



**FULLY EXECUTED**

Contract Number: 4400026535

Original Contract Effective Date: 08/12/2022

Valid From: 09/01/2022 To: 08/31/2024

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

**Purchasing Agent**

Name: **Horting Jenna**

Phone: 717-787-1122

Fax:

Your SAP Vendor Number with us: **544854**

**Supplier Name/Address:**

FACILITY OPTIMIZATION SOLUTIONS LLC  
DBA FOS OF CANNONDESIGN  
50 FOUNTAIN PLZ STE 200  
BUFFALO NY 14202-2212 US

Supplier Phone Number: 716-774-3310

**Please Deliver To:**

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

**Contract Name:**

Job Order Contracting Program Consultant

**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    | JOC System License Fee      | 0.000 |     | 0.00  | 1        | 0.00  |
| 2    | Job Order Development Fee   | 0.000 |     | 0.00  | 1        | 0.00  |
| 3    | Construction Management Fee | 0.000 |     | 0.00  | 1        | 0.00  |

**General Requirements for all Items:**

**Header Text**

This contract provided a Job Order Contracting Program Consultant to administer and provide construction management services to meet the requirements of the Commonwealth of Pennsylvania agencies.

No further information for this Contract

**Information:**

Supplier's Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_

Title \_\_\_\_\_  
Date \_\_\_\_\_

**CONTRACT  
FOR  
Job Order Contracting Program Consultant**

**THIS CONTRACT** for the provision of **Job Order Contracting Program Consultant** ("Contract") is entered into by and between the **Commonwealth of Pennsylvania**, acting through the **Department of General Services ("DGS")**, and **FOS of CannonDesign ("Contractor")**.

**WHEREAS**, the Department of General Services (DGS) issued a Request For Proposals for the provision of **Job Order Contracting Program Consultant** for the Commonwealth, RFP No. **DGS-A-2020-0001-JOC-Program Consultant-Rebid ("RFP")**; and

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

**WHEREAS**, Contractor submitted a Cost Submittal; and

**WHEREAS**, DGS determined that Contractor's proposal, as revised by its final Negotiated 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 **Job Order Contracting Program Consultant Services** to the Commonwealth.

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

1. Contractor shall, in accordance with the terms and conditions of this Contract, provide **Job Order Contracting Program Consultant Services** as more fully defined in the RFP, to the Commonwealth.
2. Commonwealth executive agencies shall procure their requirements for Job Order Contracting Program Consultant Services in accordance with the terms and conditions of this contract attached hereto as **Exhibit A**.
3. Contractor agrees to provide the Job Order Contracting Program Consultant Services listed in its final Negotiated Price Proposal, which is attached hereto as **Exhibit B** and made a part of hereof, at the prices listed for those items in **Exhibit B**.
4. Contractor agrees to meet and maintain its **10%** commitment to utilize Small Diverse Businesses (SDB) and its **3%** commitment to utilize Veteran Business Enterprises (VBE) made in its Small Diverse Business Participation Submittal and

associated required documents and its Veteran Business Enterprise Submittal and the associated required documents, attached hereto as **Exhibit C** and made a part hereof. The SDB and VBE commitments are based on the total compensation paid to the Contractor annually for the program. The Contractor agrees to complete the SDB and VBE payments information in the Department's Compliance Management Software, or as otherwise directed by the Department.

5. The following Information Technology Polices (ITP) are applicable to this contract and attached hereto as **Exhibit D**:
  - a. ITP SEC025 – Proper Use and Disclosure of Personally Identifiable Information.
  - b. ITP SEC029 – Physical Security Policy for IT Resources
  - c. ITP SEC031 – Encryption Standards
  - d. ITP SEC032 – Enterprise Data Loss Prevention Compliance Standards
  - e. ITP SEC038 – Commonwealth Data Center Privileged User IAM Policy
  - f. ITP STF000 – Software Development Life Cycle Policy
  - g. ITP STF002 – Commonwealth of PA Website Standards
  - h. ITP SYM003 – Off-Site Storage for Commonwealth Agencies
  - i. ITP SYM006 – Commonwealth IT Resource Patching Policy
  - j. ITP SYM010 – Enterprise Services Maintenance Scheduling
  - k. ITP SEC039 – Keystone Login and Identify Proofing
  - l. ITP ACC001 – Accessibility Policy
  - m. ITP BUS011 – Commonwealth Cloud Computing Services Requirements
  - n. ITP INF006 – Commonwealth County Code Standard
  - o. ITP INF009 – e-Discovery Technology Standard
  - p. ITP INFM001 – The Life Cycle of Records General Policy Statement
  - q. ITP INFRM004 – Management of Web Records
  - r. ITP INFRM005 – System Design Review of Electronic Systems
  - s. ITP INFRM006 – Electronic Document Management Systems
  - t. ITP PRV001 – Commonwealth of Pennsylvania Electronic Information Privacy Policy
  - u. ITP SEC000 – Information Security Policy
  - v. ITP SEC002 – Internet Accessible Proxy Servers and Services
  - w. ITP SEC004 – Enterprise Web Application Firewall
  - x. ITP SEC009 – Minimum Contractor Background Checks Policy
  - y. ITP SEC015 – Data Cleansing
  - z. ITP SEC019 – Policy and Procedures for Protecting Commonwealth Electronic Data
  - aa. ITP SEC021 – Security Information and Event Management Policy
  - bb. ITP SEC023 – Information Technology Security Assessment and Testing Policy
  - cc. ITP SEC024 – Security Incident Reporting Policy

6. The Work Statement in the RFP is modified as follows:

- a. Section IV-4 D Job Order Project/Construction Management should be updated to:

The selected Proposer shall be responsible for complying with the General Conditions for Design Build Contracts for JOC Job Orders (Appendix O) and the Administrative Procedures for the Job Order Contract (Appendix P), as they refer to the JOC Program Consultant and/or the Construction Management Services (if applicable). In addition, the selected Proposer shall be responsible for the following duties on every Job Order:

For Job Order Project Management

- i. Review and Assign Jobs initiated by the Agency.
- ii. Administer Joint Scoping Meeting (JSM) for the project once the Agency has entered the project.
  1. Draft, send for comment, review comments, and finalize JSM meeting minutes.
- iii. Assist Agency in confirming the project scope identified is developed through Final Design.
- iv. Assist Agency in the creation of the Job Order for construction including Supplementals.
  1. Confirm the Job Order accurately reflects the Final Design.
  2. Confirm the Job Order Cost is accurately reflected by the JOC Unit Price Book.
  3. Administer Joint Proposal Review Meetings as needed.

For Job Order Construction Management (if procured by the Agency)

- i. Attend JSM for the project once the Agency has entered the project.
  1. Review/comment and recommend approval/disapproval of JSM meeting minutes.
- ii. Review and recommend approval/disapproval of the Job Order for the design portion of the construction project.



1. Review and recommend approval/disapproval of the design progress submission(s) applicable to the Job Order.
      2. Review and recommend approval/disapproval of all invoicing for the Job Order for the design portion of the project.
    - iii. Review and recommend approval/disapproval of the Job Order for construction and supplementals.
    - iv. Perform construction management of the Job Order including, but not limited to:
      1. Administering the Initial Job Conference and all subsequent job meetings; and
      2. Reviewing and processing all construction/related forms; and
      3. Confirm work is being performed in accordance with the Job Order; and
      4. Review all invoicing for the Job Order; and
      5. Perform no less than 3 site visits during construction with the superintendent. Site visits should occur at the commencement of construction, at 50% physical construction completion and at 100% physical construction completion.
    - v. Assist and confirm all Close-Out procedures have occurred and required documentation have been provided, as required by the Agency, prior to Final payment.
    - vi. Review all as-built drawings for accuracy prior to submission to the Commonwealth.
  - b. Section IV-4 G Program and Technical Support is amended to add the following provision "The Unit Price Book shall be updated no less than annually but no more than biannually. The only exception would be to update an item that has shown an excessive increase/decrease or if an item has been submitted as a Non-Pre-Priced item three or more times, then DGS reserves the right to request an update."
7. The IT Contract Terms and Conditions are hereby amended to incorporation the clarifications and modifications as outlined in the Objections to the IT Terms and Conditions Document, which is attached hereto as **Exhibit E** and includes the following:

- a. The Simplebid End User License Agreement has been updated, which is attached hereto as **Exhibit F**.
  - b. The Amendment to the Simplebid End User License Agreement has been updated, which is attached hereto as **Exhibit G**.
  - c. Section 39 Commonwealth Held Harmless is modified as follows:
    - (a) The Contractor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
    - (b) Notwithstanding paragraph 39(a), with respect to professional liability claims, the Contractor shall indemnify the Commonwealth against any and all third party claims, demands and actions to the extent resulting from the negligent Services performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. Section 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth.
    - (c) 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.
8. 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.
  - i. The IT Contract Terms and Conditions together with the Objections to the IT Terms and Conditions contained in the RFP, which is attached hereto as Exhibits A and E respectively and made part of this Contract.
  - ii. The RFP, including all of the referenced Appendices and as revised by all Addenda issued thereto, which is attached hereto as Exhibit H and made a part hereof.
  - iii. The Contractor's Final Negotiated Cost Submittal which is attached hereto as Exhibit B and made a part hereof.
  - iv. The Contractor's Small Diverse Business Participation Submittal and Veteran Business Enterprise Participation Submittal, which is attached hereto as Exhibit C and made a part hereof.
  - v. The Contractor's Technical Submittal, together with the Negotiation Notes, which is attached hereto as Exhibit I and made a part hereof.

**[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:

CONTRACTOR:

By: [Signature]  
(Assistant) Secretary

By: [Signature]  
(Vice) President

James Carroll 3.16.22  
Printed Name/Date

Joseph Cassata, P.A. NKSFB  
Printed Name/Date

61-19541591  
Federal I.D. Number

**COMMONWEALTH OF PENNSYLVANIA**  
**Department of General Services**

By: To be obtained electronically  
Agency Head/Designee      Date  
Title

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

## **Appendix N - IT CONTRACT TERMS AND CONDITIONS**

### **1. DEFINITIONS.**

- (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) Commonwealth. The Commonwealth of Pennsylvania.
- (c) Contract. The integrated documents as defined in **Section 11, Order of Precedence**.
- (d) Contracting Officer. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- (e) Data. Any recorded information, regardless of the form, the media on which it is recorded or the method of recording.
- (f) Days. Calendar days, unless specifically indicated otherwise.
- (g) Developed Works. All of the fully or partially complete property, whether tangible or intangible prepared by the Contractor for ownership by the Commonwealth in fulfillment of the requirements of this Contract, including but not limited to: documents; sketches; drawings; designs; works; papers; files; reports; computer programs; documentation; data; records; software; samples; literary works and other works of authorship. Developed Works include all material necessary to exercise all attributes of ownership or of the license granted in **Section 46, Ownership of Developed Works**.
- (h) Documentation. All materials required to support and convey information about the Services or Supplies required by this Contract, including, but not limited to: written reports and analyses; diagrams maps, logical and physical designs; system designs; computer programs; flow charts; and disks and/or other machine-readable storage media.
- (i) Expiration Date. The last valid date of the Contract, as indicated in the Contract documents to which these IT Contract Terms and Conditions are attached.
- (j) Purchase Order. Written authorization for Contractor to proceed to furnish Supplies or Services.
- (k) Proposal. Contractor’s response to a Solicitation issued by the Issuing Agency, as accepted by the Commonwealth.

- (l) Services. All Contractor activity necessary to satisfy the Contract.
- (m) Software. A collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).
- (n) Solicitation. A document issued by the Commonwealth to procure Services or Supplies, e.g., Request for Proposal; Request for Quotation; Supplier Pricing Request; or Invitation for Bid, including all attachments and addenda thereto.
- (o) Supplies. All tangible and intangible property including, but not limited to, materials and equipment provided by the Contractor to satisfy the Contract.

## **2. TERM OF CONTRACT.**

- (a) Term. The term of the Contract shall commence on the Effective Date and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.
- (b) Effective Date. The Effective Date shall be one of the following:
  - (i) the date the Contract has been fully executed by the Contractor and all approvals required by Commonwealth contracting procedures have been obtained; or
  - (ii) the date stated in the Contract, whichever is later.

## **3. 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.

## **4. 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.

## 5. ELECTRONIC SIGNATURES.

- (a) The Contract and/or Purchase Orders 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) *Written signature not required.* No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
  - (ii) *Validity; admissibility.* The parties agree that no writing shall be required in order to make the Contract or Purchase Order legally binding, notwithstanding contrary requirements in any law or regulation. The parties hereby agree not to contest the validity or enforceability of the Contract executed electronically, 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 executed or 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.
- (c) Verification. 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.



## **6. PURCHASE ORDERS.**

- (a) Purchase Orders. The Commonwealth may issue Purchase Orders against the Contract or issue a Purchase Order as the Contract. These Purchase 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) Electronic transmission. 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.
- (c) Receipt. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of a Purchase Order.
- (d) Received next business day. Purchase Orders received by the Contractor after 4 p.m. will be considered received the following business day.
- (e) Commonwealth Purchasing Card. Purchase Orders under \$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. The Contractor agrees to accept payment through the use of a Commonwealth Purchasing card.

## **7. CONTRACT SCOPE.**

The Contractor agrees to furnish the requested Services and Supplies to the Commonwealth as such Services and Supplies are defined in this Contract.

## **8. ACCESS TO COMMONWEALTH FACILITIES.**

If the Contractor must perform work at a Commonwealth facility outside of the daily operational hours set forth by the Commonwealth, it must make arrangements with the Commonwealth to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access.

## **9. NON-EXCLUSIVE CONTRACT.**

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

## **10. INFORMATION TECHNOLOGY POLICIES.**

- (a) General. The Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (located at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Policy ACC001, Accessibility Policy. The Contractor shall ensure that Services and Supplies procured under the Contract comply with the applicable standards. In the event such standards change during the Contractor's performance, and the Commonwealth requests that the Contractor comply with the changed standard, then any incremental costs incurred by the Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.
- (b) Waiver. The Contractor may request a waiver from an Information Technology Policy (ITP) by providing detailed written justification as to why the ITP cannot be met. The Commonwealth may waive the ITP in whole, in part or conditionally, or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.

## **11. ORDER OF PRECEDENCE.**

If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence shall be:

- (a) The documents containing the parties' signatures;
- (b) The IT Contract Terms and Conditions;
- (c) The Proposal; and
- (d) The Solicitation.

## **12. CONTRACT INTEGRATION.**

- (a) Final contract. This Contract constitutes the final, complete, and exclusive Contract between the parties, containing all the terms and conditions agreed to by the parties.
- (b) Prior representations. All representations, understandings, promises, and agreements pertaining to the subject matter of this Contract made prior to or at the time this Contract is executed are superseded by this Contract.
- (c) Conditions precedent. There are no conditions precedent to the performance of this Contract except as expressly set forth herein.
- (d) Sole applicable terms. No contract terms or conditions are applicable to this Contract except as they are expressly set forth herein.

- (e) Other terms unenforceable. The Contractor may not require the Commonwealth or any user of the Services or Supplies acquired within the scope of this Contract to sign, click through, or in any other way agree to any terms associated with use of or interaction with those Services and/or Supplies, unless the Commonwealth has approved the terms in writing in advance under this Contract, and the terms are consistent with this Contract. Further, changes to terms may be accomplished only by processes set out in this Contract; no quotations, invoices, business forms or other documentation, or terms referred to therein, shall become part of this Contract merely by their submission to the Commonwealth or their ordinary use in meeting the requirements of this Contract. Any terms imposed upon the Commonwealth or a user in contravention of this subsection (e) must be removed at the direction of the Commonwealth and shall not be enforced or enforceable against the Commonwealth or the user.

### **13. PERIOD OF PERFORMANCE.**

The Contractor, for the term of this Contract, shall complete all Services and provide all Supplies as specified under the terms of this Contract. In no event shall the Commonwealth be responsible or liable to pay for any Services or Supplies provided by the Contractor prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such Services or Supplies.

### **14. INDEPENDENT PRIME CONTRACTOR.**

- (a) Independent 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.
- (b) Sole point of contact. The Contractor will be responsible for all Services and Supplies 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.

### **15. SUBCONTRACTS.**

The Contractor may subcontract any portion of the Services or Supplies 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 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 un-redacted copy of the subcontract agreement between the Contractor and the subcontractor. 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.

**16. 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 and/or its provision of Supplies 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.

**17. ENHANCED MINIMUM WAGE.**

- (a) Enhanced Minimum Wage. Contractor/Lessor agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- (b) Adjustment. Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- (c) Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:
  - (i) exempt from the minimum wage under the Minimum Wage Act of 1968;
  - (ii) covered by a collective bargaining agreement;
  - (iii) required to be paid a higher wage under another state or federal law governing the services, including the *Prevailing Wage Act* and Davis-Bacon Act; or
  - (iv) required to be paid a higher wage under any state or local policy or ordinance.

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

## **18. COMPENSATION.**

- (a) General. The Contractor shall be required to perform at the price(s) quoted in the Contract. All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and Services performed to the satisfaction of the Commonwealth.
- (b) Travel. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract. If not otherwise specified in the Contract, travel and related expenses shall be reimbursed in accordance with [Management Directive 230.10 Amended](#), *Commonwealth Travel Policy*, and [Manual 230.1](#), *Commonwealth Travel Procedures Manual*.

## **19. BILLING REQUIREMENTS.**

- (a) Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:
  - (i) Vendor name and “Remit to” address, including SAP Vendor number;
  - (ii) Bank routing information, if ACH;
  - (iii) SAP Purchase Order number;
  - (iv) Delivery Address, including name of Commonwealth agency;

- (v) Description of the supplies/services delivered in accordance with SAP Purchase Order (include Purchase Order line number if possible);
  - (vi) Quantity provided;
  - (vii) Unit price;
  - (viii) Price extension;
  - (ix) Total price; and
  - (x) Delivery date of supplies or services.
- (b) If an invoice does not contain the minimum information set forth in this section, and comply with the provisions located at <https://www.budget.pa.gov/Programs/Pages/E-Invoicing.aspx>, relating to the Commonwealth E-Invoicing Program, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

## 20. PAYMENT.

- (a) Payment Date. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
- (i) the date on which payment is due under the terms of the Contract;
  - (ii) **thirty (30) days** after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or
  - (iii) the payment date specified on the invoice if later than the dates established by [paragraphs \(a\)\(i\) and \(a\)\(ii\)](#), above.
- (b) Delay; Interest. 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 **15 days** after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act of December 13, 1982, P.L. 1155, No. 266, 72 P. S. § 1507, (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ 2.31—2.40 (relating to interest penalties for late payments to qualified small business concerns).

- (c) 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.

## **21. ELECTRONIC PAYMENTS.**

- (a) The Commonwealth will make contract payments through the Automated Clearing House (ACH). Within **10 days** of award of the Contract, the Contractor must submit or must have already submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).
- (b) The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
- (c) 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.

## **22. ASSIGNABILITY.**

- (a) Subject to the terms and conditions of this section the Contract is binding upon the parties and their respective successors and assigns.
- (b) The Contractor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Commonwealth, which consent may be withheld at the sole and absolute discretion of the Commonwealth.
- (c) For the purposes of the Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, encumbrance, 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.
- (d) Any assignment consented to by the Commonwealth 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.
- (e) Notwithstanding the foregoing, the Contractor may, without the consent of the Commonwealth, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the



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

- (f) A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, is not considered to be an assignment. The Contractor shall give the Commonwealth written notice of any such change of name.

## **23. INSPECTION AND ACCEPTANCE.**

- (a) Developed Works and Services.
  - (i) *Acceptance.* Acceptance of any Developed Work or Service will occur in accordance with an acceptance plan (Acceptance Plan) submitted by the Contractor and approved by the Commonwealth. Upon approval of the Acceptance Plan by the Commonwealth, the Acceptance Plan becomes part of this Contract.
  - (ii) *Software Acceptance Test Plan.* For contracts where the development of Software, the configuration of Software or the modification of Software is being inspected and accepted, the Acceptance Plan must include a Software Acceptance Test Plan. The Software Acceptance Test Plan will provide for a final acceptance test, and may provide for interim acceptance tests. Each acceptance test will be designed to demonstrate that the Software conforms to the functional specifications, if any, and the requirements of this Contract. The Contractor shall notify the Commonwealth when the Software is completed and ready for acceptance testing. The Commonwealth will not unreasonably delay commencement of acceptance testing.
  - (iii) If software integration is required at the end of the project, as set out in the Solicitation, the Commonwealth's acceptance of the Software shall be final unless at the time of final acceptance, the Software does not meet the acceptance criteria set forth in the Contract.
  - (iv) If software integration is not required at the end of the project, as set out in the Solicitation, the Commonwealth's acceptance of the Software shall be complete and final.
  - (v) *Certification of Completion.* The Contractor shall certify, in writing, to the Commonwealth when an item in the Acceptance Plan is completed and ready for acceptance. Unless otherwise agreed to by the Commonwealth in the Acceptance Plan, the acceptance period shall be **10 business days** for interim items and **30 business days** for final items. Following receipt of the Contractor's certification of completion of an item, the Commonwealth shall, either:

- (1) Provide the Contractor with Commonwealth's written acceptance of the work product; or
  - (2) Identify to the Contractor, in writing, the failure of the work product to comply with the specifications, listing all such errors and omissions with reasonable detail.
- (vi) *Deemed Acceptance.* If the Commonwealth fails to notify the Contractor in writing of any failures in the work product within the applicable acceptance period, the work product shall be deemed accepted.
- (vii) *Correction upon Rejection.* Upon the Contractor's receipt of the Commonwealth's written notice of rejection, which must identify the reasons for the failure of the work product to comply with the specifications, the Contractor shall have **15 business days**, or such other time as the Commonwealth and the Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected item, certifying to the Commonwealth, in writing, that the failures have been corrected, and that the items have been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted items and certification, the Commonwealth shall have **30 business days** to test the corrected items to confirm that they are in compliance with the specifications. If the corrected items are in compliance with the specifications, then the Commonwealth shall provide the Contractor with its acceptance of the items in the completed milestone.
- (viii) *Options upon Continued Failure.* If, in the opinion of the Commonwealth, the corrected items still contain material failures, the Commonwealth may either:
- (1) Repeat the procedure set forth above; or
  - (2) Proceed with its rights under **Section 28, Termination**, except that the cure period set forth in **Subsection 28(c)** may be exercised in the Commonwealth's sole discretion.
- (b) Supplies.
- (i) *Inspection prior to Acceptance.* No Supplies received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the Supplies.
  - (ii) *Defective Supplies.* Any Supplies discovered to be defective or that fail to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Supplies or the noncompliance

with the specifications were not reasonably ascertainable upon the initial inspection.

- (1) The Contractor shall remove rejected item(s) from the premises without expense to the Commonwealth within **15 days** after notification.
- (2) 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.
- (3) 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 may procure, in such manner as it determines, supplies similar or identical to the those that Contractor failed, neglected or refused to replace, 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.

#### **24. DEFAULT.**

The Commonwealth may, subject to the provisions of **Section 25, Notice of Delays**, and **Section 66, Force Majeure**, 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 **Section 28, Termination**) the whole or any part of this Contract for any of the following reasons:

- (i) Failure to begin Services within the time specified in the Contract or as otherwise specified;
- (ii) Failure to perform the Services with sufficient labor, equipment, or material to insure the completion of the specified Services in accordance with the Contract terms;
- (iii) Unsatisfactory performance of the Services;
- (iv) Failure to meet requirements within the time periods(s) specified in the Contract;
- (v) Multiple failures over time of a single service level agreement or a pattern of failure over time of multiple service level agreements;

- (vi) Failure to provide a Supply or Service that conforms with the specifications referenced in the Contract;
- (vii) Failure or refusal to remove material, or remove, replace or correct any Supply rejected as defective or noncompliant;
- (viii) Discontinuance of Services without approval;
- (ix) Failure to resume a Service, which has been discontinued, within a reasonable time after notice to do so;
- (x) Insolvency;
- (xi) Assignment made for the benefit of creditors;
- (xii) 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 subcontractors for materials furnished, labor supplied or performed, for equipment rentals or for utility services rendered;
- (xiii) Failure to protect, repair or make good any damage or injury to property;
- (xiv) Breach of any provision of this Contract;
- (xv) Any breach by Contractor of the security standards or procedures of this Contract;
- (xvi) Failure to comply with representations made in the Contractor's Proposal;  
or
- (xvii) Failure to comply with applicable industry standards, customs and practice.

## **25. NOTICE OF DELAYS.**

Whenever the Contractor encounters any difficulty that delays or threatens to delay the timely performance of this Contract (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to the Commonwealth stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Commonwealth of any rights or remedies to which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with [Section 27, Changes](#).

## **26. CONDUCT OF SERVICES.**

- (a) Following the Effective Date of the Contract, Contractor shall proceed diligently with all Services and shall perform such Services with qualified personnel, in accordance with the completion criteria set forth in the Contract.
- (b) In determining whether the Contractor has performed with due diligence under the Contract, it is agreed and understood that the Commonwealth may measure the amount and quality of the Contractor's effort against the representations made in the Contractor's Proposal. The Contractor's Services hereunder shall be monitored by the Commonwealth and the Commonwealth's designated representatives. If the Commonwealth reasonably determines that the Contractor has not performed with due diligence, the Commonwealth and the Contractor will attempt to reach agreement with respect to such matter. Failure of the Commonwealth or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of **Section 30, Contract Controversies**.

## **27. CHANGES.**

- (a) At any time during the performance of the Contract, the Commonwealth or the Contractor may request a change to the Contract. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If the Commonwealth is the requestor of the change, the Contractor will inform the Commonwealth of any charges for investigating the change request prior to incurring such charges. If the Commonwealth and the Contractor agree on the results of the investigation and any necessary changes to the Contract, the parties must complete and execute a change order to modify the Contract and implement the change. The change order will be evidenced by a writing in accordance with the Commonwealth's change order procedures. No work may begin on the change order until the Contractor has received the executed change order. If the parties are not able to agree upon the results of the investigation or the necessary changes to the Contract, a Commonwealth-initiated change request will be implemented at Commonwealth's option and the Contractor shall perform the Services; and either party may elect to have the matter treated as a dispute between the parties under **Section 30, Contract Controversies**. During the pendency of any such dispute, Commonwealth shall pay to Contractor any undisputed amounts.
- (b) Changes outside the scope of this Contract shall be accomplished through the Commonwealth's procurement procedures, and may result in an amended Contract or a new contract. No payment will be made for services outside of the scope of the Contract for which no amendment has been executed.

## **28. TERMINATION.**

- (a) For Convenience.

- (i) The Commonwealth may terminate the Contract, or a Purchase Order issued against the Contract, in whole or in part, without cause by giving Contractor **30 days'** prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be 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:

- (1) all Services performed consistent with the terms of the Contract prior to the effective date of termination;
- (2) 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 30, Contract Controversies](#), of this Contract.

- (ii) The Contractor shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such Services performed during the **30-day** notice period, if such Services are requested by the Commonwealth, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under this Contract.
  - (iii) The above shall not be deemed to limit the Commonwealth's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.
- (b) Non-Appropriation. Any payment obligation or portion thereof of the Commonwealth created by this Contract is conditioned upon the availability and appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance or full

performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract in whole or in part. The Contractor shall be reimbursed in the same manner as that described in [subsection \(a\)](#) to the extent that appropriated funds are available.

- (c) **Default.** The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within **30 days**, or if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.
- (i) Subject to [Section 38, Limitation of Liability](#), in the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection (c), the Commonwealth may procure services similar to those so terminated, and the Contractor, 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 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, 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 (c) 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 for default, then the Contract shall be deemed to have been terminated for convenience under [subsection \(a\)](#).
- (v) If this Contract is terminated as provided by this subsection (c), the Commonwealth may, in addition to any other rights provided in this subsection (c), and subject law and to other applicable provisions of this Contract, require the Contractor to deliver to the Commonwealth in the



manner and to the extent directed by the Contracting Officer, such Software, Data, Developed Works, Documentation and other materials as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated.

- (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 **Section 30, Contract Controversies**, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **29. BACKGROUND CHECKS.**

- (a) The Contractor, at its expense, must 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 IT 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/Request-a-Criminal-History-Record.aspx>. The background check must be conducted prior to initial access and on an annual basis thereafter.
- (b) Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that an employee of the Contractor or an employee of a subcontractor of the Contractor 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 cure 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 or require background checks over and above that described herein.

### 30. CONTRACT CONTROVERSIES.

- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Contract or a purchase order, the Contractor, within **six (6) months** after the cause of action accrues, must 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 **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Contractor or the Contracting Officer requests mediation, and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- (c) Within **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 or Purchase Order 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 or Purchase Order.

### 31. CONFIDENTIALITY, PRIVACY AND COMPLIANCE.

- (a) General. 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. Unless the context otherwise clearly indicates the need for confidentiality, information is deemed confidential only when the party claiming confidentiality designates the information as "confidential" in such a way as to give notice to the other party (for

example, notice may be communicated by describing the information, and the specifications around its use or disclosure, in the Solicitation or in the Proposal). Neither party may assert that information owned by the other party is such party's confidential information. Notwithstanding the foregoing, all Data provided by, or collected, processed, or created on behalf of the Commonwealth is Confidential Information unless otherwise indicated in writing.

- (b) Copying; Disclosure; Termination. The parties agree that 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 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 or any license granted hereunder, the receiving party will return to the disclosing party, or certify as to the destruction of, all confidential information in the receiving party's possession, other than one copy (where permitted by law or regulation), which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions. A material breach of these requirements may result in termination for default pursuant to **Subsection 28(c)**, in addition to other remedies available to the non-breaching party.
- (c) 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;
  - (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.

- (d) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
- (i) Prepare and submit an un-redacted version of the appropriate document;
  - (ii) Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret. The Contractor shall use a redaction program that ensures the information is permanently and irreversibly redacted; and
  - (iii) Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:
    - (1) the attached material contains confidential or proprietary information or trade secrets;
    - (2) the Contractor is submitting the material in both redacted and un-redacted format, if possible, in accordance with 65 P.S. § 67.707(b); and
    - (3) the Contractor is requesting that the material be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
- (e) Disclosure of Recipient or Beneficiary Information Prohibited. The Contractor 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 the Contract for any purpose not connected with the Contractor's responsibilities, except with consent pursuant to applicable law or regulations. All material associated with direct disclosures of this kind (including the disclosed information) shall be provided to the Commonwealth prior to the direct disclosure.
- (f) Compliance with Laws. Contractor will comply with all applicable laws or regulations related to the use and disclosure of information, including information that constitutes Protected Health Information (PHI) as defined by the *Health Insurance Portability and Accountability Act* (HIPAA). Further, by signing this Contract, the Contractor agrees to the terms of the Business Associate Agreement, which is incorporated into this Contract as **Exhibit A**, or as otherwise negotiated by the Contractor and the purchasing agency. It is understood that **Exhibit A, Commonwealth of Pennsylvania Business Associate Agreement**, is only applicable if and to the extent indicated in the Contract.
- (g) Additional Provisions. Additional privacy and confidentiality requirements may be specified in the Contract.

- (h) Restrictions on Use. All Data and all 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 shall be used only for the work of this Contract. No Data, intellectual property, Documentation or Developed Works may be used, disclosed, or otherwise opened for access by or to the Contractor or any third party unless directly related to and necessary under the Contract.

### **32. PCI SECURITY COMPLIANCE.**

- (a) General. By providing the Services under this Contract, the Contractor may create, receive, or have access to credit card records or record systems containing cardholder data including credit card numbers (collectively the “Cardholder Data”). Contractor shall comply with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements for Cardholder Data that are prescribed by the payment brands (including, but not limited to, Visa, MasterCard, American Express, and Discover), as they may be amended from time to time. The Contractor acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment brands, for purposes of this Contract or as required by applicable law or regulations.
- (b) Compliance with Standards. The Contractor shall conform to and comply with the PCI DSS standards as defined by The PCI Security Standards Council at: [https://www.pcisecuritystandards.org/security\\_standards/index.php](https://www.pcisecuritystandards.org/security_standards/index.php). The Contractor shall monitor these PCI DSS standards and will promptly notify the Commonwealth if its practices should not conform to such standards. The Contractor shall provide a letter of certification to attest to meeting this requirement within **seven (7) days** of the Contractor’s receipt of the annual PCI DSS compliance report.

### **33. DATA BREACH OR LOSS.**

- (a) The 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*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 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:
  - (i) 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.

- (ii) The Contractor shall provide timely notice to all individuals that may require notice under any applicable 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.
  - (iii) The Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.
- (c) 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 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.

#### **34. INSURANCE.**

- (a) General. Unless otherwise indicated in the Solicitation, the Contractor shall maintain at its expense and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:
- (i) Workers' Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Workers' Compensation Act*, Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.
  - (ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than **\$500,000** per person and **\$2,000,000** per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured

against the insurance coverages in regard to the Services performed for or Supplies provided to the Commonwealth.

- (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate.
  - (iv) Professional Liability/Errors and Omissions Insurance in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
  - (v) Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under Company's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of **\$3,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
  - (vi) Completed Operations Insurance in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
  - (vii) Comprehensive crime insurance in an amount of not less than **\$5,000,000** per claim.
- (b) Certificate of Insurance. Prior to commencing Services under the Contract, and annually thereafter, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been given to the Commonwealth. Such cancellation or change shall not relieve the Contractor of its continuing obligation to maintain insurance coverage in accordance with this section.
- (c) Insurance coverage length. The Contractor agrees to maintain such insurance for the latter of the life of the Contract, or the life of any Purchase Orders issued under the Contract.

### **35. CONTRACTOR RESPONSIBILITY PROGRAM.**



- (a) 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.
- (b) 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 subcontractors, nor any suppliers 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.

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

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

**36. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS.**

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.

**37. 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. 23-7400001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

**38. LIMITATION OF LIABILITY.**

- (a) General. The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of **\$250,000** or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:
- (i) for bodily injury;
  - (ii) for death;
  - (iii) for intentional injury;

- (iv) for damage to real property or tangible personal property for which the Contractor is legally liable;
  - (v) under **Section 42, Patent, Copyright, Trademark and Trade Secret Protection**;
  - (vi) under **Section 33, Data Breach or Loss**; or
  - (vii) under **Section 41, Virus, Malicious, Mischievous or Destructive Programming**.
- (b) The Contractor will not be liable for consequential or incidental damages, except for damages as set forth in **paragraphs (a)(i)—(vii)** above, or as otherwise specified in the Contract.

**39. COMMONWEALTH HELD HARMLESS.**

- (a) The Contractor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- (b) Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

**40. SOVEREIGN IMMUNITY.**

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

**41. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING.**

- (a) The Contractor shall be liable for any damages incurred by the Commonwealth 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. The Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.

- (b) 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 results from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).
- (c) 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.
- (d) The Contractor shall be responsible for reviewing Commonwealth software security standards and complying with those standards.
- (e) 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 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.
- (f) 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.
- (g) The Commonwealth will not 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. PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET PROTECTION.**

- (a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, trademarks or trade dress, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG, however, in its sole discretion and under the terms it deems appropriate, may 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 that prevents the Commonwealth from continuing to use the Developed Works as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth 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, at its expense, will 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 dress, 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, trademark or trade dress, 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:

- (i) substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs; or
  - (ii) obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.
- (e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- (f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
- (i) any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
  - (ii) any license fee less an amount for the period of usage of any software; and
  - (iii) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (g) 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.
- (h) 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.

**43. CONTRACT CONSTRUCTION.**

The provisions of this Contract shall be construed in accordance with the provisions of all applicable laws and regulations of the Commonwealth. However, by executing this Contract, the Contractor agrees that it has and will continue to abide by the intellectual property laws and regulations of the United States of America.

**44. USE OF CONTRACTOR AND THIRD PARTY PROPERTY.**

- (a) Definitions.
  - (i) “Contractor Property” refers to Contractor-owned tangible and intangible property.
  - (ii) “Third Party” refers to a party that licenses its property to Contractor for use under this Contract.
  - (iii) “Third Party Property” refers to property licensed by the Contractor for use in its work under this Contract.
- (b) Contractor Property shall remain the sole and exclusive property of the Contractor. Third Party Property shall remain the sole and exclusive property of the Third Party. The Commonwealth acquires rights to the Contractor Property and Third Party Property as set forth in this Contract.
  - (i) Where the Contractor Property or Third Party Property is integrated into the Supplies or Services which are not Developed Works), or the Contractor Property is otherwise necessary for the Commonwealth to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor hereby grants to the Commonwealth a non-exclusive, fully-paid up, worldwide license to use the Contractor Property as necessary to meet the requirements of the Contract, including the rights to reproduce, distribute, publicly perform, display and create derivative works of the Contractor Property. These rights are granted for a duration and to an extent necessary to meet the requirements under this Contract. If the Contractor requires a separate license agreement, such license terms

shall include the aforementioned rights, be acceptable to the Commonwealth and include the applicable provisions set forth in these terms at [Exhibit B, Software/Services License Requirements Agreement Template](#).

- (ii) If Third Party Property is integrated into the Supplies or Services which are not Developed Works, or the Third Party Property is otherwise necessary for the Commonwealth to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor shall gain the written approval of the Commonwealth prior to the use of the Third Party Property or the integration of the Third Party Property into the Supplies or Services. Third Party Property approved by the Commonwealth is hereby licensed to the Commonwealth as necessary to meet the Contract requirements.
  - (iii) If the Third Party requires a separate license agreement, the license terms shall be acceptable to the Commonwealth and include the applicable provisions set forth in these terms at [Exhibit B, Software/Services License Requirements Agreement Template](#).
  - (iv) If the use or integration of the Third Party Property is not approved in writing under this section, the Third Party Property shall be deemed to be licensed under [paragraph \(b\)\(i\)](#) above.
  - (v) If the Contract expires or is terminated for default pursuant to [subsection 28\(c\)](#) before the Contract requirements are complete, all rights are granted for a duration and for purposes necessary to facilitate Commonwealth's or a Commonwealth-approved vendor's completion of the Supplies, Services or Developed Works under this Contract. The Contractor, in the form used by Contractor in connection with the Supplies, Services, or Developed Works, shall deliver to Commonwealth the object code version of such Contractor Property, the Third Party Property and associated licenses immediately prior to such expiration or termination to allow the Commonwealth to complete such work.
  - (vi) Where third party users are reasonably anticipated by the Contract, all users are granted the right to access and use Contractor Property for the purposes of and within the scope indicated in the Contract.
- (c) The Commonwealth will limit its agents and contractors' use and disclosure of the Contractor Property as necessary to perform work on behalf of the Commonwealth.
  - (d) The parties agree that the Commonwealth, by acknowledging the Contractor Property, does not agree to any terms and conditions of the Contractor Property agreements that are inconsistent with or supplemental to this Contract.



- (e) Reports. When a report is provided under this Contract, but was not developed specifically for the Commonwealth under this Contract, the ownership of the report will remain with the Contractor; provided, however, that the Commonwealth has the right to use, copy and distribute the report within the executive agencies of the Commonwealth.

#### **45. USE OF COMMONWEALTH PROPERTY.**

“Commonwealth Property” refers to Commonwealth-owned Software, Data and property (including intellectual property) and third party owned Software and property (including intellectual property) licensed to the Commonwealth.

- (a) Confidentiality of Commonwealth Property. All Commonwealth 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 shall be considered confidential information under **Section 31, Confidentiality, Privacy, and Compliance.**
- (b) License grant and restrictions. During the term of this Contract, Commonwealth grants to Contractor and its subcontractors for the limited purpose of providing the Services covered under this Contract, a limited, nonexclusive, nontransferable, royalty-free right (subject to the terms of any third party agreement to which the Commonwealth is a party) to access, use, reproduce, and modify Commonwealth Property in accordance with the terms of the Contract. The Commonwealth’s license to Contractor is limited by the terms of this Contract.
  - (i) The Contractor hereby assigns to the Commonwealth its rights, if any, in any derivative works resulting from Contractor’s modification of the Commonwealth Intellectual Property. Contractor agrees to execute any documents required to evidence this assignment and to waive any moral rights and rights of attribution provided for in Section 106A of Title 17 of the United States Code, the *Copyright Act of 1976*, as amended.
  - (ii) Neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Intellectual Property. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this section.
- (c) Reservation of rights. All rights not expressly granted here to Contractor are reserved by the Commonwealth.
- (d) Termination of Commonwealth license grant.

- (i) *Rights Cease.* Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, all rights granted to Contractor under this section shall immediately cease.
  - (ii) *Return Commonwealth Property.* Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Intellectual Property (including any related source code then in Contractor's possession or under its control) in the form in use as of the Effective Date of such expiration or termination (except that Commonwealth Data shall be turned over in a form acceptable to the Commonwealth).
  - (iii) *List of utilized Commonwealth Property/Destruction.* Within **15 days** after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Intellectual Property in use as of the date of such expiration or termination. Concurrently therewith, Contractor shall destroy or erase all other copies of any of the Commonwealth Software then in Contractor's possession or under its control unless otherwise instructed by Commonwealth, in writing; provided, however, that Contractor may retain one archival copy of such Commonwealth Software, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.
- (e) Effect of license grant termination. Consistent with the provisions of this section, Contractor shall refrain from manufacturing, copying, marketing, distributing or using any Commonwealth Software or any other work which incorporates the Commonwealth Software.
- (f) Commonwealth Property Protection.
- (i) Contractor acknowledges Commonwealth's exclusive right, title and interest, including without limitation copyright and trademark rights, in and to Commonwealth Data, Commonwealth Software and the Developed Works developed under the provisions of this Contract, and Contractor shall not, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title, and interest, and shall not use or disclose the Commonwealth Data, Commonwealth Software or the Developed Works without Commonwealth's written consent, which consent may be withheld by the Commonwealth for any reason.
  - (ii) Contractor shall not, in any manner, represent that Contractor has any ownership interest in the Commonwealth Data, Commonwealth Software or the Developed Works.

#### **46. OWNERSHIP OF DEVELOPED WORKS.**

Unless otherwise specified in the Contract's Statement of Work, ownership of all Developed Works shall be in accordance with the provisions set forth in this section.

(a) Rules for usage for Developed Works.

(i) *Property of Contractor.* If Developed Works modify, improve, contain, or enhance application software programs or other materials generally licensed by the Contractor, then such Developed Works shall be the property of the Contractor, and Contractor hereby grants Commonwealth an irrevocable, nonexclusive, worldwide, fully paid-up license (to include source code and relevant documentation) in perpetuity to use, modify, execute, reproduce, display, perform, prepare derivative works from and distribute, within the Commonwealth, such Developed Works.

(1) For purposes of distribution under the license grant created by this section, Commonwealth includes any government agency, department, instrumentality, division, unit or other office that is part of the Commonwealth of Pennsylvania, together with the State System of Higher Education (including any of its universities), any county, borough, commonwealth, city, municipality, town, township special purpose district, or other similar type of governmental instrumentality located within the geographical boundaries of the Commonwealth of Pennsylvania.

(2) If federal funds are used in creation of the Developed Works, the Commonwealth also includes any other state government as well as the federal government.

(ii) *Property of Commonwealth/licensor.* If the Developed Works modify, improve or enhance application software or other materials not licensed to the Commonwealth by the Contractor, then such modifications, improvements and enhancements shall be the property of the Commonwealth or its licensor.

(b) Copyright Ownership.

(i) *Works made for hire; general.* Except as indicated in [paragraph \(a\)\(i\)](#), above, Developed Works developed as part of the scope of work for the Project, including Developed Works developed by subcontractors, are the sole and exclusive property of the Commonwealth and shall be considered "works made for hire" under the *Copyright Act of 1976*, as amended, 17 United States Code.

(ii) *Assignment.* In the event that the Developed Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, Contractor agrees to assign and, upon their

authorship or creation, expressly and automatically assigns, all copyright interests, proprietary rights, trade secrets, and other right, title, and interest in and to such Developed Works to Commonwealth. Contractor further agrees that it will have its subcontractors assign, and upon their authorship or creation, expressly and automatically assigns all copyright interest, proprietary rights, trade secrets, and other right, title, and interest in and to the Developed Works to the Commonwealth.

- (iii) *Rights to Commonwealth.* Commonwealth shall have all rights accorded an owner of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Developed Works in multiple copies, the right to distribute copies by sales or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the Developed Works and the right to display the Developed Works.
  - (iv) *Subcontracts.* The Contractor further agrees that it will include the requirements of this section in any subcontractor or other agreement with third parties who in any way participate in the creation or development of Developed Works.
  - (v) *Completion or termination of Contract.* Upon completion or termination of this Contract, Developed Works, or completed portions thereof, shall immediately be delivered by Contractor to the Commonwealth.
  - (vi) *Warranty of noninfringement.* Contractor represents and warrants that the Developed Works are original and do not infringe any copyright, patent, trademark, or other intellectual property right of any third party and are in conformance with the intellectual property laws and regulations of the United States.
- (c) Patent ownership. Contractor and its subcontractors shall retain ownership to patentable items, patents, processes, inventions or discoveries (collectively, the Patentable Items) made by the Contractor during the performance of this Contract. Notwithstanding the foregoing, the Commonwealth shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. Commonwealth may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. Commonwealth understands and agrees that any third party disclosure will not confer any license to such Patentable Items.
- (d) Federal government interests. Certain funding under this Contract may be provided by the federal government. Accordingly, the rights to Developed Works or Patentable Items of Contractors or subcontractors hereunder will be further subject

to government rights as set forth in 37 C.F.R. [Part 401](#), as amended, and other applicable law or regulations.

- (e) Usage rights. Except as otherwise covered by this section either Party, in the ordinary course of conducting business, may use any ideas, concepts, know-how, methodologies, processes, components, technologies, algorithms, designs, modules or techniques relating to the Services.
- (f) Contractor's copyright notice obligations. Contractor will affix the following Copyright Notice to the Developed Works developed under this section and all accompanying documentation: "*Copyright © [year] by the Commonwealth of Pennsylvania. All Rights Reserved.*" This notice shall appear on all versions of the Developed Works delivered under this Contract and any associated documentation. It shall also be programmed into any and all Developed Works delivered hereunder so that it appears at the beginning of all visual displays of such Developed Works.

#### **47. SOURCE CODE AND ESCROW ITEMS OBLIGATIONS.**

- (a) Source code. Simultaneously with delivery of the Developed Works to Commonwealth, Contractor shall deliver a true, accurate and complete copy of all source codes relating to the Developed Works.
- (b) Escrow. To the extent that Developed Works and/or any perpetually-licensed software include application software or other materials generally licensed by the Contractor, Contractor agrees to place in escrow with an escrow agent copies of the most current version of the source code for the applicable software that is included as a part of the Services, including all updates, improvements, and enhancements thereof from time to time developed by Contractor.
- (c) Escrow agreement. An escrow agreement must be executed by the parties, with terms acceptable to the Commonwealth, prior to deposit of any source code into escrow.
- (d) Obtaining source code. Contractor agrees that upon the occurrence of any event or circumstance which demonstrates with reasonable certainty the inability or unwillingness of Contractor to fulfill its obligations to Commonwealth under this Contract, Commonwealth shall be able to obtain the source code of the then-current source codes related to Developed Works and/or any Contractor Property placed in escrow under [subsection \(b\)](#), above, from the escrow agent.

#### **48. LOCATION, STATUS AND DISPOSITION OF DATA.**

Unless the Solicitation specifies otherwise:

- (i) All Data must be stored within the United States;

- (ii) The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor's or its subcontractors' possession;
- (iii) All Data shall be provided to the Commonwealth upon request, in a form acceptable to the Commonwealth and at no cost;
- (iv) Any Data shall be destroyed by the Contractor at the Commonwealth's request; and
- (v) Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy and accessibility requirements of this Contract.

**49. PUBLICATION RIGHTS AND/OR COPYRIGHTS.**

- (a) Except as otherwise provided in [Section 46, Ownership of Developed Works](#), the Contractor shall not publish any of the results of the work without the written permission of the Commonwealth. The publication shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the Commonwealth of Pennsylvania." The Contractor shall not include in the documentation any copyrighted matter, unless the Contractor provides the Commonwealth with written permission of the copyright owner.
- (b) Except as otherwise provided in the Contract, the Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

**50. CHANGE OF OWNERSHIP OR INSOLVENCY.**

In the event that the Contractor should change ownership for any reason whatsoever, the Commonwealth shall have the exclusive option of continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract, or continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs, or immediately terminating this Contract. Nothing in this section limits the Commonwealth's exercise of any rights that the Commonwealth may have under [Section 28, Termination](#).

**51. OFFICIALS NOT TO BENEFIT.**

No official or employee of the Commonwealth and no member of its General Assembly who exercises any functions or responsibilities under this Contract shall participate in any decision relating to this Contract which affects their personal interest or the interest of any corporation, partnership, or association in which they are, directly or indirectly, interested;

nor shall any such official or employee of the Commonwealth or member of its General Assembly have any interest, direct or indirect, in this Contract or the proceeds thereof.

**52. COMPLIANCE WITH LAWS.**

- (a) The Contractor shall comply with all federal, state and local laws, regulations and policies applicable to its Services or Supplies, including, but not limited to, all statutes, regulations and rules that are in effect as of the Effective Date of the Contract and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation.
- (b) If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the Services or Supplies provided under this Contract, the Parties shall modify this Contract, via **Section 27, Changes**, to the extent reasonably necessary to:
  - (i) Ensure that such Services or Supplies will be in full compliance with such laws, regulations and policies; and
  - (ii) Modify the rates applicable to such Services or Supplies, unless otherwise indicated in the Solicitation.

**53. THE AMERICANS WITH DISABILITIES ACT.**

During the term of this Contract, the Contractor agrees as follows:

- (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 no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing 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 the 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 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 \(a\)](#).

**54. EXAMINATION OF RECORDS.**

- (a) The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under this Contract to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.
- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in [subsection \(c\)](#) below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by applicable laws or regulations, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in [Section 31, Confidentiality, Privacy and Compliance](#).
- (c) The Contractor shall preserve and make available its records for a period of **three (3) years** from the date of final payment under this Contract.
  - (i) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of **three (3) years** from the date of any resulting final settlement.
  - (ii) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.
- (d) Except for documentary evidence retained pursuant to [paragraph \(c\)\(ii\)](#) above, the Contractor may in fulfillment of its obligation to retain its records as required by this section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of **two (2) years** following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth with the concurrence of its auditors.
- (e) The provisions of this section shall be applicable to and included in each subcontract hereunder.

## **55. SINGLE AUDIT ACT OF 1984.**

In compliance with the *Single Audit Act of 1984*, as amended, the Contractor agrees to the following:

- (a) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the



Comptroller General of the United States and specified in the most current version of *Government Auditing Standards* (Yellow Book).

- (b) The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, as amended, 31 U.S.C. § 7501, *et seq.*, and all rules and regulations promulgated pursuant to the Act.
- (c) The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
- (d) The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984*, as amended.

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

- (a) Contractor understands that its level of access may allow or require it to view or access highly sensitive and confidential Commonwealth and third party data. This data is subject to various state and federal laws, regulations and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of the Supplies or Services, 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. This sign-off document, a sample of which is attached as **Exhibit C, Sample Sign-off Document**, 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) The 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 deployment of the Supplies or Services, the Contractor is and shall remain compliant with all applicable state and federal laws, regulations and policies 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.
- (c) This section does not require a Commonwealth agency to exhaustively list the laws, regulations or policies 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 applicable laws, regulations and policies.

- (d) The requirements of this section 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 29, 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, 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 to execute, as necessary. 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. A sample sign-off document is attached to these Terms as **Exhibit C, Sample Sign-off Document**.

## **58. ADDITIONAL FEDERAL PROVISIONS.**

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

## **59. ENVIRONMENTAL PROTECTION.**

In carrying out this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including the *Clean Streams Law*, Act of June 22, 1937 (P.L. 1987, No. 394), as amended, 35 P.S. §§ 691.1—691.801; the *Solid Waste Management Act*, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. §§ 6018.101—68.1003; and the *Dam Safety and Encroachment Act*, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. §§ 693.1—693.27.

## **60. 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.

## **61. CONTRACTOR INTEGRITY PROVISIONS.**

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

- (a) Definitions. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:
  - (i) “*Affiliate*” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the

voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

- (ii) “*Consent*” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
  - (iii) “*Contractor*” means the individual or entity, that has entered into this contract with the Commonwealth.
  - (iv) “*Contractor Related Parties*” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
  - (v) “*Financial Interest*” means either:
    - (1) Ownership of more than a five percent interest in any business; or
    - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - (vi) “*Gratuity*” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18*, the 4 Pa. Code § [7.153\(b\)](#), shall apply.
  - (vii) “*Non-bid Basis*” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- (b) In furtherance of this policy, Contractor agrees to the following:
- (i) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
  - (ii) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor

employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

- (iii) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- (iv) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- (v) Contractor certifies to the best of its knowledge and belief that within the last **five (5) years** Contractor or Contractor Related Parties have not:
  - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - (3) had any business license or professional license suspended or revoked;
  - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
  - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification

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

- (vi) Contractor shall comply with the requirements of the *Lobbying Disclosure Act* (65 Pa. C.S. § 13A01, et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the *Pennsylvania Election Code* (25 P.S. § 3260a).
- (vii) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- (viii) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- (ix) Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach

of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this subsection in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

- (x) For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

## **62. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS.**

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

## **63. WARRANTIES.**

Except as otherwise set forth in the Contract, the Contractor warrants that the Services, Supplies and Developed Works will conform in all material respects to the functional specifications for the Services, Supplies and Developed Works and/or the requirements of the Contract. The warranty period for the Services, Supplies and Developed Works shall be **90 days** from final acceptance. If third-party Services, Supplies or Developed Works are subject to a warranty that exceeds **90 days** from final acceptance, the longer warranty



period shall apply. The Contractor shall correct any non-conformity within the warranty period specified herein.

- (a) Disruption. The Contractor hereby represents and warrants to the Commonwealth that the Contractor will not cause, or take any action that, directly or indirectly, may cause a disruption of the Commonwealth's operations.
- (b) Nonconformity. In the event of any nonconformity with the foregoing warranties, the Commonwealth will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the Commonwealth, shall within **10 days'** notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the Commonwealth, until such time as the deliverable conforms, in all material respects, to the Service requirements and/or the functional specifications of the Developed Works set forth in this Contract. The Contractor shall have no obligation with respect to nonconformities arising out of:
  - (i) Modifications to Developed Works made by the Commonwealth;
  - (ii) Use of the Developed Works not in accordance with the documentation or specifications applicable thereto;
  - (iii) Failure by the Commonwealth to implement any corrections or enhancements made available by the Contractor;
  - (iv) Combination of the Developed Works with any items not supplied or approved by the Contractor; or
  - (v) Failure of any software licensed under a separate license agreement to conform to its specifications or documentation.
- (c) Industry standards. The Contractor hereby represents and warrants to the Commonwealth that the Services shall be performed in accordance with industry standards using the utmost care and skill.
- (d) Right to perform. The Contractor hereby represents and warrants to the Commonwealth that the Contractor has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Developed Works under this Contract.
- (e) Sole warranties. 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.

#### **64. LIQUIDATED DAMAGES.**

- (a) By accepting this Contract, the Contractor agrees to the delivery and acceptance requirements of this Contract. If a due date is not met, the delay will interfere with the Commonwealth's program. In the event of any such delay, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. The Commonwealth and the Contractor therefore agree that in the event of any such delay, the amount of damage shall be the amount set forth in this section, unless otherwise indicated in the Contract, and agree that the Contractor shall pay such amount as liquidated damages, not as a penalty. Such liquidated damages are in lieu of all other damages arising from such delay.
- (b) The amount of liquidated damages shall be as set out in the Solicitation. If not amount is set out in the Solicitation, the amount of liquidated damages for failure to meet a due date shall be three-tenths of a percent (.3%) of the price of the deliverable for each calendar day following the scheduled completion date. If the price of the deliverable associated with the missed due date is not identified, liquidated damages shall apply to the total value of the Contract. Liquidated damages shall be assessed each calendar day until the date on which the Contractor meets the requirements for the deliverable associated with the due date, up to a maximum of **30 days**. If indicated in the Contract, the Contractor may recoup all or some of the amount of liquidated damages assessed if the Contractor meets the final project completion date set out in the Contract.
- (c) If, at the end of the **30-day** period specified in [subsection \(b\)](#) above, the Contractor still has not met the requirements for the deliverable associated with the due date, then the Commonwealth, at no additional expense and at its option, may either:
  - (i) Immediately terminate the Contract in accordance with [Subsection 28\(c\)](#) and with no opportunity to cure; or
  - (ii) Order the Contractor to continue with no decrease in effort until the work is completed in accordance with the Contract and accepted by the Commonwealth or until the Commonwealth terminates the Contract. If the Contract is continued, any liquidated damages will also continue until the work is completed.
- (d) At the end of a calendar month, or at such other time(s) as identified in the Contract, liquidated damages shall be paid by the Contractor and collected by the Commonwealth by:
  - (i) Deducting the amount from the invoices submitted under this Contract or any other contract Contractor has with the Commonwealth;
  - (ii) Collecting the amount through the performance security, if any; or
  - (iii) Billing the Contractor as a separate item.

**65. SERVICE LEVELS.**

- (a) The Contractor shall comply with the procedures and requirements of the Service Level Agreements, if any, which are made part of this Contract.
- (b) Where there are expressly defined Service Levels, Contractor shall measure and report its performance against these standards on at least a monthly basis, except as may otherwise be agreed between the parties. Regardless of the presence or absence of expressly defined Service Levels, any failure to adequately or timely perform a Service may result in consequences under this Contract, up to and including Contract termination.
- (c) The Commonwealth's acceptance of any financial credit incurred by the Contractor in favor of the Commonwealth for a Service Level default ("Service Level Credit") shall not bar or impair Commonwealth's rights and remedies in respect of the failure or root cause as set forth elsewhere in this Contract, including without limitation other claims for liquidated damages, injunctive relief and termination rights; provided however, Service Level Credits paid would be credited against any such claims for damages.

**66. FORCE MAJEURE.**

- (a) 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.
- (b) The Contractor shall notify the Commonwealth orally within **five (5) days** and in writing within **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, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

- (c) 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.

**67. PUBLICITY/ADVERTISEMENT.**

The Contractor shall not issue news releases, internet postings, advertisements, endorsements, or any other public communication without prior written approval of the Commonwealth, and then only in coordination with the Commonwealth. This includes the use of any trademark or logo.

**68. TERMINATION ASSISTANCE.**

- (a) Upon the Commonwealth's request, Contractor shall provide termination assistance services (Termination Assistance Services) directly to the Commonwealth, or to any vendor designated by the Commonwealth. The Commonwealth may request termination assistance from the Contractor upon full or partial termination of the Contract and/or upon the expiration of the Contract term, including any renewal periods. Contractor shall take all necessary and appropriate actions to accomplish a complete, timely and seamless transition of any Services from Contractor to the Commonwealth, or to any vendor designated by the Commonwealth, without material interruption of or material adverse impact on the Services. Contractor shall cooperate with the Commonwealth and any new contractor and otherwise promptly take all steps required or reasonably requested to assist the Commonwealth in effecting a complete and timely transition of any Services.
- (b) Such Termination Assistance Services shall first be rendered using resources included within the fees for the Services, provided that the use of such resources shall not adversely impact the level of service provided to the Commonwealth; then by resources already included within the fees for the Services, to the extent that the Commonwealth permits the level of service to be relaxed; and finally, using additional resources at costs determined by the Parties via [Section 27, Changes](#).

**69. NOTICE.**

Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address such party may designate by notice given pursuant to this section.

**70. [RIGHT-TO-KNOW LAW](#).**

- (a) The Pennsylvania *Right-to-Know Law*, 65 P.S. §§ 67.101—3104, *as amended*, (“RTKL”) applies to this Contract. For the purpose of this section, the term “the Commonwealth” shall refer to the contracting Commonwealth organization.
- (b) If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL that is related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- (c) Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
  - (i) Provide the Commonwealth, within **10 days** after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - (ii) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within **seven (7) days** of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within **five (5) business days** of receipt of written notification of the Commonwealth’s determination.
- (f) If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.

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

#### **71. GOVERNING LAW.**

This Contract 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 30, Contract Controversies](#), Commonwealth and Contractor agree that 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. Any legal action relating to this Contract must be brought in Dauphin County, Pennsylvania, and the parties agree that jurisdiction and venue in such courts is appropriate.

#### **72. CONTROLLING TERMS AND CONDITIONS.**

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's website, quotations, invoices, business forms, click-through agreements, 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.

#### **73. SMALL DIVERSE BUSINESS/SMALL BUSINESS COMMITMENT.**

The Contractor shall meet and maintain the commitments to small diverse businesses in the Small Diverse Business and Small Business ("SDB/SB") portion of its Proposal. Any proposed change to a SDB/SB commitment must be submitted to the DGS Bureau of

Diversity, Inclusion and Small Business Opportunities (“BDISBO”), which will make a recommendation as to a course of action to the Commonwealth Contracting Officer. Contractor shall complete the Prime Contractor’s Quarterly Utilization Report and submit it to the Commonwealth Contracting Officer and BDISBO within **10 business days** at the end of each calendar quarter that the Contract is in effect.

**74. POST-CONSUMER RECYCLED CONTENT; RECYCLED CONTENT ENFORCEMENT.**

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 by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

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.

**75. SURVIVAL.**

Sections 11, 30, 31, 33, 37, 38, 39, 41, 42, 45, 46, 47, 48, 49, 52, 54, 55, 56, 63, 67, 69, 70, 71 and 75 and any right or obligation of the parties in this Contract which, by its express terms or nature and context is intended to survive termination or expiration of this Contract, will survive any such termination or expiration shall survive the expiration or termination of the Contract.

## EXHIBIT A

### COMMONWEALTH OF PENNSYLVANIA BUSINESS ASSOCIATE AGREEMENT

#### Health Insurance Portability and Accountability Act (HIPAA) Compliance

WHEREAS, the [name of program and/or Department] (Covered Entity) and the Contractor (Business Associate), intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191 (HIPAA), the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the *American Recovery and Reinvestment Act of 2009* (ARRA), as amended, Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, as amended, 42 C.F.R. §§ 431.301—431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), 35 P.S. § 7607, 50 Pa. C.S. § 7111, 71 P.S. § 1690.108(c), 62 P.S. § 404, 55 Pa. Code Chapter 105, 55 Pa. Code Chapter 5100, the Pennsylvania *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance; and

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be handled, used or disclosed only in accordance with this Business Associate Agreement (BAA), the Underlying Agreement and the standards established by HIPAA, the HITECH Act and related regulations, 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) “**Business Associate Agreement**” or “**BAA**” shall mean this Agreement.
- (c) “**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.
- (d) “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, Pub. L. No. 104-191.



- (e) **“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).
- (f) **“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.
- (g) **“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.
- (h) **“Security Rule”** shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- (i) **“Underlying Agreement”** shall mean Contract/Purchase Order # \_\_\_\_\_.
- (j) **“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. Changes in Law.**

Business Associate agrees that it will comply with any changes in the HIPAA Rules by the compliance date established by any such changes and will provide the Covered Entity with written certification of such compliance.

## **3. Stated Purposes for Which Business Associate May Use or Disclose PHI.**

Except as otherwise limited in this BAA, Business Associate shall be permitted to use or disclose PHI provided by or obtained by or obtained on behalf of Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity which are specified in [Appendix A](#) to this BAA, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity. Business Associate agrees to make uses, disclosures and requests for PHI consistent with Covered Entity’s minimum policies and procedures.

## **4. Additional Purposes for Which Business Associate May Use or Disclose Information.**

Business Associate shall not use or disclose PHI provided by, or created or obtained on behalf of, Covered Entity for any other purposes except as required by law. Business Associate shall not use PHI to de-identify the information in accordance with 45 CFR § [164.514](#) (a)—(c) without the Covered Entity’s express written authorization(s). Business

Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

## 5. Business Associate Obligations.

- (a) **Limits on Use and Further Disclosure Established by Business Associate Agreement and Law.** Business Associate hereby agrees that the PHI provided by, or created or obtained on behalf of, Covered Entity shall not be further used or disclosed other than as permitted or required by BAA or as required by law.
- (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 BAA that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity as required by [Subpart C](#) of 45 CFR Part 164. Appropriate safeguards shall include but are not limited to implementing:
  - (i) administrative safeguards required by 45 CFR § [164.308](#);
  - (ii) physical safeguards as required by 45 CFR § [164.310](#);
  - (iii) technical safeguards as required by 45 CFR § [164.312](#); and
  - (iv) policies and procedures and document requirements as required by 45 CFR § [164.316](#).
- (c) **Training and Guidance.** Business Associate shall provide annual training to relevant contractors, Subcontractors, employees, agents and representatives on how to prevent the improper use or disclosure of PHI. Business Associate shall also comply with annual guidance on the most effective and appropriate technical safeguards issued by the Secretary of Health and Human Services.
- (d) **Reports of Improper Use or Disclosure or Breach.** Business Associate hereby agrees that it shall notify the Covered Entity's Project Officer and the Covered Entity's Legal Office within **two (2) days** of discovery of any use or disclosure of PHI not provided for or allowed by this BAA, including breaches of unsecured PHI as required by 45 CFR § [164.410](#). Such notification shall be written and shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the improper use or disclosure or Breach. Business Associate shall furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 CFR § [164.404\(c\)](#) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. An improper use or disclosure or Breach shall be treated as discovered by the Business Associate on the **first day**

on which it is known to the Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate to have occurred.

- (e) Business Associate agrees that if any of its employees, agents, contractors, subcontractors or representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information, Business Associate shall ensure that such employees, agents, contractors, subcontractors and representatives shall receive training on Business Associate's procedure for compliance with the HIPAA Rules. Business Associate Agrees that if any of its employees, agents, contractors, subcontractors or representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information in a manner not provided for in this BAA, Business Associate shall ensure that such employees, agents, contractors, subcontractors and representatives are sanctioned or prevented from accessing any PHI Business Associate receives from, or creates or receives on behalf of Covered Entity. Use or disclosure of PHI in a manner contrary to the terms of this BAA shall constitute a material breach of the Underlying Agreement.
- (f) **Contractors, Subcontractors, Agents and Representatives.** In accordance with 45 CFR § 164.502(e)(1)(ii) and 45 CFR § 164.308(b)(2), if applicable, ensure that any contractors, subcontractors, agents and representatives that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. The existence of any contractors, subcontractors, agents and representatives shall not change the obligations of Business Associate to the Covered Entity under this BAA.
- (g) **Reports of Security Incidents.** Business Associate hereby agrees that it shall notify, in writing, the Department's Project Officer within **two (2) days** of discovery of any Security Incident at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available.
- (h) **Right of Access to PHI.** Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within **10 business days** of receiving a written request from the Covered Entity or an authorized individual in accordance with the HIPAA Rules. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its contractors, subcontractors, agents or representatives, access to PHI, Business Associate shall notify Covered Entity of same within **five (5) business days**. Business Associate shall further conform with and meet all of the requirements of 45 CFR § 164.524.

- (i) **Amendment and Incorporation of Amendments.** Within **five (5) business days** of receiving a request from Covered Entity or from the individual for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available to the Covered Entity and incorporate the amendment to enable Covered Entity to comply with 45 CFR § 164.526. If any individual requests an amendment from Business Associate or its contractors, subcontractors, agents or representatives, Business Associate shall notify Covered Entity of same within **five (5) business days**.
- (j) **Provide Accounting of Disclosures.** Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 CFR § 164.528. 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, the purpose of the disclosure, and shall include disclosures made on or after the date which is **six (6) years** prior to the request. Business Associate shall make such record available to the individual or the Covered Entity within **10 business days** of a request for an accounting of disclosures and in accordance with 45 CFR § 164.528.
- (k) **Access to Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, created or received by Business Associate on behalf of the Covered Entity, available to the Covered Entity and the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules.
- (l) **Return or Destruction of PHI.** At termination of this BAA, 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 BAA. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this BAA 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.
- (m) **Maintenance of PHI.** Notwithstanding [subsection 5\(l\)](#) of this BAA, Business Associate and its contractors, subcontractors, agents and representatives shall retain all PHI throughout the term of the Underlying Agreement and shall continue to maintain the information required under [subsection 5\(j\)](#) of this BAA for a period of **six (6) years** after termination of the Underlying Agreement, unless Covered Entity and Business Associate agree otherwise.
- (n) **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 BAA or the HIPAA Rules. 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 BAA or the Privacy Rule.

- (o) **Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any contractor, Subcontractor, employee, agent and representative who violates this BAA or the HIPAA Rules.
- (p) **Application of Civil and Criminal Penalties.** All Civil and Criminal Penalties under the HIPAA Rules shall apply to Business Associate's violation of any provision contained in the HIPAA Rules.
- (q) **Breach Notification.** Business Associate shall comply with the Breach notification requirements of 45 CFR [Part 164](#). In the event of a Breach requiring indemnification in accordance with [subsection 5\(v\)](#), below, Covered Entity may elect to directly comply with Breach notification requirements or require Business Associate to comply with all Breach notifications requirements of 45 CFR [Part 164](#) on behalf of Covered Entity. If Covered Entity requires Business Associate to comply with Breach notification requirements, Business Associate shall provide Covered Entity with a detailed weekly, written report, starting one week following discovery of the Breach. The report shall include, at a minimum, Business Associate's progress regarding Breach notification and mitigation of the Breach. If Covered Entity elects to directly meet the requirements of 45 CFR [Part 164](#), Business Associate shall be financially responsible to Covered Entity for all resulting costs and fees incurred by Covered Entity, including, but not limited to, labor, materials, or supplies. Covered Entity may at its sole option:
  - (i) Offset amounts otherwise due and payable to Business Associate under the Underlying Agreement; or
  - (ii) Seek reimbursement of or direct payment to a third party of Covered Entity's costs and fees incurred under this subsection.

Business Associate shall make payment to Covered Entity (or a third party as applicable) within **30 days** from the date of Covered Entity's written notice to Business Associate.

- (r) **Grounds for Breach.** Any non-compliance by Business Associate with this BAA or the HIPAA Rules will automatically be considered to be a breach of the Underlying Agreement.
- (s) **Termination by Commonwealth.** Business Associate authorizes termination of this BAA or Underlying Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion that the Business Associate has violated a material term of this BAA.

- (t) **Failure to Perform Obligations.** In the event Business Associate including its contractors, Subcontractors, agents and representatives fails, to perform its obligations under this BAA, 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 BAA and applicable law.
- (u) **Privacy Practices.** The Covered Entity will provide, and Business Associate shall immediately begin using and/or distributing to clients, any applicable form, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date of this BAA, or as otherwise designated by the Program or Covered Entity. The Covered Entity retains the right to change the applicable privacy practices, documents and forms. The Business Associate shall implement changes as soon as practicable, but not later than **45 days** from the date of notice of the change.
- (v) **Indemnification.** Business Associate shall indemnify, defend and hold harmless Covered Entity from and all claims and actions, whether in law or equity, resulting from Business Associate's Breach or other violation of the HIPAA Rules (this includes but is not limited to Breach and violations by Business Associate's contractors, subcontractors, employees, agents and representatives). Additionally, Business Associate shall reimburse Covered Entity for any civil monetary penalties imposed on Covered Entity as a result of a Breach or violation cognizable under this [subsection 5\(v\)](#).

## 6. **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 45 CFR § [164.520](#) ([Appendix A](#) to this BAA), as well as changes to such notice.
- (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 of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR § [164.522](#) to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

## 7. **Survival.**

The requirements, rights and obligations created by this BAA shall survive the termination of the Underlying Agreement.

**Appendix A to Exhibit A,  
Commonwealth of Pennsylvania Business Associate Agreement**

**Permitted Purposes for the Creation, Receipt, Maintenance, Transmission, Use and/or  
Disclosure of Protected Health Information**

1. Purpose of Disclosure of PHI to Business Associate: To allow \_\_\_\_\_ to meet the requirements of the Underlying Agreement.
  
2. Information to be disclosed to Business Associate: \_\_\_\_\_.
  
3. Use Shall Effectuate Purpose of Underlying Agreement: \_\_\_\_\_ may use and disclose PHI to the extent contemplated by the Underlying Agreement, and as permitted by law with Commonwealth approval.



## EXHIBIT B

PA Supplier ID Number: \_\_\_\_\_

**SOFTWARE/SERVICES LICENSE REQUIREMENTS AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF PENNSYLVANIA,  
ACTING BY AND THROUGH THE GOVERNOR’S OFFICE OF ADMINISTRATION  
AND**



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This Software/Services License Requirements Agreement (“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.

### 1. **Order of Precedence.**

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

### 2. **Enterprise Language.**

- (a) The parties agree that more than one agency of the Commonwealth (“Commonwealth Agency”) may license products subject to this Agreement, provided that the procurement of any Licensed Products by any Commonwealth Agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each Commonwealth Agency seeking to use the Licensed Products.
- (b) The parties agree that, if the licensee is a “Commonwealth Agency” as defined by Section 103 of the *Commonwealth Procurement Code*, 62 Pa. C. S. § 103, the terms and conditions of this Agreement apply to the procurement of Licensed Products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase order or other procurement document without further need for execution.

*Exhibit B, Software/Services License Requirements Agreement*

Page 1 of 2

### **3. List of Licensed Products.**

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

### **4. Choice of Law/Venue.**

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

### **5. Indemnification/Immunity.**

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

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

- (a) The Licensor shall, at its expense, defend, indemnify and hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, trademarks or trade dress, or for a misappropriation of a United States trade secret arising out of performance of this Agreement ("Claim"), including all Licensed Products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall

mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines and penalties finally awarded by a court of competent jurisdiction, governmental/administrative body or any settlements reached pursuant to a Claim and (b) reimburse the Commonwealth for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The Commonwealth agrees to give the Licensor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P. S. §§ 732-101—732-506, the Office of Attorney General ("OAG") has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG, however, in its sole discretion, and under the terms the OAG deems appropriate, may delegate its right of defense of a Claim. If the OAG delegates the defense to the Licensor, the Commonwealth will cooperate with all reasonable requests of the Licensor made in the defense of and/or settlement of a Claim. The Licensor shall not, without the Commonwealth's consent, enter into any settlement agreement which (a) states or implies that the Commonwealth has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the Commonwealth to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the Commonwealth to make a payment which the Licensor is not obligated by this Agreement to pay on behalf of the Commonwealth. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Licensor that, in the event it requests that the Commonwealth provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the Commonwealth for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the Commonwealth for such support. If the OAG does not delegate to the Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this section ceases. The Licensor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the suit.

- (b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all Licensed Products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties.
- (c) If the defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the Commonwealth or agreed to by Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.

- (d) If, in the Licensor's opinion, the Licensed Products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, trademark or trade dress, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
  - (i) substitute functional equivalents for the alleged infringing Licensed Products; or
  - (ii) 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:
  - (i) procure the right to continue use of such infringing products;
  - (ii) replace them with non-infringing items; or
  - (iii) 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 subsection (e) above, the Licensor agrees to, upon return of the Licensed Products, refund to the Commonwealth:
  - (i) the license fee paid for the infringing Licensed Products, less the amount for the period of usage of any software; and
  - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.
- (g) The obligations of the Licensor under this section continue without time limit and survive the termination of this Agreement.
- (h) Notwithstanding the above, the Licensor shall have no obligation under this section for:
  - (i) modification of any Licensed Products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;
  - (ii) any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare any Licensed Products;

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

**7. Virus, Malicious, Mischievous or Destructive Programming.**

- (a) The Licensor warrants that the Licensed Products as delivered by the Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the Licensed Products (each a "Virus"). However, the Licensed Products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by the Licensor for temporary use are time-sensitive.
- (b) The Licensor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from the Licensor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Licensor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and security updates (such as operating systems security patches, etc.).
- (c) In the event of destruction or modification of any Licensed Products, the Licensor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages.

## 8. **Limitation of Liability.**

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

## 9. **Payment.**

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

## 10. **Termination.**

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

## 11. Background Checks.

- (a) Upon prior written request by the Commonwealth, the Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to the Commonwealth's IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <https://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.
- (b) Before the Commonwealth will permit an employee access to the Commonwealth's facilities, the Licensor must provide written confirmation to the office designated by the applicable Commonwealth Agency that the background check has been conducted. If, at any time, it is discovered that an employee has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, the Licensor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems, unless the Commonwealth Agency consents, in writing, prior to the access being provided. The Commonwealth Agency may withhold its consent at its sole discretion. Failure of the Licensor to comply with the terms of this subsection may result in the default of the Licensor under its Agreement with the Commonwealth.
- (c) The Commonwealth specifically reserves the right to conduct background checks over and above that described herein.
- (d) Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the applicable Commonwealth Agency and the Department of General Services set forth in Enclosure 3 of [Commonwealth Management Directive 625.10 Amended, Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings](#). The requirements, policy and procedures include a processing fee payable by the Licensor for contracted personnel photo identification or access badges.

## 12. Confidentiality.

- (a) Definition. "Confidential Information:"

- (i) For the Commonwealth. All data and other information of or in the possession of the Commonwealth or any Commonwealth Agency or any private individual, organization or public agency, in each case to the extent such information and documentation is not permitted to be disclosed to third parties under local, Commonwealth or federal laws and regulations or pursuant to any policy adopted by the Commonwealth or pursuant to the terms of any third-party agreement to which Commonwealth is a party.
  - (ii) For the Licensor. All information identified in writing by the Licensor as confidential or proprietary to the Licensor or its subcontractors.
- (b) Confidential Information. All Confidential Information of or relating to a party shall be held in confidence by the other party to the same extent and in at least the same manner as such party protects its own confidential or proprietary information. Neither party shall disclose, publish, release, transfer or otherwise make available any Confidential Information of the other party in any form to, or for the use or benefit of, any person or entity without the other party's consent. Subject to the other provisions of this Agreement, each party shall, however, be permitted to disclose relevant aspects of the other party's Confidential Information to its officers, agents, subcontractors and personnel and to the officers, agents, subcontractors and personnel of its corporate affiliates or subsidiaries to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement; provided, however, that such party shall take all reasonable measures to ensure that Confidential Information of the other party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, subcontractors and personnel and that such party shall be responsible for any unauthorized disclosure of the Confidential Information of the other party by such officers, agents, subcontractors or personnel; and further provided, that if the disclosure is by the Commonwealth to another contractor or sub-contractor, such disclosure is subject to a suitable non-disclosure agreement imposing equally or more stringent requirements for data privacy and security. Except to the extent provided otherwise by any applicable law, the obligations of this subsection (b) shall not apply with respect to information which:
  - (i) is developed by the other party without violating the disclosing party's proprietary rights,
  - (ii) is or becomes publicly known (other than through unauthorized disclosure),
  - (iii) is disclosed by the owner of such information to a Third Party free of any obligation of confidentiality,
  - (iv) is already known by such party without an obligation of confidentiality other than pursuant to this Agreement or any confidentiality contract entered into before the Effective Date of the Agreement between the Commonwealth and the Licensor, or



- (v) is rightfully received by the disclosing party free of any obligation of confidentiality.
- (c) Obligations. Each party shall:
  - (i) Notify the other party promptly of any known unauthorized possession, use or knowledge of the other party's Confidential Information by any person or entity.
  - (ii) Promptly furnish to the other party full details known by such party relating to the unauthorized possession, use or knowledge thereof and shall use reasonable efforts to assist the other party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge of the other party's Confidential Information.
  - (iii) Use reasonable efforts to cooperate with the other party in any litigation and investigation against third parties deemed necessary by the other party to protect its proprietary rights.
  - (iv) Promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of the other party's Confidential Information.
- (d) Cost of compliance; required disclosure. Each party shall bear the cost it incurs as a result of compliance with this section. The obligations in this section shall not restrict any disclosure by either party pursuant to any applicable law or pursuant to the order of any court or other legal process or government agency of competent jurisdiction (provided that the disclosing party shall give prompt notice to the non-disclosing party of such disclosure or order in a timeframe to allow the non-disclosing party to resist the disclosure or order).
- (e) Submitting Confidential Information to the Commonwealth. The Licensor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
  - (i) Prepare an un-redacted version of the appropriate document;
  - (ii) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret;
  - (iii) Prepare a signed written statement that states:
    - (1) the attached document contains confidential or proprietary information or trade secrets;

- (2) the Licensor is submitting the document in both redacted and un-redacted format in accordance with Section 707(b) of the *Right-to-Know Law*, 65 P.S. § 67.707(b); and
  - (3) the Licensor is requesting that the document be considered exempt under Section 708(b)(11) of the *Right-to-Know Law*, 65 P.S. § 67.708(b)(11) from public records requests; and
- (iv) Submit the **two (2)** documents with the signed written statement to the Commonwealth.
- (f) Confidential Information at termination. Upon expiration or termination of this Agreement, or a purchase order or other procurement document for Licensed Products governed by the terms of this Agreement, and at any other time at the written request of a party, the other party must promptly return to such party all of such party's Confidential Information and Data (and all copies of this information) that is in the other party's possession or control, in whatever form. With regard to the Commonwealth's Confidential Information and/or Data, the Licensor shall comply with the requirements of subsection (e).
- (g) Not confidential. Additionally, neither the Agreement nor any pricing information related to the Agreement, nor purchase orders issued pursuant to the Agreement, will be deemed confidential.

### **13. Sensitive Information**

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

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

- (a) The Licensor understands that its level of access may allow it to view or access highly sensitive and confidential Commonwealth and third party data. This data is subject to various state and federal laws and policies that vary from Commonwealth Agency to Commonwealth Agency, and from program to program within a Commonwealth Agency. If applicable, prior to the issuance of a purchase order or other procurement document for a Licensed Product or the deployment of a Licensed Product on any Commonwealth Agency's facilities, the Licensor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth Agency, including but not limited to, as necessary, Business Associate Agreements as required by the *Health Insurance Portability and Accountability Act* (HIPAA), as amended, a sample of which is attached hereto as [Attachment 3](#). This sign-off document (a sample of which is attached hereto as [Attachment 4](#)), will include a description of the nature of the data which may be implicated based on the nature of the Licensor's access, and will incorporate the HIPAA Business Associate Agreement if it is applicable.
- (b) The Licensor hereby certifies and warrants that, after being informed by the Commonwealth Agency of the nature of the data which may be implicated and prior to the installation of the Licensed Products), the Licensor is and shall remain compliant with all applicable state and federal law and policy regarding the data's protection, and with the requirements memorialized in every completed and signed Sign-Off document. Every sign-off document completed by 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 does not require a Commonwealth Agency to exhaustively list the law to which implicated data is subject; the Commonwealth Agency is obligated only to list the nature of the data implicated by the Licensor's access, to refer the Licensor to its privacy and security policies, and to specify requirements that are not otherwise inherent in compliance with law and policy.
- (d) The requirements of this section are in addition to and not in lieu of other requirements of this Agreement and its Attachments and Exhibits having to do with data privacy and security, including but not limited to the requirement that the Licensor comply with [Attachment 2](#), *Requirements for Non-Commonwealth Hosting Applications/Services*, and all applicable Commonwealth Information Technology Policies (ITPs), which can be found at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- (e) The Licensor shall conduct additional background checks, in addition to those required in [Section 11](#) 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.

**15. Publicity/Advertisement.**

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

**16. Portability.**

The parties agree that a Commonwealth Agency may move a Licensed Product from machine to machine, whether physical or virtual, and to other locations, where those machines and locations are internal to the Commonwealth or to a Commonwealth contractor, as long as such relocation and the use being made of the Licensed Product comports with the license grant and restrictions. Notwithstanding the foregoing, a Commonwealth Agency may move the machine or appliance provided by the Licensor upon which the Licensed Product is installed.

**17. Taxes-Federal, State and Local Taxes-Federal, State and Local.**

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

**18. Commonwealth Audit Responsibilities.**

- (a) The Commonwealth will maintain, and promptly provide to the Licensor upon its request, accurate records regarding use of the Licensed Product by or for the

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

- (b) The Commonwealth will perform a self-audit upon the request of the Licensor, which request may not occur more often than annually, and report any change in user count (hereinafter "True up number"). The Commonwealth shall notify the Licensor of the True up number no later than **45 calendar days** after the request that the Commonwealth perform a self-audit. If the user count has increased, the Commonwealth will make an additional purchase of the Licensed Products through a reseller contract or another procurement document, which is equivalent to the additional users. This section sets out the sole license audit right under this Agreement.

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

The Pennsylvania *Right-to-Know Law*, Act of February 14, 2008, P.L. 6, No. 3, 65 P.S. §§ 67.101—3104 ("RTKL"), applies to this Agreement.

**20. *Third Party Software.***

If the Licensed Product utilizes or includes third party software and other copyrighted material and is subject, therefore, to additional licensing terms, acknowledgements or disclaimers compliance with this Agreement constitutes compliance with those third-party terms. The parties agree that the Commonwealth, by acknowledging third party software, does not agree to any terms and conditions of the third party software agreements that are inconsistent with or supplemental to this Agreement.

**21. *Attorneys' Fees.***

The Commonwealth will not pay attorneys' fees incurred by or paid by the Licensor.

**22. *Controversies.***

- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Agreement or a purchase order, the Licensor, within **six (6) months** after the claim accrues, must file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Licensor asserts a controversy exists. If the Licensor fails to file a claim or files an untimely claim, the Licensor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office

of General Counsel Dispute Resolution Program, <https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.

- (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send a written determination to the Licensor. If the contracting officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Licensor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Licensor shall proceed diligently with the performance of the Agreement or purchase order in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Licensor pursuant to the terms of the Agreement, purchase order or other procurement document.

### **23. Insurance.**

- (a) The Licensor shall maintain at its expense, and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:
  - (i) Workers' Compensation Insurance for all of the employees engaged in performing Services in accordance with the *Workers' Compensation Act*, Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.
  - (ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death (including bodily injury), sickness or disease, accidental death and damage to and property of others, including loss of use resulting from any property damage which may arise from the Licensor's operations under this Agreement, whether such operation be by the Licensor, its agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an

amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for or supplies provided to the Commonwealth.

- (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.
  - (iv) Technology Products Liability/Professional Liability/Errors & Omissions Insurance in the aggregate amount of not less than \$2,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
  - (v) Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.
  - (vi) Information Security and Privacy Liability Insurance including Privacy Notification Costs (including coverage for Technology Professional Liability if not covered under the Licensor's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (b) Certificate of Insurance. Prior to providing Licensed Products under this Agreement, and annually thereafter, the Licensor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been received by the Commonwealth. Such cancellation or change shall not relieve the Licensor of its continuing obligation to maintain insurance coverage in accordance with this section.
- (c) Insurance coverage length. The Licensor agrees to maintain such insurance for the life of any applicable purchase order issued pursuant to the Agreement.

## 24. Federal Requirements.

*Exhibit B, Software/Services License Requirements Agreement*

Page 15 of 16

If applicable, in addition to the requirements set forth in [Section 14](#) of this Agreement, the Licensor must receive and sign off on particular federal requirements that a Commonwealth agency may be required to include when utilizing federal funds to procure the Licensed Products. This sign-off document, in addition to any applicable requirements of [Section 14](#) of this Agreement, will include a description of the required federal provisions, along with the applicable forms necessary for the Licensor execute, as necessary. The sign-off document, along with attachments, must be attached to the purchase order.

**25. Signatures.**

The fully executed Agreement may not contain ink signatures by the Commonwealth. In that event, the Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.

**26. Travel.**

The Licensor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Agreement or Statement of Work. If not otherwise specified in the Agreement or Statement of Work, travel and related expenses shall be reimbursed in accordance with [Management Directive 230.10 Amended](#), *Commonwealth Travel Policy*, and [Manual 230.1](#), *Commonwealth Travel Procedures Manual*.

**27. Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes and integrates all prior discussions, agreements and understandings pertaining thereto. No modification of this Agreement will be effective unless in writing and signed by both Parties. Other terms and conditions or additional terms and conditions included or referenced in the Licensor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Licensor and not binding on the Commonwealth.

**28. Notice.**

Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.), with confirmed receipt, or by certified or registered United States



mail, postage prepaid, return receipt requested, sent to the address such party may designate by notice given pursuant to this section.

**29. Survival.**

The termination or expiration of this Agreement will not affect any provisions of this Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, indemnification and privacy.

**30. Waiver.**

Failure to enforce any provision will not constitute a waiver.

**31. Severability.**

If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

**32. Nonexclusive Remedy.**

Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

**33. Integration.**

This Agreement, including all Exhibits, Attachments and referenced documents, and any Purchase Orders referencing this Agreement, constitutes the entire agreement between the parties. No agent, representative, employee or officer of the Commonwealth or of the Licensor has authority to make any statement, agreement, or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment executed by the parties.

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

**Witness:**

**Licensor:**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*If a corporation, the Chairman, President, Vice-President, Senior Vice-President, Executive Vice-President, Assistant Vice-President, Chief Executive Officer 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**

**GOVERNOR’S OFFICE OF ADMINISTRATION**

\_\_\_\_\_  
See Section 25  
Agency Head or Designee

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
See Section 25  
Office of Chief Counsel

\_\_\_\_\_  
See Section 25  
Office of General Counsel

\_\_\_\_\_  
See Section 25  
Office of Attorney General

**APPROVED:**

\_\_\_\_\_  
See Section 25  
Office of the Budget, Office of Comptroller Operations

*Exhibit B, Software/Services License Requirements Agreement*

## ATTACHMENT 1

### LIST OF LICENSED PRODUCTS

With the consent of the Commonwealth, the 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):

## ATTACHMENT 2

### Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this [Attachment 2](#) is to define requirements for technology solutions procured by the Commonwealth that are not hosted within Commonwealth infrastructure.

#### A. **Hosting Requirements.**

1. The Licensor or its subcontractor shall supply all hosting equipment (hardware and software) required for the cloud services and performance of the software and services set forth in the Quote and Statement of Work.
2. The Licensor shall provide secure access to applicable levels of users via the internet.
3. The Licensor shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth and server capacity.
4. The Licensor or its subcontractors shall maintain all hosting equipment (hardware and software) and replace as necessary to maintain compliance with the Service Level Agreements.
5. The Licensor shall monitor, prevent and deter unauthorized system access. Any and all known attempts must be reported to the Commonwealth within **two (2) business days**. In the event of any impermissible disclosure unauthorized loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure of such Confidential Information. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the Licensor shall comply with state and federal data breach notification statutes and regulations, and shall report security incidents to the Commonwealth within **one (1) hour** of when the Licensor has reasonable confirmation of such unauthorized access, use, release, or disclosure of data.
6. The Licensor or the Licensor's subcontractor shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, and within at least **three (3) business days'** notice, to review the hosted system's data center locations and security architecture.
7. The Licensor's employees or subcontractors, who are directly responsible for day-to-day monitoring and maintenance of the hosted system, shall have industry standard certifications applicable to the environment and system architecture used.
8. The Licensor or the Licensor's subcontractor shall locate servers in a climate-controlled environment. The Licensor or the Licensor's contractor shall house all servers and equipment in an operational environment that meets industry standards

including climate control, fire and security hazard detection, electrical needs, and physical security.

9. The Licensor shall examine applicable system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. The Licensor shall completely test and apply patches for all third-party software products in the server environment before release.
11. The Licensor shall comply with [Attachment 2-B](#), SOC Reporting Requirements.

**B. Security Requirements.**

1. The Licensor shall conduct a third-party independent security/vulnerability assessment at its own expense on an annual basis.
2. The Licensor shall comply with the Commonwealth's directions/resolutions to remediate the results of the security/vulnerability assessment to align with the standards of the Commonwealth.
3. The Licensor shall use industry best practices to protect access to the system with a firewall and firewall rules to prevent access by non-authorized users and block all improper and unauthorized access attempts.
4. The Licensor shall use industry best practices to provide applicable system intrusion detection and prevention in order to detect intrusions in a timely manner.
5. The Licensor shall use industry best practices to provide applicable malware and virus protection on all servers and network components.
6. The Licensor shall limit access to Commonwealth-specific systems and services and provide access only to those staff that must have access to provide services proposed.
7. The Licensor shall provide the Services, using security technologies and techniques in accordance with industry best practices and the Commonwealth's ITPs set forth in [Attachment 2-A](#), including those relating to the prevention and detection of intrusions, and any other inappropriate use or access of systems and networks.

**C. Data Storage.**

1. The Licensor shall store all Commonwealth data in the United States.
2. The Licensor shall use industry best practices to update and patch all applicable systems and third-party software security configurations to reduce security risk. The Licensor shall protect their operational systems with applicable anti-virus, host

intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.

3. The Licensor shall be solely responsible for applicable data storage required.
4. The Licensor shall take all commercially viable and applicable measures to protect the data including, but not limited to, the backup of the servers on a daily basis in accordance with industry best practices and encryption techniques.
5. The Licensor agrees to have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, to protect that data particularly in instances where such critical or sensitive data may be stored on a Licensor-controlled or a Licensor-owned electronic device.
6. The Licensor shall utilize a secured backup solution to prevent loss of data, back up all data every day and store backup media. Stored backup media must be kept in an all-hazards protective storage safe at the worksite and when taken offsite. All back up data and media shall be encrypted.

**D. Adherence to Policy.**

1. The Licensor's support and problem resolution solution shall provide a means to classify problems as to criticality and impact and with appropriate resolution procedures and escalation process for classification of each problem.
2. The Licensor shall abide by the applicable Commonwealth's Information Technology Policies (ITPs), a list of the most relevant being attached hereto as [Attachment 2-A](#).
3. The Licensor shall comply with all pertinent federal and state privacy regulations.

**E. Closeout.**

When the purchase order's or other procurement document's term expires or terminates, and a new purchase order or other procurement document has not been issued by a Commonwealth Agency to the Commonwealth Software Reseller within **sixty (60) days** of expiration or termination, or at any other time at the written request of the Commonwealth, the Licensor must promptly return to the Commonwealth all Commonwealth's data (and all copies of this information) that is in the Licensor's possession or control. The Commonwealth's data shall be returned in a format agreed to by the Commonwealth.

## ATTACHMENT 2-A

### Information Technology Policies (ITPs) for Outsourced/Licensor(s)-hosted Solutions

| ITP Number-Name   | Policy Link   |
|---|---|
| ITP_ACC001-Accessibility Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf</a>     |
| ITP_APP030-Active Directory Architecture  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_app030.pdf">https://www.oa.pa.gov/Policies/Documents/itp_app030.pdf</a>     |
| ITP_BUS007-Enterprise Service Catalog   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf</a>     |
| ITP_BUS010-Business Process Management Policy                                   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf</a>     |
| ITP_BUS011-Commonwealth Cloud Computing Services Requirements                   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus011.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus011.pdf</a>     |
| ITP_BUS012-Artificial Intelligence General Policy                               | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf</a>     |
| ITP_INF000-Enterprise Data and Information Management Policy                    | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf</a>     |
| ITP_INF001-Database Management Systems  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf</a>     |
| ITP_INF006-Commonwealth County Code Standard                                    | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf</a>     |
| ITP_INF009-e-Discovery Technology Standard                                      | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf</a>     |
| ITP_INF010-Business Intelligence Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf</a>     |
| ITP_INF011-Reporting Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf</a>     |
| ITP_INF012-Dashboard Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf</a>     |
| ITP_INFRM001-The Life Cycle of Records: General Policy Statement                | <a href="https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf</a> |
| ITP_INFRM004-Management of Web Records  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf</a> |
| ITP_INFRM005-System Design Review of Electronic Systems                         | <a href="https://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf">https://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf</a> |
| ITP_INFRM006-Electronic Document Management Systems                             | <a href="https://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf</a> |
| ITP_INT_B_1-Electronic Commerce Formats and Standards                           | <a href="https://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf">https://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf</a>   |
| ITP_INT_B_2-Electronic Commerce Interface Guidelines                            | <a href="https://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf">https://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf</a>   |
| ITP_INT006-Business Engine Rules  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_int006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_int006.pdf</a>     |
| ITP_NET004-Internet Protocol Address Standards                                  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_net004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_net004.pdf</a>     |
| ITP_NET005-Commonwealth External and Internal Domain Name Services (DNS)        | <a href="https://www.oa.pa.gov/Policies/Documents/itp_net005.pdf">https://www.oa.pa.gov/Policies/Documents/itp_net005.pdf</a>     |
| ITP_PRV001-Commonwealth of Pennsylvania Electronic Information Privacy Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf</a>     |
| ITP_SEC000-Information Security Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf</a>     |
| ITP_SEC002-Internet Accessible Proxy Servers and Services                       | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf</a>     |
| ITP_SEC003-Enterprise Security Auditing and Monitoring                          | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf</a>     |
| ITP_SEC004-Enterprise Web Application Firewall                                  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf</a>     |
| ITP_SEC006-Commonwealth of Pennsylvania Electronic Signature Policy             | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf</a>     |
| ITP_SEC007-Minimum Standards for IDs, Passwords and Multi-Factor Authentication | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf</a>     |
| ITP_SEC008-Enterprise E-mail Encryption   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf</a>     |

*Exhibit B, Attachment 2-A, Information Technology Policies (ITPs) for  
Outsourced/Licensor(s)-hosted Solutions*

| <b>ITP Number-Name</b>  | <b>Policy Link</b>  |
|---|---|
| ITP_SEC009-Minimum Contractor Background Checks Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf</a> |
| ITP_SEC010-Virtual Private Network Standards  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf</a> |
| ITP_SEC011-Enterprise Policy and Software Standards for Agency Firewalls  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf</a> |
| ITP_SEC013-Identity Protection and Access Management (IPAM) Architectural Standard and Identity Management Services | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec013.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec013.pdf</a> |
| ITP_SEC015-Data Cleansing   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf</a> |
| ITP_SEC017-Copa Policy for Credit Card Use for e-Government   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf</a> |
| ITP_SEC019-Policy and Procedures for Protecting Commonwealth Electronic Data  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf</a> |
| ITP_SEC020-Encryption Standards for Data at Rest  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec020.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec020.pdf</a> |
| ITP_SEC021-Security Information and Event Management Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf</a> |
| ITP_SEC023-Information Technology Security Assessment and Testing Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf</a> |
| ITP_SEC024-IT Security Incident Reporting Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf</a> |
| ITP_SEC025-Proper Use and Disclosure of Personally Identifiable Information (PII)                                   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf</a> |
| ITP_SEC029-Physical Security Policy for IT Resources  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf</a> |
| ITP_SEC031-Encryption Standards for Data in Transit   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf</a> |
| ITP_SEC032-Enterprise Data Loss Prevention (DLP) Compliance Standards   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf</a> |
| ITP_SEC034-Enterprise Firewall Rule Set   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf</a> |
| ITP_SEC037-Identity Proofing of Online Users  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec037.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec037.pdf</a> |
| ITP_SEC038-Commonwealth Data Center Privileged User IAM Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf</a> |
| ITP_SFT000-Software Development Life Cycle (SDLC) Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf</a> |
| ITP_SFT001-Software Licensing   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf</a> |
| ITP_SFT002-Commonwealth of PA Website Standards   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf</a> |
| ITP_SFT003-Geospatial Enterprise Service Architecture   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf</a> |
| ITP_SFT004-Geospatial Information Systems (GIS)   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf</a> |
| ITP_SFT005-Managed File Transfer (MFT)  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf</a> |
| ITP_SFT007-Office Productivity Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf</a> |
| ITP_SFT008-Enterprise Resource Planning (ERP) Management  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf</a> |
| ITP_SFT009-Application Development  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf</a> |
| ITP_SYM003-Off-Site Storage for Commonwealth Agencies   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf</a> |
| ITP_SYM004-Policy for Establishing Alternate Processing Sites for Commonwealth Agencies                             | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf</a> |
| ITP_SYM006-Commonwealth IT Resources Patching Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf</a> |
| ITP_SYM008-Server Virtualization Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf</a> |
| ITP_SYM010-Enterprise Services Maintenance Scheduling   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf</a> |

*Exhibit B, Attachment 2-A, Information Technology Policies (ITPs) for Outsourced/Licensor(s)-hosted Solutions*



## ATTACHMENT 2-B

### SOC Reporting Requirements

- (a) Subject to this section and unless otherwise agreed to in writing by the Commonwealth, the Contractor shall, and shall require its subcontractors to, engage, on an annual basis, an independent auditing firm to conduct each the following:
- (i) A SOC 1 Type II report with respect to controls used by the Contractor relevant to internal and external procedures and systems that process Commonwealth financial transactions;
  - (ii) A SOC 2 Type II report with respect to controls used by the Contractor relevant to internal and external procedures and systems that access or contain Commonwealth Data; and
  - (iii) A SOC for Cybersecurity report with respect to controls used by the Contractor setting forth the description and effectiveness of the Contractor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

Pennsylvania's fiscal year begins July 1 and ends on June 30. Audits shall be submitted annually no later than July 31 of the current year. All reports shall reflect the conduct of the Contractor during the **12 months** of the Commonwealth's previous fiscal year, unless otherwise agreed to in writing by the Commonwealth.

- (b) SOC 2 Type II report reports shall address the following:
- (i) Security of Information and Systems;
  - (ii) Availability of Information and Systems;
  - (iii) Processing Integrity;
  - (iv) Confidentiality;
  - (v) Privacy; and
  - (vi) If applicable, compliance with the laws, regulations standards or policies designed to protect the information identified in [ITP-SEC019](#) or other information identified as protected or Confidential by this Contract or under law.
- (c) At the request of the Commonwealth, the Contractor shall complete additional SOC for Cybersecurity audits in the event:

- (i) repeated non-conformities are identified in any SOC report required by subsection (a); or
- (ii) if the Contractor's business model changes (such as a merger, acquisition, or change sub-contractors, etc.);

The Contractor shall provide to the Commonwealth a report of the SOC for Cybersecurity audit findings within **60 days** of its completion.

- (d) The Commonwealth may specify other or additional standards, certifications or audits it requires under any Purchase Orders or within an ITP.
- (e) The Contractor shall adhere to SSAE 18 audit standards. The Contractor acknowledges that the SSAE guidance may be updated during the Term of this Contract, and the Contractor shall comply with such updates which shall be reflected in the next annual report.
- (f) In the event an audit reveals any non-conformity to SSAE standards, the Contractor shall provide the Commonwealth, within **45 calendar days** of the issuance of the SOC report, a documented corrective action plan that addresses each non-conformity. The corrective action plan shall provide, in detail:
  - (i) clear responsibilities of the personnel designated to resolve the non-conformity;
  - (ii) the remedial action to be taken by the Contractor or its subcontractor(s);
  - (iii) the dates when each remedial action is to be implemented; and
  - (iv) a summary of potential risks or impacts to the Commonwealth that are associated with the non-conformity(ies).
- (g) The Commonwealth may in its sole discretion agree, in writing, to accept alternative and equivalent reports or certifications in lieu of a SOC report.

## ATTACHMENT 3

**COMMONWEALTH OF PENNSYLVANIA**  
**SAMPLE BUSINESS ASSOCIATE AGREEMENT**  
*(Business Associate Agreements as provided by Agencies may differ)*

**WHEREAS**, the \_\_\_\_\_ (Covered Entity) and \_\_\_\_\_ (Business Associate) intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191 (HIPAA), the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the *American Recovery and Reinvestment Act of 2009* (ARRA), as amended, Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, as amended, 42 C.F.R. §§ 431.301—431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), 35 P.S. § 7607, 50 Pa. C.S. § 7111, 71 P.S. § 1690.108(c), 62 P.S. § 404, 55 Pa. Code Chapter 105, 55 Pa. Code Chapter 5100, the Pennsylvania *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance; and

**WHEREAS**, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be handled, used or disclosed only in accordance with this Agreement, and the standards established by HIPAA, the HITECH Act and related regulations, 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.
- (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. Changes in Law.**

Business Associate agrees that it will comply with any changes in the HIPAA Rules by the compliance date established by any such changes and will provide the Covered Entity with written certification of such compliance.

**3. 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:

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**NO OTHER DISCLOSURES OF PHI OR OTHER INFORMATION ARE PERMITTED.**

**4. 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.
- (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 other form and format as agreed to by Business Associate and the individual. If the request is for information maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, Business Associate must provide Covered Entity with access to the PHI in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the Business Associate and Covered Entity. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity within **five (5) business days**. Business Associate shall further conform with all of the requirements of 45 C.F.R. § 164.524 and other applicable laws, including the HITECH Act, as amended, related regulations and agency guidance. Business Associate shall indemnify Covered Entity for costs/damages associated with Business Associate's failure to respond within the time frames set forth in this subsection 3(f).
- (g) **Amendment and Incorporation of Amendments.** Within **five (5) business days** of receiving a written request from Covered Entity for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available and incorporate the amendment to enable Covered Entity to comply with 45 C.F.R. § 164.526, applicable federal and state law, including the HITECH Act, as amended and related regulations, the Privacy Rule, the Security Rule and agency guidance. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity within **five (5) business days**.
- (h) **Provide Accounting of Disclosures.** Business Associate shall maintain a record of all disclosures of PHI made by Business Associate which are not excepted from disclosure accounting requirements under HIPAA, HITECH and related regulations, the Privacy Rule or the Security Rule (all as amended) in accordance with 45 C.F.R. § 164.528 and other applicable laws and agency guidance, including the HITECH Act and related regulations. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, and the purpose of the disclosure. Business Associate shall make such record available to the Covered Entity within **five (5) business days** of a written request for an accounting of disclosures. Business Associate shall indemnify Covered Entity for costs/damages associated with Business Associate's failure to respond within the time frames set forth in this subsection 3(h).
- (i) **Requests for Restriction.** Business Associate shall comply with requests for restrictions on disclosures of PHI about an individual if the disclosure is to a health

plan for purposes of carrying out payment or health care operations (and is not for treatment purposes), and the PHI pertains solely to a health care item or service for which the service involved was paid in full out-of-pocket. For other requests for restriction, Business associate shall otherwise comply with the Privacy Rule, as amended, and other applicable statutory and regulatory requirements and agency guidance.

- (j) **Access to Books and Records.** Business Associate shall make its internal practices, books and records relating to the use or disclosure of PHI received from, or created or received, by Business Associate on behalf of the Covered Entity, available to the Secretary of Health and Human Services or designee for purposes of determining compliance with applicable laws and agency guidance.
- (k) **Return or Destruction of PHI.** At termination of this Agreement, Business Associate hereby agrees to return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Agreement. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Agreement to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.
- (l) **Maintenance of PHI.** Notwithstanding subsection 3(k) of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under the various documentation requirements of this Agreement (such as those in subsection 3(h)) for a period of **six (6) years** after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise.
- (m) **Mitigation Procedures.** Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Agreement or the Privacy Rule, as amended. Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement or applicable laws and agency guidance.
- (n) **Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement, applicable laws or agency guidance.
- (o) **Grounds for Breach.** Non-compliance by Business Associate with this Agreement or the Privacy or Security Rules, as amended, is a breach of the Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-

compliance. Commonwealth may elect to terminate Business Associate's contract for such breach.

- (p) **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion, that the Business Associate has violated a material term of this Agreement.
- (q) **Failure to Perform Obligations.** In the event Business Associate fails to perform its obligations under this Agreement, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Agreement and applicable laws and agency guidance.
- (r) **Privacy Practices.** Covered Entity will provide Business Associate with all applicable forms, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date designated by the Program or Covered Entity. Covered Entity may change applicable privacy practices, documents and forms. The Business Associate shall make reasonable endeavors to implement changes as soon as practicable, but not later than **45 days** from the date of notice of the change. Business Associate shall otherwise comply with all applicable laws and agency guidance pertaining to notices of privacy practices, including the requirements set forth in 45 C.F.R. § [164.520](#).

## 5. 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.

**6. MISCELLANEOUS.**

- (a) **Regulatory References.** A reference in this Addendum to a section in HIPAA, HITECH and related regulations, the Privacy Rule or the Security Rule refers to the most current version of the section in effect or as amended.
- (b) **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time in order to ensure compliance with the requirements of the HIPAA, HITECH and related regulations, the Privacy Rule, the Security Rule and any other applicable law, all as amended.
- (c) **Conflicts.** In the event that any terms of this Agreement are inconsistent with the terms of the Agreement, then the terms of this Agreement shall control.

**ATTACHMENT 4**

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

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

1. Scope of Deployment (need not be entire agency):
  
1. Nature of Data implicated or potentially implicated:
  
2. Agency Policies to which Licensor. is subject (incorporated by reference):
  
3. Background checks (describe if necessary):
  
4. Additional requirements (describe with specificity):
  
5. Is Licensor a Business Associate (yes or no)?

If yes, the attached Business Associates Agreement, as completed by the Agency, is applicable and is hereby incorporated into this Sign-Off Document by reference.

**Agency Contact Person Signature and Date:** \_\_\_\_\_

**[Licensor \_\_\_\_\_]**  
**Authorized Signatory and Date:** \_\_\_\_\_

**EXHIBIT C**

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

This document becomes, upon its execution by the signatories named below, a legally valid, binding part of Agreement No. \_\_\_\_\_ between the Commonwealth and \_\_\_\_\_ (Contractor), 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 Contractor is subject (incorporated by reference):
  
4. Background checks (describe if necessary):
  
5. Additional requirements (describe with specificity):
  
6. Is Contractor 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:** \_\_\_\_\_

**[Contractor \_\_\_\_\_]**  
**Authorized Signatory and Date:** \_\_\_\_\_

**Exhibit B**  
**for the Job Order Contracting Program Consultant Contract**

**Appendix G - Cost Submittal**

Overview

This portion of the proposal must be separately sealed and labeled "Cost Submittal"

|   |  |                      |                          |
|---|--|----------------------|--------------------------|
| <b>PROPOSAL ADDRESS</b>                           |  | <b>EMAIL ADDRESS</b> |                          |
| Joe Cassata, Facility Optimization Solutions, LLC |  | jcassata@foscd.com   |                          |
| 50 Fountain Plaza, Suite 200                      |  | <b>PHONE NUMBER</b>  |                          |
| Buffalo, NY 14202                                 |  | 716.316.5664         |                          |
|   |  | <b>VENDOR NUMBER</b> | <b>FEDERAL ID OR SSN</b> |
|   |  | 0000544854           | 61-1954591               |

| Estimated JOC Project Value<br>(Based on average over the previous 3 years) | JOC Fee % | Estimate JOC Fee Amount<br>(Amount to be Evaluated) |
|---|-----------|---|
| \$ 30,000,000.00  | 10.45%    |   |

"Estimated JOC Project Value" shown above is for evaluation purposes only and is NOT guaranteed.

Per the August 30th, 2021 Negotiations meeting with FOS of Cannon Design and confirmed via email from FOS of Cannon Design on September 17th, 2021 the Negotiated Cost for the Job Order Contracting Program Consultant will be as follows:

- JOC System License Fee - 2.00% of the Total Job Order Amount to be charged to the Agency at the time of Purchase Order Execution.
- Job Order Development Fee - 3.45% of the Total Job Order Amount to be charged to the Agency at the time of Purchase Order Execution.
- Construction Management Fee - 5.00% of the Total Job Order Amount to be charge to the Agency at the time of Project Completion. This is an optional service.
- Supplemental Job Orders - Any project changes that result in a change to the project cost will be handled through the issuance of a supplemental job order. Additional fees owed to the Consultant based on supplemental job orders will be calculated and charged to the Agency upon project completion. In the event that a supplemental job order is being issued as a result of a price decrease, a credit is due to the Agency, the Consultant will issue a credit to the Agency by ACH within fifteen (15) days of project completion.
- If an Agency does not opt for Construction Management Services on a Job Order, the Agency fee would be 5.45% which includes the JOC System License Fee and the Job Order Development Fee.  
 If an Agency does opt for Construction Manager Services on a Job Order, the Agency fee would be 10.45% which includes the JOC System License Fee, Job Order Development Fee and Construction Management Fee.

## Exhibit C

### SDB-2 SDB PARTICIPATION SUBMITTAL

**CHECK ONE, AND ONLY ONE, BOX. FAILURE TO COMPLY WILL RESULT IN REJECTION OF YOUR PROPOSAL.**

*Click on bold titles to navigate to that specific page.*



I agree to meet the SDB participation goal in full. I agree that 10 % of the work will be performed by SDBs.



I am requesting a partial waiver of the SDB participation goal. I agree that \_\_\_\_\_ % of the work will be performed by SDBs.

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the SDB Participation Goal**, I am unable to achieve the remaining portion of the SDB participation goal for this solicitation and am requesting a partial waiver of that portion of the SDB participation goal.

I have completed and am submitting with my proposal a **Good Faith Efforts Waiver Request** for that portion of the SDB participation goal that I do not intend to meet, which is required in order to be considered for award.



I am requesting a full waiver of the SDB participation goal

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the SDB Participation Goal**, I am unable to achieve any part of the SDB participation goal for this solicitation and am requesting a full waiver of the SDB participation goal.

I have completed and am submitting with my proposal a **Good Faith Efforts Waiver Request** for the complete SDB participation goal, which is required in order to be considered for award.

**VBE-2**  
**VBE PARTICIPATION SUBMITTAL**

**CHECK ONE, AND ONLY ONE, BOX.**  
**FAILURE TO COMPLY WILL RESULT IN REJECTION OF YOUR PROPOSAL**  
*Click on bold titles to navigate to that specific page.*

**I agree to meet the VBE participation goal in full.** I agree that 3 % of the work will be performed by VBEs.

**I am requesting a partial waiver of the VBE participation goal. I agree that \_\_\_\_\_% of the work will be performed by VBEs.**

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the VBE Participation Goal**, I am unable to achieve the remaining portion of the VBE participation goal for this solicitation and am requesting a partial waiver of that portion of the VBE participation goal.

I have completed and am submitting with my proposal a **Good Faith Efforts Waiver Request** for that portion of the VBE participation goal that I do not intend to meet, which is required in order to be considered for award.

**I am requesting a full waiver of the VBE participation goal**

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the VBE Participation Goal**, I am unable to achieve any part of the VBE participation goal for this solicitation and am requesting a full waiver of the VBE participation goal.

I have completed and am submitting with my proposal a **Good Faith Efforts Waiver Request** for the complete VBE participation goal, which is required in order to be considered for award.

## Information Technology Policy

### *Proper Use and Disclosure of Personally Identifiable Information (PII)*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SEC025  | <b>Effective Date</b><br>March 19, 2010  |
| <b>Category</b><br>Recommended Policy  | <b>Supersedes</b>                        |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>January, 2019 |

#### 1. Purpose

Provides guidelines for the exercise of agency discretion in creating policies and procedures on the proper electronic use and disclosure of Personally Identifiable Information (PII).

#### 2. Scope

This Information Technology Policy (ITP) applies to all departments, boards, commissions and councils under the Governor’s jurisdiction. Agencies not under the Governor’s jurisdiction are strongly encouraged to follow this ITP.

#### 3. Definitions

**3.1 Data Breach:** A security incident in which personally identifiable information (PII) is copied, transmitted, viewed, stolen, or used by an individual unauthorized to do so.

**3.2 Personally Identifiable Information (PII):** any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

By way of further example, PII includes:

- Driver's license number or a State identification card number issued in lieu of a driver's license,
- Passport number,
- Identifying information that must be protected under any policy, law or other requirement applicable to an agency.

#### 4. Policy

The Office of Administration/Office for Information Technology (OA/OIT) is committed to protecting the privacy of Personally Identifiable Information (PII) of its employees, contractors, constituents, and other individuals associated with the Commonwealth. All entities under the Governor’s jurisdiction will take appropriate measures, implement necessary technology, and/or establish operating procedures to ensure data privacy is maintained. All applications collecting PII must comply with applicable laws and be vetted through the CA<sup>2</sup> process (detailed in ITP-SEC005 *Commonwealth Application Certification and Accreditation*).

## **Identifying PII**

Agencies are responsible for identifying and classifying all PII generated, collected, stored, used, and disclosed by the agency or by a third party on the agency's behalf. This data includes Sensitive Security Information, Protected Information, Privileged Information and Prerequisite-required information. Refer to ITP-SEC019 *Policy and Procedures for Protecting Commonwealth Electronic Data* for data classification guidance.

## **Collecting PII**

Agencies must limit the generation, collection, storage, use, and disclosure of PII to that which is necessary for business purposes only, and must further limit generation, collection, storage, use and disclosure of PII to the **minimum** PII necessary for the accomplishment of those business purposes.

Systems which are vendor or agency hosted shall use PII as data elements only and not as keys to databases. PII may be used for identification purposes or as identifiers only to address a business necessity, and only if allowed by applicable law and/or regulations/mandates.

## **Displaying PII**

Systems which are vendor or agency hosted shall not display PII visually, whether on computer monitors, or on printed forms or other system output, unless required by any law or other requirement applicable to an agency, or business necessity.

## **PII Used in Test Environments**

PII data used in staging, development, or test environments (as well as production environments) shall be secured properly in accordance with commonwealth ITP's and any law or other requirement applicable to an agency to prevent unauthorized use or disclosure. It is recommended that "simulated" PII data be used in test and development environments.

## **Unique Identifiers**

Systems developed by an agency, third party or contracted provider or business partner that require a unique identifier shall not use PII as that identifier. All systems, which must assign an identifying number for an individual, must assign a unique identification number that is not the same as or cannot be traced back to users PII. Security must be applied, and care must be taken to ensure that access the electronic system and use of these unique identification numbers are restricted in accordance with any law or other requirement applicable to an agency.

## **Transferring PII**

PII moved from one computer to another over an un-trusted network\* must be transferred using encryption controls defined in ITP-SEC019 *Policy and Procedures for Protecting Commonwealth Electronic Data* to protect data integrity and confidentiality. Agency legal review may be required, and is otherwise recommended, to ensure appropriate limits and processes are applied to any PII data transfer between commonwealth agencies, business partners, or external entities.

*\*This requirement does not apply when transferring PII between two hosts on the same*



*secure/firewalled subnet.*

## **Maintaining PII**

All agency entities maintaining files utilizing PII for any purpose shall ensure that access or use of such information is properly controlled, encrypted, and restricted to prevent unauthorized use or disclosure, and that the retention period is minimized based upon business necessity.

## **Legacy Systems**

Owners of legacy information systems that use PII as keys or indexes in their databases and which are not specifically required to do so by any law, regulation, reporting requirement or other mandate must have an action plan and timeline for remediation.

## **Disclosure of PII**

Data breaches involving PII must be reported via the requirements outlined in ITP-SEC024 - *IT Security Incident Reporting Policy*, regardless of other law or requirements that may be applicable to a breach. Breaches, for reporting under ITP-SEC024, include breaches of data in electronic or paper form. Agencies or business partners are also required to follow, as appropriate, any mandates pertaining to breaches found in any law or other requirement applicable to an agency.

## **5. Responsibilities**

Agencies are to put in place processes for ensuring that all users of agency systems are aware of the procedures and the importance of reporting security incidents (refer to ITP-SEC024 for guidance), data breaches, threats, or malfunctions that may have an impact on the security of agency information.

## **6. References**

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 - *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- ITP-PRV001 - *Commonwealth of PA Electronic Information Privacy Policy*
- ITP-SEC000 - *Information Security Policy*
- ITP-SEC005 - *Commonwealth Application Certification and Accreditation*
- ITP-SEC019 - *Policy and Procedures for Protecting Commonwealth Electronic Data*
- ITP-SEC020 - *Encryption Standards for Data at Rest*
- ITP-SEC024 - *IT Security Incident Reporting Policy*
- ITP-SEC031 - *Encryption Standards for Data in Transit*
- NIST SP 800-122 - *Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)*
- Breach of Personal Information Notification Act: 73 P.S. § 2301

- HIPAA regulations: 45 CFR 160.101
- Sarbanes Oxley: 15 USCS § 7201
- Payment Card Industry Standards

## 7. Authority

Executive Order 2016-06, Enterprise Information Technology Governance

## 8. Publication Version Control

It is the user's responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 9. Exemption from This Policy

In the event an agency chooses to seek an exemption, for reasons such as the need to comply with requirements for a federally mandated system, a request for waiver may be submitted via the Commonwealth of PA Procurement and Architectural Review (COPPAR) process. Requests are to be entered into the COPPAR Tool located at <http://coppa.oa.pa.gov/>. Agency CIO approval is required.

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision   |
|----------|------------|---|
| Original | 03/19/2010 | Base Policy   |
| Revision | 05/17/2011 | Changed ITB # from 36 to 25   |
| Revision | 10/07/2011 | Policy updated to reflect EASC comments   |
| Revision | 04/20/2012 | Policy updated to reflect OA-Legal comments   |
| Revision | 04/02/2014 | ITP Reformat  |
| Revision | 01/12/2018 | Added Definitions and Exemption from Policy section<br>Revised Policy opening statement |

# Information Technology Policy

## *Physical Security Policy for IT Resources*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SEC029  | <b>Effective Date</b><br>June 21, 2007 |
| <b>Category</b><br>Security  | <b>Supersedes</b>                      |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>June 2022   |

### 1. Purpose

This Information Technology Policy (ITP) establishes an information security policy to ensure that Commonwealth Information Technology (IT) facilities and resources are protected by physical security measures that prevent physical tampering, damage, theft, or unauthorized physical access.

Commonwealth agencies have physical access to IT facilities and resources such as servers, tape libraries, and communication closets. Agencies are to take great care in physically securing IT facilities and resources to ensure the integrity of their systems and networks.

Physical access to other Commonwealth resources is regulated by the policies and procedures described in [General Order No. 4.1: Security for Commonwealth Owned/Controlled Buildings, Property, Employees, and Visitors](#).

### 2. Scope

This ITP applies to all offices, departments, boards, commissions and councils under the Governor's jurisdiction (hereinafter referred to as "agencies"). Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of this ITP that are applicable to the products and services provided to the Commonwealth.

### 3. Policy

IT facilities and resources include data centers, computer rooms, telephone closets, network routers and hub rooms, voicemail system rooms, and similar areas containing IT facilities and resources.

All IT facilities and resources are to be physically protected in proportion to the criticality or functional importance.

Protection measures include:

- Separated, locked, and designated as limited access areas.
- Environmentally controlled to ensure operating conditions are within specifications for equipment located within the confines of the area.
- Equipped with environmental and safety monitoring devices to ensure compliance with regulated or statutory requirements.
- Inspected on a regular basis to ensure compliance with health, safety, fire, security, and maintenance requirements.

Access to restricted IT facilities and resources is limited only to authorized persons.

- The process for granting door keys or access cards for these facilities and resources shall include the approval of the person responsible for the facility or room.
- Access cards and/or keys issued for access to restricted IT facilities and resources may not be shared or loaned to others.
- Employees, business partners and citizen visitors without the proper access credentials may be granted temporary access via verbal or signed orders when conditions require their immediate access, or visitor access is approved. These individuals:
  - Shall be recorded in the facility sign-in/sign-out log. This log will have appropriate language on each page, or otherwise prominently displayed, indicating the minimal visitor responsibilities associated with accessing the facility.
  - Shall be issued a temporary identification badge and are required to wear it openly.
  - Shall be supervised at all times while in restricted areas by a party with authorized access to the IT facilities and resources.
- Access records and sign-in logs shall be maintained and archived for routine review for a period of not less than one year.
- No one shall be permitted to enter a controlled-access facility, area, or room without being authenticated and having his/her privileges verified.

Organizations responsible for IT facilities and resources shall designate a responsible party to review access records and visitor logs. These reviews shall be conducted at least every three months. The reviewer is to:

- Investigate any unusual access.
- Remove access privileges for individuals who no longer require right of entry.

Agencies shall ensure procedures are in place to provide immediate access to IT facilities and resources by fire, safety, and other emergency personnel in the case of an emergency.

## 4. Responsibilities

**4.1 Agencies** shall comply with the requirements as outlined in this ITP.

**4.2 Third-party vendors, licensors, contractors, or suppliers** shall comply with the requirements as outlined in this ITP.

## 5. Related ITPs/Other References

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>

## 6. Authority

- Executive Order 2016-06, *Enterprise Information Technology Governance*

## 7. Publication Version Control

It is the [Authorized User](#)'s responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-itcentral@pa.gov](mailto:RA-itcentral@pa.gov).

## 8. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Policy Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision  | Redline Link  |
|----------|------------|--|---|
| Original | 06/21/2007 | Base Policy  |   |
| Revision | 04/02/2014 | ITP Reformat   |   |
| Revision | 06/08/2021 | <ul style="list-style-type: none"><li>• ITP Template</li><li>• Added third-party vendors to Scope and Responsibilities</li><li>• Added Related ITP Section</li><li>• Added Exemption Section</li></ul> | <a href="#">Revised IT Policy Redline &lt;06/08/2021 &gt;</a> |

# Information Technology Policy

## Encryption Standards

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SEC031  | <b>Effective Date</b><br>August 17, 2007 |
| <b>Category</b><br>Security  | <b>Supersedes</b><br>--                  |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>June 2022     |

### 1. Purpose

This Information Technology Policy (ITP) establishes standards for the encryption of Commonwealth data while in transit and at rest.

### 2. Scope

This ITP applies to all departments, offices, boards, commissions, and councils under the Governor's jurisdiction (hereinafter referred to as "agencies"). Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of this ITP that are applicable to the products and services provided to the Commonwealth.

### 3. Definitions

**3.1 Data Element Encryption:** Data Element Encryption is a technique that encrypts individual data elements instead of encrypting an entire file or database. Common examples of Data Element Encryption include column level database encryption and encryption of a Social Security Number (SSN) before writing it to a file. Data Element Encryption is used to selectively apply encryption and may be used to reduce encryption/decryption overhead, to protect different elements with different keys, or to simplify adding encryption to applications.

**3.2 Full Disk Encryption:** Full Disk Encryption is a computer security technique that encrypts data stored on a mass storage or removable device, and automatically decrypts the information when an [Authorized User](#) request it. The term "Full Disk Encryption" is often used to signify that everything on a disk or removable device, including the operating system and other executables, is encrypted. Full Disk Encryption can include hardware encryption and self-encrypting, such as configuring a tape drive to encrypt all backup data before write. Storage area network (SAN) device encryption can be met with data-at-rest encryption with self-encrypting drives.

**3.3 File Encryption:** File Encryption is a technique that encrypts files on a file system, without encrypting the file system itself or the entire disk. A File Encrypting application may include functionality to archive multiple files into a single file before or after encrypting, produce self-decrypting files, or automatically encrypt files or folders based on policies or locations. File Encryption is often used to protect files being sent through email or written to removable media.

**3.4 Volume Level Encryption:** Protects a smaller subset of the drive, possibly down to

the individual folders. This can span a single disk or multiple disks.

## 4. Policy

### 4.1 Data in Transit

Encryption shall be used to protect the transmission of Class “C” Classified Records or Closed Records as defined in [ITP-SEC019 Policies and Procedures for Protecting Commonwealth Electronic Data](#). Data in transit is any type of information that is actively moving between systems, applications, or locations. Encryption of data in transit is an effective data protection measure to protect data that is in motion.

Criteria to be taken into account when encrypting data in transit include:

- Data Classification - Refer to [ITP-SEC019 - Policy and Procedures for Protecting Commonwealth Electronic Data](#), to correctly identify the categorization and classification of Commonwealth data.
- Data Compliance - Mandates of law including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA), Sarbanes-Oxley Act of 2002, the Gramm-Leach-Bliley Act (GLBA), and any other law or regulation that involves data that is subject to some degree of protection under such statute, law, order, or regulation.

The Commonwealth Metropolitan Area Network (MAN) should not be considered a trusted mode of transit (i.e., zero trust network) and all data traffic through the MAN and Commonwealth agency networks should be considered untrusted unless additional interagency traffic encrypted trusts are established and maintained. Agencies must comply with all Security IT policy guidance to properly secure all Commonwealth data in transit.

Use of Advanced Encryption Standard (AES) for symmetric encryption is required.

Internet Protocol Security (IPSec) gateway to gateway implementations utilizing triple data encryption standard (3DES) is to be migrated to IPSec/AES to take advantage of increased security; new IPSec implementations are not to use 3DES.

Any application protocols (e.g., HTTP, file transfer protocol [ftp], secure copy [SCP]) tunneled in an encryption mechanism or combination of encryption mechanisms utilizing approved symmetric or asymmetric encryption algorithms as detailed in this policy are considered to be secure.

Use of 256-bit key sizes and hashing algorithms that utilize 160-bit (or greater) digest lengths are strongly recommended. Agencies are encouraged to use larger key/digest sizes where performance and client constraints allow.

Encryption products used to protect sensitive information are to conform to the NIST Cryptographic Module Validation Program listing <http://csrc.nist.gov/groups/STM/cmvp/>.

| Transmission Mechanism Examples  | Meets ITP-SEC031 for Internet communications, establishment of VPN tunnels for secure connections, remote administration technologies and VDI/Appstreaming uses |
|--|---|
| HTTPS in export grade ciphers (40-bit and 56-bit keys)   | No, does not meet key size requirements, and does not utilize AES.  |
| HTTPS protocols (any SSL version, TLS 1.0 (not permitted), TLS 1.1) Ciphers including Rivest 4 (RC4) and 3DES ciphers  | No  |
| HTTPS protocols 1.2 , 1.3 (emerging) Ciphers shall be AES 128 bit or higher. ECDHE is also approved for use. TLS 1.3 is an emerging technology. When vendors provide TLS 1.3 capable server software, appropriate testing will need to be performed to ensure application compatibility. | Yes   |
| Secure Shell (SSH)-1, SSH-2 (3DES, or Blowfish)  | No, does not utilize AES encryption.  |
| SSH-2 (AES), SCP/SFTP over SSH-2, HTTP over SSH-   | Yes   |
| VPN Clients 1.2 , 1.3 (emerging) passwords or PKI certificates). TLS 1.3 is an emerging technology. When vendors provide TLS 1.3 capable server software, appropriate testing will need to be performed to ensure application compatibility.   | Yes   |
| IPSec (3DES for encryption)  | No, IPSec/3DES setups are to be migrated to IPSec/AES.  |
| IPSec (AES-CBC for encryption)   | Yes   |
| Layer 2 Forwarding (L2F) or Point-to-Point Tunneling Protocol (PPTP)   | No, L2F and PPTP do not offer encryption.   |
| SHA-1 cipher for certificate signing   | Contain.  |
| SHA-2 family of ciphers for certificate signing (SHA-224, SHA-256, SHA-384, SHA-512, SHA-512/224, SHA-512/256)   | Yes   |
| SHA-3 family of ciphers for certificate signing (SHA3-224, SHA3-256, SHA3-384, SHA3-512; XOFs: SHAKE128, SHAKE256)   | Yes   |

#### 4.2 Data at Rest

Encryption shall be used to protect Class “C” Classified Records or Closed Records at rest. Data at rest is data that is not actively moving from device to device or network to network such as data stored on a hard drive, laptop, flash drive, or archived/stored in some other way. Encryption of data at rest is an effective data protection measure to protect inactive data.

To ensure the highest level of security and overall effectiveness of encryption, mobile or portable devices using encryption shall not be placed in suspend mode when unattended and shall be shut down completely when not in use or when unattended.

#### **Full Disk Encryption**

Full Disk Encryption shall be used on computers or computing devices storing Class “C” Classified Records or Closed Records located in areas not equipped with public access restrictions and physical security controls such as locked doors.



Full Disk Encryption shall be used for archiving or backing up Class “C” Classified Records or Closed Records to tape or optical media. Software or hardware mechanisms can be used provided they conform to Commonwealth standards. If no conforming mechanisms are available, File Encryption techniques may be used to encrypt the data at the file level before it is written to tape or optical media.

Non-encrypted flash drives may be procured from the Peripheral contract(s) only in cases where these devices will not store any Class “C” Classified Records or Closed Records as defined in ITP-SEC019 *Policy and Procedures for Protecting Commonwealth Electronic Data*.

### **Volume Level Encryption**

In cases where the volume contains Class “C” Classified Records or Closed Records that are not encrypted by some other means of File or Data Element Encryption, Volume Level Encryption shall be used.

All volumes on mobile or portable device shall use at least Volume Level Encryption.

### **File Encryption**

File Encryption shall be used when files containing Class “C” Classified Records or Closed Records are transferred on physical media, through email, or across networks, without other forms of encryption or protection.

### **Data Element Encryption**

Data Element Encryption shall be used when Class “C” Classified Records or Closed Records are stored in accordance with ITP-SEC019 *Policy and Procedures for Protecting Commonwealth Electronic Data*. Physical security of a data storage device is not a substitute for Data Element Encryption, as it does not prevent accessing data through exploited application vulnerabilities. Likewise, Data Element Encryption should be designed such that exploited access does not provide unencrypted access to Class “C” Classified Records or Closed Records.

## **5. Responsibilities**

**5.1 Agencies** shall comply with the requirements as outlined in this ITP.

**5.2 Office of Administration, Office of Information Technology** shall comply with the requirements as outlined in this ITP.

**5.3 Third-party vendors, licensors, contractors, or suppliers** shall comply with the requirements as outlined in this ITP.

## **6. Related ITPs/Other References**

Definitions of associated terms of this policy are published on the Office of Administration’s public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration’s public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 Amended *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- ITP-PRV001 – *Commonwealth of Pennsylvania Electronic Information Privacy Policy*
- ITP-SEC000 – *Information Security Policy*
- ITP-SEC019 – *Policy and Procedures for Protecting Commonwealth Electronic Data*
- ITP-SFT005 - *Managed File Transfer (MFT)*

## 7. Authority

Executive Order 2016-06, *Enterprise Information Technology Governance*

## 8. Publication Version Control

It is the [Authorized User's](#) responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 9. Exemption from this Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision  |  |
|----------|------------|--|--|
| Original | 08/17/2009 | Base Policy  |  |
| Revision | 09/17/2009 | Rewrote policy section and added transmission mechanism table  |  |
| Revision | 04/02/2014 | ITP Reformat   |  |
| Revision | 08/17/2015 | Revised Data sensitivity classification categories language regarding SEC019   |  |
| Revision | 12/09/2016 | <ul style="list-style-type: none"> <li>Revised Transmission Mechanism Examples table with updated encryption protocol requirements</li> <li>Added Exemption section</li> <li>Added ITP-SEC000 reference</li> <li>Revised NIST Cryptographic Module Validation Program URL</li> <li>Added Secure Hash Algorithm (SHA) language</li> </ul> |  |
| Revision | 10/24/2017 | <ul style="list-style-type: none"> <li>Added statement on "untrusted network" of Commonwealth MAN and agency networks in Policy section</li> <li>Added additional References</li> <li>Moved language from Purpose to Policy section for clarity</li> </ul>   |  |
| Revision | 07/22/2018 | <ul style="list-style-type: none"> <li>Added TLS 1.1 to Contain, 1.2 and 1.3 are preferred</li> <li>SSL/TLS 1.0 and lower no longer acceptable encryption protocol</li> <li>Revised table for clarity</li> </ul>   |  |
| Revision | 12/04/2020 | <ul style="list-style-type: none"> <li>Combined ITP-SEC020 Encryption Standard for Data at Rest with ITP-SEC031. SEC020 was added to this policy as Section 4.2 under Policy.</li> <li>Added Definition section</li> </ul>   | <a href="#">Revised IT Policy Redline &lt;12/4/2020&gt;</a>  |
| Revision | 06/22/2021 | <ul style="list-style-type: none"> <li>Added disclaimer regarding TLS 1.3</li> <li>Updated Scope</li> <li>Updated Related ITPs Section</li> <li>Updated Transmission Mechanism Table Header</li> <li>Language cleaned up throughout policy to be inclusive of third party vendors</li> </ul>   | <a href="#">Revised IT Policy Redline &lt;06/22/2021&gt;</a> |

# Information Technology Policy

## *Enterprise Data Loss Prevention (DLP) Compliance Standards*

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-SEC032  | <b>Effective Date</b><br>April 29, 2011 |
| <b>Category</b><br>Security  | <b>Supersedes</b>                       |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>April 2022   |

### 1. Purpose

This Information Technology Policy (ITP) establishes the enterprise standards and administrative and technical controls that must be met to deploy Data Loss Prevention (DLP) technologies or solutions. DLP solutions protect sensitive data from data breach and are designed to detect and act upon unauthorized use and transmission of confidential information.

The Commonwealth and its agencies are custodians to a vast amount of sensitive citizen data, including, but not limited to, social security numbers, medical information, driving records, employee records, and financial information. This data is stored on numerous servers and storage devices and is transported throughout Commonwealth and business partner networks. Confidential data that is not protected or released to unauthorized parties is a fundamental Information Security failure.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions and councils under the Governor's jurisdiction (hereinafter referred to as "agencies"). Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of the Commonwealth's ITPs that are applicable to the products and services provided to the commonwealth.

### 3. Policy

DLP technologies may exist in several forms including host based (server or endpoint) or network-based solutions. Data Loss prevention (DLP) services help the organization comply with standards and regulations. It helps protect sensitive information and prevents its unintended disclosure.

Any DLP technology/solution must comply with the technical specifications and/or requirements outlined in the following Commonwealth ITP's:

- 1) ITP-SEC019 - *Policy and Procedures for Protecting Commonwealth Electronic Data*
- 2) ITP-SEC031 - *Encryption Standards*
- 3) ITP-SEC017 - *CoPA Policy or Credit Card Use for e-Government Applications*

(if applicable)

## 4. Responsibilities

4.1 Agencies shall comply with the requirements as outlined in this ITP.

4.2 Third-party vendors, licensors, contractors, or suppliers proving a DLP technology/solution on behalf of Commonwealth entities shall comply with the requirements as outlined in this ITP.

## 5. References

- ITP-SEC019 - *Policy and Procedures for Protecting Commonwealth Electronic Data*
- ITP-SEC031 - *Encryption Standards*
- ITP-SEC017 - *CoPA Policy or Credit Card Use for e-Government Applications*

## 6. Authority

- Executive Order 2016-06, Enterprise Information Technology Governance

## 7. Publication Version Control

It is the [Authorized User](#)'s responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-itcentral@pa.gov](mailto:RA-itcentral@pa.gov).

## 8. Exemption from this Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to ITP-BUS004 *IT Waiver Review Process* for guidance.

This chart contains a history of this publication's revisions:

| Version  | Date      | Purpose of Revision | Redline Link   |
|----------|-----------|---------------------|--|
| Original | 4/29/2011 | Base Policy         |  |
| Revision | 4/2/2014  | ITP Reformat        |  |
| Revision | 4/28/2021 | Policy Refresh      | <a href="#">Revised IT Policy Redline &lt;04/28/2021&gt;</a> |

# Information Technology Policy

## *Commonwealth Data Center Privileged User Identification and Access Management Policy*

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-SEC038  | <b>Effective Date</b><br>September 06, 2017 |
| <b>Category</b><br>Security  | <b>Supersedes</b><br>None                   |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>June 2019        |

### 1. Purpose

This policy provides guidelines for Commonwealth IT data centers and applications to establish appropriate controls for the administration and monitoring of privileged user access to the hosted systems and data they contain. This includes the identification, authorization and authentication of privileged users, programs, processes, and service accounts that access these systems.

### 2. Scope

This Information Technology Policy (ITP) applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

### 3. Objective

The objective of this ITP is to:

- Provide security requirements for the use of privileged user accounts to access computer applications, systems, and data.
- Provide a level of standardization and uniformity throughout Commonwealth of PA (COPA) agencies regarding the use and protection of privileged user accounts
- Satisfy federal compliance requirements and other external requirements where possible.

### 4. Definitions

**Administrative accounts** – accounts used by a specific privileged user having administrative-level role(s), with access to all standard user and privileged operations. These can be, but are not limited to, accounts which manage other user accounts and roles, accounts which can bypass an application and directly modify the contents of the application's backend database, accounts with universal access to all the application's data regardless of its nature (including PII, PHI, etc.), or accounts which can uninstall or reconfigure server software. These users are not necessarily IT staff but may be business managers administering agency application access and privileges for other workers.

**Authentication** – The process of establishing confidence in the validity of a user's presented identifier, usually as a prerequisite for granting access to resources in an information system.

**Authentication Method** – The type of authentication being used to validate a user. These are categorized as:

- Something you know (e.g. PIN, password, shared information)
- Something you possess (e.g. token, smart card, digital certificate)

- Something you are (biometrics – e.g. fingerprint, voice, iris, face)

**Authorization** – The process of verifying that an authenticated user is permitted to have access to a system or application based on the user’s business responsibilities.

**Break-the-Glass** – Accounts used in emergency situations, based upon pre-staged user accounts, managed in a way that can make them available with reasonable administrative overhead. Typically, these accounts are created and the userID and passwords locked away in a cabinet, desk, sealed envelope, etc. so that their use is restricted and it is obvious when they have been used.

**Commonwealth Data Center (data center)** – Facilities used to host Commonwealth IT assets and data. These include the Enterprise Data Center (EDC) and Pennsylvania Compute Service (PACS) as well as agency owned facilities.

**Globally Unique Identifier (GUID)** – The Globally Unique Identifier is an alpha-numeric code which uniquely identifies a person. Two John Smiths could, for instance, both have the same userID at different times, but they would have different GUID’s. User access to IT resources should be based on the GUID rather than the userID as it uniquely identifies the person. Note: Active Directory assigns a GUID to each account, this is not necessarily the same as assigning a GUID to a person.

**Identify and Access Management (IAM)** – Processes and tools used to manage user IT accounts throughout the account lifecycle. These include the creation (provisioning) of the account, management of attributes and privileges during the account’s active lifetime, password management, and finally the removal (de-provisioning) of the account when that lifetime is over.

**Least Privilege** – Least privilege refers to the security objective of granting users only those accesses they need to perform their official duties. Data entry clerks, for example, would not normally have any need for administrative level access to the database they use.

**Multi-Factor Authentication** – The use of two or more of the Authentication Methods (see above). Two-factor would employ one each of two of the methods; three-factor would employ one each of all three methods.

**Privileged Access Management (PAM)** – Processes and tools that provide IT administrators a method of managing privileged users and their accounts and access rights to IT resources. This is a specialized aspect of general Identity and Access Management. (Sometimes referred to as Privileged Account Management or Privileged User Management though these each have slightly different nuances.)

**Privileged User** – A user who has been granted elevated privileges for accessing protected physical or logical resources, including users with application administrator access or roles. Such users include, for example, security personnel or system administrators who are responsible for managing restricted physical locations or shared information technology (IT) infrastructure. These users might require access to related systems to create new user accounts, and add to or amend the privileges of other users.

**Role-based access control (RBAC)** – RBAC is the idea of establishing standard levels of access – “permissions” – to the various computing resources and networks of an organization that are tailored to specific employee roles, or job functions, rather than to individuals.

**Separation of duties** – Separation of duties refers to dividing roles and responsibilities so that a single individual cannot subvert a critical process. For example, in financial systems, no single individual should normally be given authority to issue checks. Rather, one person initiates a request for a payment and another authorizes that same payment.

**Service or Operational accounts** – generally system-to-system or application-to-application accounts having administrative-level roles. For example, an application which updates or creates records in a backend database would use a service account with appropriate database privileges to do so.

**System accounts** – built-in system or application accounts having administrative-level roles. Some examples include *root* in Linux/Unix systems, *Administrator* in Windows systems, or *sa* in SQL Server.

## 5. General Policy

Information technology and application administrators are responsible for management of privileged users and accounts. This management includes appropriate user identification, authentication, and authorization, including appropriate level of access, to systems, applications, and data. *Note: this function of IT and application administrators makes them privileged users themselves and subject to the guidelines enumerated in this ITP.*

Privileged user management addresses three general types of accounts: Administrative, Service or Operational, and System accounts. In each instance, the improper use of these privileged accounts can result in serious consequences, intentional or not, such as the corruption or loss of data or improper disclosure of data. Privileged accounts must be properly secured and monitored to avoid their misuse.

This general Policy applies to all types of privileged accounts listed above and generically referenced in this section as “accounts”.

- 5.1 Accounts shall meet or exceed all requirements set forth in ITP-SEC007 *Minimum Standards for IDs, Passwords, and Multi-Factor Authentication*.
- 5.2 Accounts shall uniquely identify and authenticate users, processes, or groups who make use of the account.
- 5.3 Accounts shall be granted the least privilege needed by the user, process, or group who makes use of the account.
- 5.4 Accounts privileges and access shall be based on RBAC principles, not on attributes such as userID, employee number, etc.
- 5.5 An inventory of all privileged accounts shall be maintained by the agency and kept current as new systems or applications are brought online.
- 5.6 Semi-annual scans of the infrastructure and applications shall be done to discover any unreported accounts with elevated or excessive privileges – the agency may choose to do this manually or through an approved tool of their choice.
- 5.7 Account usage shall be monitored and audited. The resulting records shall be subjected to applicable enterprise and agency data retention schedules.
- 5.8 These privileged accounts and access rights will be reviewed every six months and adjusted as needed.

## 6. Detailed Policy

The policies in this section apply to the specific types of privileged accounts enumerated above in §5.

### 6.1 Administrative accounts

- For assigned administrative tasks regularly requiring the use of a privileged account, particularly for desktop, server, or other infrastructure access (routers, firewalls, etc.), the user shall be assigned a separate account, distinct from the user's everyday account. This privileged account shall be reserved and restricted only for the privileged access use cases and will not be used for routine duties such as HR activities, sending/receiving email, or searching/browsing the Internet.
- Where needed, non-privileged accounts may be temporarily elevated to a privileged status. Such actions shall be documented including date/time, who, and for what circumstances. The elevated privileges shall be removed once the need no longer exists.
- Passwords on administrative accounts are governed by ITP-SEC007, though it is recommended that these passwords be a minimum of 12 characters including at least one each of uppercase, lowercase, numbers, and special characters
- Appropriate background checks, up to and including fingerprinting through the PA State Police, shall be performed on each user prior to them being granted use of any privileged account.
- Privileged accounts shall be disabled or removed (subject to audit requirements or investigations) immediately upon separation of the user.
- All privileged users shall agree to and sign the *IT Administrator Acceptable Use Policy* per MD245.18 – *IT Administrator Acceptable Use, Auditing and Monitoring, Incident Notification, and Response Policies and Procedures*.
- In cases where remote access to the systems is required from outside of the COPA network, VPN or other encrypted network access shall be used. The user shall be authenticated using multifactor authentication.

### 6.2 System accounts

- The use of built-in or default accounts shall be minimized only to cases where there are no other alternatives.
- Where possible they are to be disabled (preferably) or renamed to something other than the default.
- Default passwords shall be changed and managed per ITP-SEC007.

### 6.3 Service or Operational accounts:

- If used, break-the-glass accounts shall be named appropriately (e.g. breakglass01). The passwords shall be a minimum of 12 characters including at least one each of uppercase, lowercase, numbers, and special characters, and locked away in a sealed envelope. The use of these accounts shall be logged, including date/time, who, and for what circumstances. The passwords will be changed immediately after use.
- Service or other such accounts are to be managed per ITP-SEC007 and well-documented in either the system or application design documents.



## 7. Reporting of non-Compliant Systems and Applications

In the case of non-compliant systems or legacy applications, the non-compliance will be reported to the agency security officer and the Commonwealth CISO as part of the agency's security assessment (ITP-SEC023 *Information Technology Security Assessment and Testing Policy*). The report will include details as to the privileged user policies, the type of data stored on the system or accessed by the application, any compensating controls, and any plans for the revision or replacement of the system or application.

## 8. Exemptions and Waivers

In the event an agency chooses to seek an exemption, for reasons such as the need to comply with requirements for a federally mandated system, a request for a waiver is to be completed and submitted via the Commonwealth of Pennsylvania Policy and Procurement Action Request (COPPAR) process. Requests are to be entered via the COPPAR Tool located at <http://coppar.oa.pa.gov/>. Agency CIO approval is required.

The waiver request is to state why the standard privileged user policy cannot be used. Details are required about the application, server, and network connections. Network diagrams are to be included to illustrate the security components that will mitigate the proposed privileged user policy. Any waiver that is granted will be valid for a period of not more than one (1) year and will be void if the application or system undergoes a substantial revision or replacement. Despite the existence of the waiver, the non-compliant system or application is to be reported to the Commonwealth CISO as part of the agency's security assessment as prescribed above in §7 and detailed in ITP-SEC023 *Information Technology Security Assessment and Testing Policy*.

## 9. Related ITPs/Other References

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 210.5 *The Commonwealth of Pennsylvania State Records Management Program*
- Management Directive 245.18 *IT Administrator Acceptable Use, Auditing and Monitoring, Incident Notification, and Response Policies and Procedures*
- ITP-SEC000 *Information Security Policy*
- ITP-SEC007 *Minimum Standards for IDs, Passwords, and Multi-Factor Authentication*
- ITP-SEC019 *Policy and Procedures for Protecting Commonwealth Electronic Data*
- ITP-SEC020 *Encryption Standards for Data at Rest*
- ITP-SEC023 *Information Technology Security Assessment and Testing Policy*
- NIST Special Publication SP 800-53 Rev. 4 *Security and Privacy Controls*
- NIST Special Publication SP 800-63-2 *Electronic Authentication Guideline*
- NIST Special Publication SP 800-192 *Verification and Test Methods for Access Control Policies/Models*

- NIST Federal Information Processing Standard (FIPS) 200 *Minimum Security Requirements for Federal Information and Information Systems*

## 10. Authority

Executive Order 2016-06, Enterprise Information Technology Governance

## 11. Publication Version Control

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This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision  |
|----------|------------|--|
| Original | 09/06/2017 | Base Policy  |
| Revision | 06/19/2018 | Removed unnecessary Purpose language<br>Clarified 6.1 to include desktop and example infrastructure assets |

# Information Technology Policy

## Software Development Life Cycle (SDLC) Policy

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SFT000  | <b>Effective Date</b><br>February 17, 2017 |
| <b>Category</b><br>Software  | <b>Supersedes</b><br>None                  |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>August 2019     |

### 1. Purpose

Establishes policy for a [Software Development Life Cycle \(SDLC\)](#) framework, and related software application development methodologies and tools that are essential components in the management, development, and delivery of software applications to support agency business needs and services.

### 2. Scope

This Information Technology Policy (ITP) applies to all departments, boards, commissions and councils under the Governor’s jurisdiction. Agencies not under the Governor’s jurisdiction are strongly encouraged to follow this ITP.

### 3. Background

Software application development is a complex endeavor, susceptible to failure, unless undertaken with a deliberate and systematic methodology. Application development requires an SDLC framework that fully integrates [Software Application Development Methodologies \(SADM\)](#), Project Management, and Software Quality Control and Assurance components to create quality software applications with real business value in a timely cost-effective manner.

An SDLC is the essential underlying foundation required in establishing a standard framework for the proper evaluation, development, installation, validation, integration, implementation, and life cycle management of information system solutions (i.e., hardware and software), regardless of the systems engineering, or software development methodologies, and/or tools used to automate, manage, execute the development and/or delivery the information systems solutions.

It is imperative to have an SDLC framework established with procedures and processes aligned with their respective software application development methodology. Integrating software development tools (e.g., CAD, Application Life Cycle Management, Modeling, Testing, Compliance) can aid in the management, automation, and consistency of solution development as well as the overall quality of the product. These tools must also be properly aligned and integrated into the SDLC framework and respective SADM approach.

Managing the application portfolio is a key component of life cycle management. Understanding the type, composition, status, and risks associated with agency applications that enable business and IT services is critical for IT strategic planning and making informed decisions regarding modernization, enhancements, divestiture, or replacement based on the changing needs of the business and IT ecosystems.

#### 4. Objective

Provide a framework for the creation and delivery of high quality business information systems that:

- Meet or exceed customer expectations when promised and within cost estimates;
- Work effectively and efficiently within the current and planned information infrastructure; and
- Are properly managed, maintained, and properly documented throughout their useful life.
- Ensure proper alignment with Business and IT Service Portfolio and integrated ITIL processes
- Facilitate the development of agency specific policies and associated standard operating procedures to establish sound SDLC frameworks, audit controls, and separation of duties.
- Ensure Commonwealth agencies are employing the best practices of SDLC and providing some assurance that systems are being developed efficiently and effectively.
- Outline some tools and specifications that can be used/referenced by agency application development teams for facilitating the management, automation, consistency, quality assurance, and compliance of solutions.
- Provide SDLC strategy concepts
- Posture the Commonwealth application portfolio towards a COTS or SaaS-first priority

#### 5. Policy

All new application development and enhancement projects are required to utilize a well-documented systems development life cycle framework. This applies to projects performed by Commonwealth employees and by Commonwealth contractors.

Whether a software application development methodology (SADM) is based on [waterfall](#), [spiral](#), [agile](#) processes or some other methodology they share fundamental systems development life cycle components and activities. Agencies are required to establish an SDLC framework that at a minimum include the following components:

Feasibility - processes and procedures to evaluate and define the best solution approach through research, feasibility studies, analysis of business needs and/or high-level requirements, resources, capability, capacity, IT investment and risk strategies, alternatives analysis, SADM, etc.

##### Cloud Services Request

Refer to ITP-BUS011 *Commonwealth Cloud Services Requirements* for guidance on cloud solution implementation into the enterprise.

Agencies that have determined a [Software-as-a-Service \(SaaS\)](#), Platform-as-a-Service (PaaS), or Infrastructure-as-a-Service (IaaS) cloud-based solution meets the business requirements are required to engage OA/OIT Enterprise through a Service Request process prior to consumption of the cloud-based solution. This process allows the agency and OA/OIT Enterprise to perform a robust vetting analysis that will:

- Determine the impact and capacity of bandwidth on the Commonwealth backbone
- Ensure and maintain agency and enterprise information security
- Help establish consistent rules of engagement for implementation of the solution

- Help establish flexible cloud procurement vehicles
- Allow for a centralized repository of lessons learned, use cases, and other cloud-based artifacts to enhance the Commonwealth's cloud solutions posture
- Determine the impacts to existing to existing agency and/or enterprise service offerings, capabilities, and resources

Additional details on the Service Request process is in Section 8 - Related ITPs/Other References.

Requirements Management - requirements definition, analysis, refinement, categorization, prioritization, changes, traceability, and documentation procedures and processes based on SADM. Service Design Coordinator shall ensure alignment with Service Design Package (SDP) and affiliated application, infrastructure, data/information, security requirements defined and managed through service design and integrated SDLC frameworks.

Principles - To reduce the commonwealth's legacy and customized application portfolio, agencies tasked with new or modernizing applications to support business needs are to emphasize reuse engineering of existing solutions, Commercial-off-the-Shelf (COTS) and Software-as-a-Service (SaaS) solutions over commonwealth-customized applications. Agencies are to also consider leveraging multiple COTS or SaaS solutions that can be integrated to formulate a holistic solution to the business needs. Evidence of such must be included with required project initiative documentation.

If no third-party solution (i.e. COTS, SaaS, or combination with integration), meets business requirements, next consideration is to be given to commonwealth-custom application actively maintained in the Commonwealth (utilize the Enterprise Application Inventory for analysis of available commonwealth-custom applications). If a commonwealth-custom application is not available or does not meet business requirements, agencies may then leverage internal and external personnel to develop a *commonwealth-custom application*. NOTE: This policy requires agencies to enter and maintain all custom applications into the Enterprise Application Inventory. Failure to maintain current continuity plans and an updated application entry in the Enterprise Application Inventory may result in delays in agency project approvals.

Agencies must perform a comprehensive multidimensional examination of COTS and/or SaaS solution alternatives in comparison to custom application development. A comparative analysis matrix should be created using predefined evaluation criteria with weighted scoring and ranking method to evaluate solution alternatives in making informed decisions as to the solution that will provide the best value to the organization.

Agencies must be able to provide sound justification for the why a COTS or SaaS solution alternative is or is not the viable alternative to custom application development when investing in a new, modernizing, or replacing application platform used to support the agency mission.

Design - processes and procedures for the creation and evaluation of conceptual design models and high-level diagrams to detailed design models and diagrams based on SADM. Service Design Coordinator shall ensure alignment with Service Design Package (SDP) and

affiliated application, infrastructure, data/information, security design specifications managed through service design, change management and integrated SDLC frameworks.

Build – processes and procedures utilized to construct and/or configure the solution based on SADM. All Commonwealth-custom application source code and/or software must reside on Commonwealth IT Resources or approved commonwealth-contracted resources. Builds and associated packages, configurations, databases, and accounts are to be designated as development versions with naming conventions identifying as such. This source code and/or software is not being shared in public domains. A COPPAR waiver is required if an agency needs to share Commonwealth-custom application source code and/or software in a public domain. Service Design Coordinator shall ensure alignment with Service Design Package (SDP) and service transition activities affiliated with application, infrastructure, data/information, security design specifications managed through service design, transition, change management and integrated SDLC frameworks.

Testing & Validation - processes and procedures associated with test planning, test design, test execution, validations, defect management, and approvals, based on SADM and in relation to unit, systems integration, user acceptance, and security vulnerability testing requirements. These processes and procedures should also include integrated quality control and assurance mechanisms to ensure solution meets all business, systems, security, policy, product quality, and/or other relevant compliance/certification requirements.

- Application quality is fundamental to delivering expected business outcomes and agreed upon service level. The quality of testing is the overall contributor to the quality of the application. The effectiveness of the testing effort can be maximized by selection of a testing strategy which includes thorough unit, integration, system, regression, performance, [stress testing](#), good management of the testing process, and the appropriate use of tools. Code packages, configurations, databases, and accounts are to be designated as beta/staging/test versions with naming conventions identifying as such.
- Testing tools are to be used to verify that changes in functionality were successfully implemented and that changes were implemented without degradation to other application components or performance. The use of testing tools is to be integrated with the change management strategy and the standards defined in section 7.

The selection and use of test tools (open source or purchased) should be properly evaluated relative to interoperability, extensibility, maintainability, and overall test coverage and effectiveness under the specified test conditions/parameters and targeted systems environment(s).

Implementation - processes and procedures regarding production ready solution adoption, delivery, and deployment; including business and technical operational readiness assessments with integrated go-live decision and roll-back mechanisms. Builds and associated packages, configurations, databases, and accounts are to be designated as production versions with naming conventions identifying as such.

Operations & Maintenance - processes and procedures to ensure the system is monitored for expected performance in accordance with requirements in live production environments, needed modifications are incorporated and subsequent product releases are effectively



managed to ensure the system continues to evolve to meet the changing needs of the business. All documentation is finalized and archived for future reference.

Agencies shall incorporate separation of duties to maintain continuity and integrity throughout the execution of the procedures and processes associated with the SDLC framework and affiliated software development projects. Careful consideration should be given to:

- Establishing access controls granting permissions to Commonwealth employees and/or outside contractors performing multiple roles within the various environments (i.e., development, production, system integration, testing, staging, etc.) to add, modify, delete, and migrate application code, data sets, and/or make configuration changes to systems in these environments.
- Granting privileged access permissions to outside contractors to add, modify, and/or delete user accounts and IDs and/or information systems security configurations.
- Establishing controls defining oversight, authority and responsibilities for end-product verifications, validations, and final acceptance/approvals associated with operational readiness assessments, testing, systems and data conversions, and go-live decisions.

Agencies shall ensure proper alignment of SDLC frameworks with the desired project management approach based on the SADM chosen, i.e., integrated project management elements associated with waterfall, spiral or agile approaches that are used to facilitate the initiating, planning, executing, monitoring/controlling, and closing of all systems development tasks and activities within the SDLC framework.

Agencies shall ensure proper alignment and integration of [application lifecycle management \(ALM\)](#) and other application development tools with established SDLC frameworks and corresponding SADM approach used in the solution development. When utilizing tools, agencies should reference Section 7 and affiliated product listings.

Service Design Coordinator shall ensure alignment of Service Design Package (SDP) test plans, execution, validation, acceptance activities affiliated with application, infrastructure, data/information, security design specifications managed through service design, transition, change management, and integrated SDLC frameworks.

It is acceptable for agencies to maintain and utilize more than one SADM and project management approach within the SDLC framework.

Release Management – The objective of release management is to ensure that standardized methods and procedures are used for defining executable solution deployment strategies and implementation playbooks to ensure efficient and successful delivery of all software releases with minimal impact the integrity of existing services and/or business operations. Release management practices are to be applied to all software development lifecycles as well as hardware, documentation, processes, and other components of a service. Release management focuses on strategic planning, scheduling, and controlling the movement of releases between development, staging, and production environments. Release management should include a release package, a set of configuration items to be built, tested, and deployed as a single release.

At a minimum, release management processes shall include:

- Use of proper change management (discussed below) with appropriate deployment, communications, and backout procedures documented as part of the process.
- Non-workday maintenance period - unless required by a break-fix situation, deployments shall take place during non-working hours, preferably during established maintenance windows. This is to be gauged by peak and valley usage of the application.
- Proper Production Configuration Files:
  - Normal Operating State – In a normal operating state, production configuration files must not contain usable or unusable keys or values that reference lower environments.
  - Normal/Scheduled Deployments – In normal production deployments configuration files that need to be included in the deployment package must not contain usable or unusable keys or values that reference lower environments.
  - Break/Fix Deployments – In break/fix situations that require connectivity with lower environments for troubleshooting or testing, the application is to be placed into a break/fix state that ensures outside users cannot access the system. Once the issue has been resolved, the configuration file will be modified back to its normal operating state version and any lower environment information must be removed from the production configuration file. At that point, the application can be placed back into its normal operating state.
- Usage of a code management / team collaboration tool. Ensure processes are administered via a code management tool, ensuring proper branch and merge, and build. Such usage can aid in a code review of what's been updated for that given release. Ensure staff are properly trained on the tool and the procedures it is administering.

Additionally, the various environments which are part of the application lifetime (e.g. Development, [User Acceptance Testing \(UAT\)](#), Staging, Production) are to be segregated with different access management – separate and distinct service accounts, passwords, test accounts, etc. – so that actions taken with a privileged account in a lower environment cannot be applied to another environment with the same privileged account.

The Service Design Coordinator shall evaluate systems and operational readiness assessments and monitor service transition activities and integrated SDLC frameworks in collaboration with business and service operations stakeholders.

Change Management – The objective of change management is to ensure that standardized methods and procedures are used for efficient handling of all changes to minimize the impact of change-related incidents and to improve day-to-day operations. Change management is the process of documenting change requests, analyzing feasibility, planning, implementing, and verifying changes to a system. Change requests can be initiated by the requirement for a new feature, by the requirement to fix a problem, or by the requirement to change the way a business function is performed. A request is accompanied by all the relevant information about the proposed change and the change initiator. Analyzing the change request involves assessing the urgency, assigning priority, performing technical and economic feasibility, and risk and impact analysis. Designated approvers use this information to approve or reject the



change request. Planning refers to developing specific technical requirements, scheduling, identifying the implementation and back-out strategy, and receiving approval. Implementation includes deployment and propagation of the change, as well as testing and documentation updates. Before closing the change request in the change management system, the change is verified by the stakeholders.

Application Inventory – The integration of an application inventory also provides a valuable tool for risk assessments and business continuity planning. The inventory identifies risks associated with technology maturity (software and hardware), compliance, sustainability, audits, supportability, recoverability, etc. It contains vital information regarding business criticality and physical location of assets which will provide valuable insights to agency and enterprise stakeholders to prepare for continuity plans, assessing impacts on business and/or IT operations, and assist in planning and making key decisions regarding modernization strategies, IT project and investments priorities.

The application inventory also provides agency CIOs and IT Managers with a resource to prepare their agency IT strategic plans and to ensure alignment with agency and enterprise business and IT strategic initiatives. In addition, the application inventory provides an additional mechanism for agency portfolio/project managers to understand potential risks/impacts, align business and IT strategies with IT projects initiatives to meet agency business goals and objectives.

Systems development life cycles need to have a long-term strategy to maintain value and alignment with ever-changing business function requirements. Key components that a mature SDLC strategy will capture include:

- Detailed demonstration of continued value to the enterprise
- A defined plan of communication and understanding between application development teams, key stakeholders, and business users using:
  - Service design packages
  - Documented workflow and decision-tree models
  - Implementation of a knowledge management process
- Integration of application security programs and processes in all SDLC processes
- A proper balance between delivery of systems based on business requirements and cost-effectiveness processes
- New and modernized application/system software designs that consider the hardware and software roadmaps that support the systems

## 6. Standards

### Current Standards for Application Testing Tools

(These technologies meet the requirements of the current architecture and are recommended for use.)

| Technology                                   | Platforms | Technology Classification |
|--|-----------|---------------------------|
| Microsoft Visual Studio Team Services (VSTS) | Windows   | Current                   |
| IBM Rational Team Concert (RTC)              | Windows   | Current                   |
| IBM Rational Performance Tester              | Windows   | Current                   |

|  |         |         |
|--|---------|---------|
| IBM Rational Robot                     | Windows | Current |
| IBM Rational Functional Tester         | Windows | Current |
| IBM Rational PurifyPlus                | Windows | Current |
| IBM Rational Test Manager              | Windows | Current |
| HP LoadRunner                          | All     | Current |
| HP/Quick Test Professional Version     | Windows | Current |
| HP Quality Center                      | All     | Current |
| Microsoft Team Foundation Server (TFS) | Windows | Current |

### Contain Standards for Application Testing Tools

(These technologies no longer meet the requirements of the current architecture and are not recommended for use. They are to be phased out over time. No date has been set for their discontinuance.)

| Technology                       | Platforms | Technology Classification |
|----------------------------------|-----------|---------------------------|
| Mercury WinRunner (all versions) | All       | Contain                   |

### Current Standards for Application Requirements, Data, and Object Modeling Tools

(These technologies meet the requirements of the current architecture and are recommended for use.)

| Technology  | Platforms | Technology Classification |
|---|-----------|---------------------------|
| Microsoft Visual Studio Team Services (VSTS)                          | Windows   | Current                   |
| IBM Rational Team Concert (RTC)                                       | Windows   | Current                   |
| IBM Rational Software Architect                                       | Windows   | Current                   |
| IBM Rational Software Modeler   | Windows   | Current                   |
| Computer Associates ERwin Data Modeler                                | Windows   | Current                   |
| Microsoft Visio (Standard/Professional/Enterprise Architect Editions) | Windows   | Current                   |
| Sparx Systems Enterprise Architect                                    | Windows   | Current                   |
| Sparx Systems MDG Integration for Visual Studio                       | Windows   | Current                   |

### Contain Standards for Application Requirements, Data, and Object Modeling Tools

(These technologies no longer meet the requirements of the current architecture and are not

recommended for use. They are to be phased out over time. No date has been set for their discontinuance.)

| <b>Technology</b>  | <b>Platforms</b> | <b>Technology Classification</b> |
|--|------------------|----------------------------------|
| IBM Rational Rose Modeler (all versions)                     | Windows          | Contain                          |
| IBM Rational Rose Developer for Java (all versions)          | Windows          | Contain                          |
| IBM Rational Rose Developer for Visual Studio (all versions) | Windows          | Contain                          |
| IBM Rational Rose Enterprise (all versions)                  | Windows          | Contain                          |
| Borland Together   | Windows          | Contain                          |
| Sybase PowerDesigner (all versions)                          | Windows          | Contain                          |
| MagicDraw UML (all versions)                                 | Windows          | Contain                          |
| Computer Associates Groundworks (all versions)               | Windows          | Contain                          |

#### **Current Standards for Application Requirements Management Tools**

(These technologies meet the requirements of the current architecture and are recommended for use.)

| <b>Technology</b>                            | <b>Platforms</b> | <b>Technology Classification</b> |
|--|------------------|----------------------------------|
| Microsoft Visual Studio Team Services (VSTS) | Windows          | Current                          |
| IBM Rational Team Concert (RTC)              | Windows          | Current                          |
| IBM/Rational RequisitePro                    | Windows          | Current                          |
| HP Quality Center                            | All              | Current                          |
| Microsoft Team Foundation Server             | Windows          | Current                          |
| Sparx Systems Enterprise Architect           | Windows          | Current                          |

#### **Contain Standards for Application Requirements Management Tools**

(These technologies no longer meet the requirements of the current architecture and are not recommended for use. They are to be phased out over time. No date has been set for their discontinuance.)

| <b>Technology</b>  | <b>Platforms</b> | <b>Technology Classification</b> |
|--------------------|------------------|----------------------------------|
| Borland Caliber-RM | All Platforms    | Contain                          |
| Telelogic DOORS    | All Platforms    | Contain                          |

### Current Standards for Software Configuration Management Tools

(These technologies meet the requirements of the current architecture and are recommended for use.)

| Technology                                   | Platforms | Technology Classification |
|--|-----------|---------------------------|
| Microsoft Visual Studio Team Services (VSTS) | Windows   | Current                   |
| IBM Rational Team Concert (RTC)              | Windows   | Current                   |
| Microsoft Team Foundation Server             | Windows   | Current                   |
| IBM Rational ClearCase MultiSite             | All       | Current                   |

### Contain Standards for Software Configuration Management Tools

(These technologies no longer meet the requirements of the current architecture and are not recommended for use. They are to be phased out over time. No date has been set for their discontinuance.)

| Technology  | Platforms | Technology Classification |
|---|-----------|---------------------------|
| IBM Rational ClearCase                            | All       | Contain                   |
| Microsoft Visual SourceSafe 2005 Standard Edition | Windows   | Contain                   |

### Current Standards for Software Change Management Tools

(These technologies meet the requirements of the current architecture and are recommended for use.)

| Technology                                   | Platforms | Technology Classification |
|--|-----------|---------------------------|
| IBM Rational ClearQuest                      | All       | Current                   |
| IBM Rational ClearQuest MultiSite            | All       | Current                   |
| Microsoft Team Foundation Server             | All       | Current                   |
| Microsoft Visual Studio Team Services (VSTS) | Windows   | Current                   |

### Contain Standards for Software Change Management Tools

(These technologies no longer meet the requirements of the current architecture and are not recommended for use. They are to be phased out over time. No date has been set for their discontinuance.)

| Technology | Platforms | Technology Classification |
|------------|-----------|---------------------------|
| N/A        | N/A       | N/A                       |

## 7. Responsibilities

### 7.1 Commonwealth Agencies:

- When performing application development, are required to utilize a documented SDLC framework for all new application development and enhancement projects.
- All applications that directly or indirectly support vital business functions (e.g. financial, federally-mandated, etc.) and/or are linked to a Continuity of Planning (CoP) Primary Mission Essential Business Function (PMEF) must be reported into the Enterprise Application Inventory tool (see Section 9 for location of tool). The agency must update this inventory to reflect the status and composition of their application portfolio supporting their agency mission.
- Agencies that utilize an internal agency-based application inventory are required to report their applications into the Enterprise Application Inventory tool.
- Agencies are to maintain proper alignment of their application portfolios contained in the Enterprise Application Inventory tool with their respective agency IT Strategic Plans and IT Policy compliance status (existing policy waivers or other non-compliance conditions).
- Agency applications that are public-facing must comply with ITP-SEC005 *Commonwealth Application Certification and Accreditation* procedures and requirements.
- Align and integrate ITIL Service life cycle phases with SDLC frameworks as appropriate and level of maturity evolves within commonwealth IT organizations.
- Agencies are to adhere to the software decision Principles for determining software/application needs.
- Agencies are to submit a Service Request for all SaaS, PaaS, IaaS solutions prior to consumption of solutions.

### 7.2 Office of Administration, Office for Information Technology Enterprise

- Will maintain an intranet-available centralized Enterprise Application Inventory tool and provide guidance and assistance to agencies utilizing that tool.
- Will maintain a Service Request process for agencies on SaaS solutions and provide a timely analysis of all SaaS solution requests.

## 8. Related ITPs/Other References

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- ITP-BUS011 *Commonwealth Cloud Services Requirements*
- ITP-SEC000 *Information Security Policy*
- ITP-SFT001 *Software Licensing*
- ITP-SEC005 *Commonwealth Application Certification and Accreditation*
- Enterprise Application Inventory:  
<https://itcentral.pa.gov/apps/applicationinventory/Pages/ApplicationInventory.aspx>  
(CWOPA limited access only)
- Enterprise Application Inventory Guidelines:  
<https://itcentral.pa.gov/apps/applicationinventory/Documents/ApplicationInventoryGuideline.docx> (CWOPA access only)
- Enterprise Service Request: <https://itcentral.pa.gov/Pages/Enterprise-Services.aspx>  
(CWOPA access only)

## 9. Authority

Executive Order 2016-06, Enterprise Information Technology Governance

## 10. Publication Version Control

It is the user's responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 11. Exemption from This Policy

In the event an agency chooses to seek an exemption, for reasons such as the need to comply with requirements for a federally mandated system, a request for waiver may be submitted via the Commonwealth of PA Procurement and Architectural Review (COPPAR) process. Requests are to be entered into the COPPAR Tool located at <http://coppar.oa.pa.gov/>. Agency CIO approval is required.

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision  |
|----------|------------|--|
| Original | 02/17/2017 | Base Document<br>Moved to Software domain from Application, including ITP number change<br>Merged ITP-APP012 <i>Systems Development Life Cycle Policy</i> , ITP-APP014 <i>Application Testing Tools Policy</i> , ITP-APP016 <i>Requirements, Data and Object</i> |

|          |            |  |
|----------|------------|--|
|          |            | <i>Modeling Tools</i> , ITP-APP017, ITP-APP018 <i>Software Configuration Management Tools</i> , ITP-APP019 <i>Software Change Management Tools</i> into ITP<br>Added additional guidance to Policy and Responsibilities sections   |
| Revision | 09/13/2017 | Inserted language on software decision Principles<br>Added software decision Principles Agency Responsibility<br>Added MS VSTS to Current Standards for Software Change Management Tools<br>Added Release Management concepts<br>Added Service Request requirement for SaaS solutions<br>Added additional definitions<br>Added additional responsibilities addressing Service Request requirement for SaaS |
| Revision | 08/15/2018 | Definitions moved to online Policy Glossary<br>Added Release Management guidance<br>Added production designation and naming convention guidance<br>Added Access Management guidance<br>Clarified cloud-based solutions and review process  |

# Information Technology Policy

## *Commonwealth of PA Design Standards*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SFT002  | <b>Effective Date</b><br>April 1, 2020 |
| <b>Category</b><br>Software  | <b>Supersedes</b><br>None              |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>March 2021  |

### 1. Purpose

Facilitates enterprise-wide interoperability and standardization for internet, intranet, and extranet facing websites.

### 2. Scope

This Information Technology Policy (ITP) applies to all departments, boards, commissions and councils under the Governor’s jurisdiction. Agencies not under the Governor’s jurisdiction are strongly encouraged to follow this ITP.

### 3. Policy

All agencies are to follow the formats and standards included in this policy for both internal and outsourced creation and implementation of websites. Portal projects hosted within the Commonwealth infrastructure are required to use the current standards and best practices defined by this ITP.

All new or modernized websites managed by agencies under the Governor’s jurisdiction must adhere to the Pennsylvania Design Standards (PDS) as detailed in OPD-SFT002A *Pennsylvania Design Standards*. External suppliers providing website solutions to these agencies must adhere to OPD-SFT002A.

#### Content Management

The Commonwealth's portal includes a component which provides content management. This makes it easier to publish new content to portal pages, interactive communities and applications hosted in the portal framework. Using content management, business users without web programming skills can create form-based web content in a controlled, consistent way.

Content templates allow business users to create and publish new content based on pre-existing models and layouts, and make it easy to cascade similar changes across pages and sites. Features such as publishing, workflow, library services, and integrated administration make it easy for individual business content publishers and portal administrators to work in parallel rather than in conflict with one another. This allows business users without web development skills to create visually rich content for portal pages, communities and applications.

#### Information Technology (IT) Accessibility Requirements

Agencies, boards, councils, and commissions are responsible for ensuring their websites are designed to all web design and application development requirements specified in ITP-ACC001 *IT Accessibility Policy* and all applicable federal and state regulations and laws.

#### Commonwealth Language Access Plan

Agencies, boards, councils, and commissions are responsible for ensuring their websites are



designed to all web design and application development requirements specified in the Commonwealth Language Access Plan (*forthcoming*).

### General Web Page Design Guidelines

Websites shall be designed with the target audience in mind, not personal preferences. Each website is to:

- Be easy to read;
- Be easy to navigate;
- Be accessible to a wide range of users;
- Follow defined enterprise branding specifications;
- State the page title on each page; and
- Integrate documentation content into the site design rather than as a downloadable option. (NOTE: Sites can provide both options but prioritize integration into the site design.)

Web page layout and design are to be consistent throughout the entire site. Website administrators and content publishers are to place strong emphasis on the quality of the content presented. Artwork/graphics presented on the website are to compliment the content, but not overwhelm it. An effective web design provides useful information, rather than trying to distract visitors with effects. Web content publishers are not to overly rely on extraneous effects for message presentation. Content is to be logically presented in a consistent manner throughout the site and to provide intuitive navigation. Content should integrate with document translation services for non-native language users to the fullest extent possible. Refer to the Commonwealth Language Access plan for additional guidance.

### Commonwealth Branding Standard for Agencies under the Governor's Jurisdiction

In an effort to present constituents with a cohesive, Commonwealth-branded interface for web services, web design guidelines have been developed for use on Commonwealth websites. The guidelines help to deploy a branded and universal graphical user interface, while still allowing the agencies to maintain a degree of autonomy and creativity on agency sites. These specifications can be found in Management Directive 205.40 *Commonwealth Branding*.

### Hypertext Links/URLs

Link descriptions are to aid users to locate relevant information. Links are to use text that is descriptive and intuitive (e.g., avoid "click here" as text for a hyperlink). Hyperlinks are to be checked and maintained regularly to verify their validity as broken hyperlinks may cause users to question the reliability of the site.

As web pages are created, correct links to pages depend on the correct directory and the file structure. Use relative links instead of absolute links when linking to pages within a Commonwealth website (e.g., a relative link (/index.html) would be found, while an absolute link (http://www.state.pa.gov/pavisit/index.html) would not be found, if the directory or server site name was changed).

For agencies under the Governor's jurisdiction, all websites are required to use the pa.gov domain. (Refer to ITP-NET005 *Commonwealth External and Internal Domain Name Services (DNS)* for details).

### Website Naming Conventions

Websites are to follow the website naming conventions set forth in ITP-NET005 *Commonwealth External and Internal Domain Name Services (DNS)*. This ITP states that all internet accessible services that are provided by agencies will be registered within pa.gov domain.

### Directory Structure and Filenames

Use lowercase letters for all filenames. Standardize on a naming convention for the filenames to reflect the content of the files. Be consistent in and with extensions. Do not include special characters (e.g., @, %, &) or spaces in naming of the files or directories. Use of underscore (\_) or dash (-) is preferable to the use of special characters.

### Acronyms and Terminology

Where possible, continue to simplify and distinguish terms. Spell out acronyms to reduce potential confusion or lack of clarity for users not familiar with government organizations or services.

### Cookies

Persistent cookies are only to be used with web analytics tools that do not collect Personally Identifiable Information. Personally Identifiable Information includes any data that could potentially be used to identify a particular person.

### Multimedia

Sound and video files, as well as streaming audio and video, may be added to sites provided that:

- All multimedia files are developed in compliance with ITP-ACC001 *IT Accessibility Policy* which requires closed captioning, or a transcript be associated with all internal and external Commonwealth-produced videos; and
- Users receiving complete file transmission instructions are notified of file size.

Streaming media requires higher bandwidth availability for satisfactory performance. Agencies designing streaming media services are to contact the Office of Administration, Office for Information Technology, Enterprise Technology Services Office (OA/OIT/ETSO) in advance to discuss options and to ensure no negative impact to Commonwealth IT infrastructure.

### Legal Review

Agency program managers are responsible for working with their respective Legal Counsel to:

- Verify the agency's right to use all software, information, graphics, photographs, and text on the site;
- Evaluate potential liability associated with site content; and
- Content review and approval.
- The responsibilities for content review and approval are as follows:
  - Agency communications offices are responsible for the user interface design and the placement of content into the structure of agency websites. Agency communications offices are to collaborate with business owners for the creation and approval of content.
  - Information technology offices are responsible for implementing the user interface design and facilitating the process of maintaining content on agency websites.
  - Communications offices are responsible for collaborating with information technology offices to develop technically feasible user interface designs that conform to Commonwealth standards.
  - Agency websites are to follow the Commonwealth Style guides issued by the Governor's Office.

### Web Analytics

Web analytics tools provide data, charts and graphics to analyze website traffic. The primary use of web analytics tools is to effectively organize and locate web pages to best meet business

goals and objectives. Web analytics tools capture data such as:

- Number of new and repeat visitors;
- Number of page views;
- Visitor demographics; and
- Visitor click paths for entering and exiting pages.

Web analytics tools use captured data for the correlation and analysis of web traffic enabling business users to:

- Determine user trends;
- Target demographic groups;
- Understand user preferences and online behaviors;
- Confirm how effectively a website meets visitor needs and expectations;
- Identify how well a website fulfills business objectives; and
- Deliver more targeted and relevant e-mail campaigns by measuring open, click-through, and unsubscribe rate.

### **Current Standards for Web Analytics Tools**

(These technologies meet the requirements of the current architecture and are recommended for use.)

| <b>Technology or Product</b>                                     | <b>Product or Platforms</b> | <b>Technology Classification</b> |
|--|-----------------------------|----------------------------------|
| Google Analytics<br>For less than 5 million page views per month | All                         | Current                          |
| WebTrends  | All                         | Current                          |

### External Linking Requirements

External Websites are defined as those websites not under the management or control of the Commonwealth of Pennsylvania. This policy is intended primarily for the Commonwealth's public-facing websites, but agencies are encouraged to apply it to their intranet websites as well.

#### A. External Linking Policy Notice:

The Office of Administration, in coordination with the Governor's Office, will maintain a link located within the footer area of all Commonwealth agency public-facing websites, or in another reasonably conspicuous and accessible location on the site, that displays the External Linking Policy Language, as follows:

#### External Linking Policy and Disclaimer

The information posted on Commonwealth websites may include hypertext links, or pointers, to information created and maintained by other public and/or private organizations (outside websites). We only provide these links and pointers for your information and convenience. When you select a link to an outside website, you are leaving the Commonwealth site and are subject to the privacy and security policies of the owners/sponsors of the outside website.

- The Commonwealth of Pennsylvania **does not** control or guarantee the accuracy, relevance, timeliness, or completeness of information contained on an outside website.
- The Commonwealth of Pennsylvania **does not** endorse the organizations sponsoring outside websites and does not endorse the views they express or the products/services they offer.
- The Commonwealth of Pennsylvania **cannot** authorize the use of copyrighted materials contained in outside websites. Users must request such authorization from the sponsor of the outside website.
- The Commonwealth of Pennsylvania **is not** responsible for transmissions users receive from outside websites.
- The Commonwealth of Pennsylvania **cannot** guarantee that outside websites comply with accessibility requirements.

In instances where Commonwealth agencies maintain their own public-facing websites, those agencies must include the External Linking Policy and Disclaimer Language in the footer area of those sites, or in another reasonably conspicuous and accessible location on the site.

#### B. Choice and Display of External Website Links

It is important for every agency which places links to external websites on its public-facing web pages to take reasonable steps to evaluate those links, and to ensure the external websites are displayed in a way consistent with law and Commonwealth policy.

- Ensure external links are closely related to the subject matter of the web page.
- A .gov internet domain may not be used to advertise for private individuals, firms, or corporations.
- Ensure external links are checked for "breakage" (i.e. 404 Not Found Error) at reasonable intervals.

## 4. Responsibilities

### 4.1 Office of Administration, Office for Information Technology (OA/OIT):

In coordination with the Governor's Office, OA/OIT will maintain a link located within the footer area of all Commonwealth agency public-facing websites that displays the External Linking Policy Language.

### 4.2 Commonwealth Agencies

Websites maintained by agencies must adhere to guidelines listed in this ITP including:

- Adding and maintaining the External Linking Policy and Disclaimer Language in the footer area of those sites and ensure external links are following applicable policy and laws.
- Conform with the Design Standards set in OPD-SFT002A *Pennsylvania Design Standards (PDS)* for all new and modernized Commonwealth-managed websites.

## 5. Related ITPs/Other References

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 205.40 *Commonwealth Branding*
- Management Directive 210.5 *State Records Management Program*
- Commonwealth Language Access Plan (*forthcoming*)
- OPD-SFT002A *Pennsylvania Design Standards (PDS)*
- Pennsylvania Design Standards: <https://www.pa.gov/design-standards>
- ITP-ACC001 *Information Technology Accessibility Policy*
- ITP-NET005 *Commonwealth External and Internal Domain Name Services (DNS)*
- ITP-PLT019 *Web Server/Application Server Standards* ITP-SEC019 *Policy and Procedures for Protecting Commonwealth*
- *Electronic Data*
- ITP-SEC020 *Encryption Standards for Data at Rest*
- ITP-SEC031 *Encryption Standards for Data in Transit*
- ITP-SFT000 *Systems Development Life Cycle Policy*
- ITP-SYM006 *Desktop and Server Software Patching*

## 6. Authority

Executive Order 2016-06 *Enterprise Information Technology Governance*

Executive Order 2019-04 *Establishing a "Citizen-First" Government and Promoting Customer Service Transformation*

## 7. Publication Version Control

It is the user's responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 8. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this IT policy, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision  | Redline Link   |
|----------|------------|--|--|
| Original | 02/22/2017 | Base document<br>Moved to Software domain from Application, including ITP number change<br>Replaces ITP-APP005 <i>Commonwealth of PA Website Standards</i> , ITP-APP007 <i>Commonwealth of PA External Website Linking Policy</i> , TP-APP029 <i>Portal Technology Standards</i> , ITP-APP039 <i>Web Analytics Policy</i> ITPs | N/A  |
| Revision | 04/01/2020 | Revised ITP title, replaced "Website" with "Design"<br>Removed outdated design guidance throughout<br>Added OPD-SFT002A Design Standards requirement   | <a href="#">Revised IT Policy Redline &lt;04/01/2020&gt;</a> |

**Information Technology Policy  
Commonwealth of Pennsylvania  
Governor's Office of Administration/Office for Information Technology**

|                         |  |  |
|-------------------------|--|--|
| <b>ITP Number:</b>      | <b>ITP-SYM003</b>                                  |  |
| <b>ITP Title:</b>       | <b>Off-Site Storage for Commonwealth Agencies</b>  |  |
| <b>Issued by:</b>       | <b>Deputy Secretary for Information Technology</b> |  |
| <b>Date Issued:</b>     | <b>December 19, 2006</b>                           | <b>Date Revised: December 20, 2010</b> |
| <b>Domain:</b>          |  |  |
|                         | <b>Systems Management</b>                          |  |
| <b>Discipline:</b>      |  |  |
|                         | <b>Business Continuity</b>                         |  |
| <b>Technology Area:</b> |  |  |
|                         | <b>Off-Site Storage</b>                            |  |
| <b>Revision History</b> |  |  |
| <b>Date:</b>            | <b>Description:</b>                                |  |
| <b>12/20/2010</b>       | <b>ITP Refresh</b>                                 |  |

**Abstract:**

The purpose of this Information Technology Policy (ITP) is to establish a policy for the implementation of a Commonwealth Enterprise Continuity of Government Plan that ensures the storage of vital records in off-site facilities in the event of an emergency.

**General:**

This ITP applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are encouraged to follow this policy to ensure that they develop and implement guidelines that facilitate enterprise-wide interoperability and standardization of off- site storage procedures.

**Policy:**

Agencies are required by 4 Pa. Code, Section 3.21 of the provisions of the Pennsylvania Emergency Management Service Act of 1978 Pamphlet Laws 1332, to develop plans to ensure continuity of designated emergency/recovery management responsibilities and services. An important and essential part of any agency plan is the off-site storage of vital records identified as essential for an agency's continued operations in times of emergency.

The Pennsylvania Emergency Management Agency State Emergency Operations Plan (PEMA SEO Plan), Emergency Support Function (ESF) Section No. 2, directs Office of Administration (OA) to be the primary agency responsible for administrative oversight of all Commonwealth Telecommunications and Information Technology (IT) services. OA provides technical advice and assistance to other state agencies on immediate and long term IT records recovery and records management.

The Office of Administration/Office for Information Technology (OA/OIT) is responsible for developing and disseminating policy and procedures governing Commonwealth agencies' off-site data center storage needs.

Each agency is to make arrangements to store mission-critical resources at a remote storage site that is geographically separated from the Commonwealth Capitol complex in the event of a local disaster. The media are to be maintained in a secure, conditioned, and hazard-free environment located at least 50 miles from the

Commonwealth Capitol. The media are to be accessible 24 hours a day, seven days a week, and be retrievable within four hours (for agencies within a 15-mile radius of the Commonwealth Capitol) as requested by authorized Commonwealth personnel.

Agencies are to provide for access control, intruder and environmental warning alarms, fire suppression, and water damage protection at any off-site location. Management Directive 210.8, Micrographics Procedures to be used in Conjunction with Central Microfilm Management, specifies additional guidelines concerning the storage of vital records to ensure that mission-critical IT-based resources necessary for continuous operation of an agency are backed up at a separate, remote site (facility). MD 210.8 also specifies for continuity/recovery of applications and/or services in the event of an emergency. Use of such an off-site storage facility enables the agency to satisfy its responsibilities for the protection and safeguarding of IT-based resources under its jurisdiction and in the instance of an emergency. The agency is ensured that mission-critical services and applications can be maintained or restored. The following is a list of suggested mission-critical resources which are to be designated for off-site storage. Please note that the list is not to be considered all-inclusive; each agency is to determine its own requirements based on its business functions and responsibilities.

**Mission-Critical IT Resources Designated for Off-Site Storage** (In a protected environment approved by OA/OIT):

- Agency Continuity of Government Plan
- Vital Agency Records
- Inventory Records: Hardware, System/Application Software, Tape/Disk Libraries, Supplies, Schematics and Floor Plans
- Master Files
- Transaction Files
- Database and Data Files
- Operating System Software
- Application and 3rd-Party Software
- Software Library
- Source and Executive Programs
- Security Software
- Documentation Required to Process Mission-Critical Applications
- Systems, Programming, Operations, and Run-Book Documentation
- User and 3rd-Party Documentation
- Inventory of Other Materials, Supplies, Documentation Needed for Processing at an Alternate Site
- Journals, Software
- Special Forms/Critical Supplies

Off-site storage facilities are to, at a minimum:

- Maintain a normal office environment with temperature and humidity controls.
- Contain fire alarm protection.
- Contain safeguards in a controlled access area.
- Maintain a constant temperature of 62 to 68 degrees with a constant relative humidity of 35 percent to 45 percent for storage areas with computer magnetic tapes/cartridges containing permanent records.

These same environmental standards are recommended for the storage of all off-site electronic records, regardless of the media.



## Definitions of Terms:

**Continuity of Government** - An agency-specific plan which provides and documents a structured approach to ensure availability of resources, continuity of operations, and provisioning of services in times of emergency. The agency plan identifies mission-critical applications and services provided by the agency and minimal essential resources needed to provide for continuity and recovery of Commonwealth government operations in times of emergency.

**Emergency** - Any event that disrupts mission-critical applications and/or services beyond the point where an agency can restore such needs through routine recovery procedures.

**Information Technology** - Methods and techniques for creating, collecting, and producing information or for processing, transmitting, disseminating, storing, protecting, and disposing of electronic data, text, images, and voice through the use of contemporary electronic devices.

**Mission-Critical Application** - Any computer, desktop or network-based application which, if interrupted for a predetermined period of time, would cause hardship to a segment of the people of the Commonwealth, adversely affect public health and safety, seriously inhibit the primary function of an agency, or cause any legal liability on behalf of the Commonwealth, and is essential to restore or continue agency and/or state government operations in the event of a major or regional emergency.

**Mission-Critical Resources** - Computer or desktop hardware and network-based equipment and facilities, software, data, programs, documentation, vital records, essential applications and services including complex voice, data, video communications and other information essential to restore or continue agency and/or state government operations.

**Off-Site Storage** - The use of a separate facility at a remote site for storage of mission-critical resources (including a copy of the agency's continuity of government plan) is to facilitate business recovery of applications and/or services in the event of an emergency. Use of an off-site storage facility enables the agencies to satisfy their responsibilities for the protection and safeguarding of information technology-based resources under their jurisdiction in the event of an emergency and to be in compliance with the PEMA SEO Plan.

**Commonwealth Emergency Operations Plan** - A plan administered by PEMA to provide emergency operations policy, direction, and guidance to state agencies and to establish guidance for cooperative compacts with contiguous states during peace and wartime emergencies.

**Vital Records** - Records, regardless of archival value; which are essential to the functions of government during and after an emergency. Refer to Manual M210.8, Vital Records Disaster Planning.

## Refresh Schedule:

All standards identified in this ITP are subject to periodic review and possible revision, or upon request by the Enterprise Architecture Standards Committee (EASC).

**Exemption from This Policy:**

In the event an agency chooses to seek an exemption, for reasons such as the need to comply with requirements for a federally mandated system, a request for waiver may be submitted via the Commonwealth of PA Procurement and Architectural Review (COPPAR) process. Requests are to be entered into the COPPAR Tool located at <http://coppar.oa.pa.gov/>. Agency CIO approval is required. Contact your agency [CoP Planner](#) for further details or assistance.

**Questions:**

Questions regarding this policy are to be directed to [ra-itcentral@pa.gov](mailto:ra-itcentral@pa.gov).

**References:**

Manual 210.8 Vital Records Disaster Planning

Management Directive 210.8 Micrographics Procedures to be Used in Conjunction with Central Microfilm Management

# Information Technology Policy

## *Commonwealth IT Resources Patching Policy*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SYM006  | <b>Effective Date</b><br>November 20, 2009 |
| <b>Category</b><br>Systems Management  | <b>Supersedes</b><br>None                  |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>January 2018    |

### 1. Purpose

This Information Technology Policy (ITP) defines the policy for timely application of software patches, and the methodology that will be used to monitor all IT Resources in the Commonwealth to ensure policy compliance.

### 2. Scope

This Information Technology Policy applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

### 3. Definitions

- 3.1 IT Resources:** Include, but are not limited to, the staff, software, hardware, systems, services, tools, plans, data, and related training materials and documentation that in combination support business activities.
- 3.2 Server and Desktop Systems:** Applies to all Commonwealth-associated platforms and infrastructure utilized to run and access IT resources. This includes the software (e.g. operating systems) and the hardware (e.g. routers, switches, etc.).
- 3.3 US-CERT:** United States Computer Emergency Readiness Team tasked with providing cybersecurity resources and notifications for information security officers.

### 4. Policy

In an effort to better secure the Commonwealth network, computing infrastructure and user data, all server and desktop systems are to be kept up-to-date with service packs and security patches in accordance with the direction provided in this policy.

#### Service Packs:

When a software publisher releases a new service pack or similar major update for their software and / or firmware, such as operating system service packs and office suite application service packs, agencies are to deploy the service pack within six months of the release date. The six (6) month window provides a sufficient time during which the software upgrade can be fully tested and subsequently deployed before support for the previous service pack level ends.

## New Software and Operation Systems:

Agencies shall coordinate with the Office of Administration, Office for Information Technology (OA/OIT) regarding the upgrade/deployment of new operating system software revisions. OA/OIT may direct at times the installation of entirely new software, if deemed critical by the Enterprise Information Security Office (EISO).

## **Security Patching**

### **Microsoft OS and Microsoft, Java, and Adobe software patches**

The EISO maintains the list of Microsoft operating system (OS) security patches and their Commonwealth-assigned severity ratings at <https://itcentral.pa.gov/Security/Pages/default.aspx>. In some cases, the security patch may not carry the same severity rating that the software publisher has assigned. In most cases, the EISO will send out an advance notification informing IT staff of upcoming patches and their corresponding severity levels. Contact the EISO at [ra-ciso@pa.gov](mailto:ra-ciso@pa.gov) to determine the person at the agency who is on the notification list.

### **Non-Microsoft patches (AIX, Mainframe OS, Linux, network hardware OS etc.)**

The policy is predicated upon preventative risk mitigation. Security patches for this category of systems and software shall be reviewed by appropriate agency administration teams and assessed accordingly.

At a minimum, agencies are responsible for monitoring patch recommendations provided by applicable software manufacturers and third-party entities such as the US-CERT. Agencies are responsible for applying system patches in accordance with such recommendations and best practices.

Agencies shall have a documented security patch schedule defining a definitive patch schedule for each platform. (e.g. AIX – Bi-annually, Mainframe – Quarterly)

Agencies shall have a monthly rollup and communication of announced security patches. This should be reviewed monthly to determine if the patch should deviate from the documented normal patching schedule.

### **Managing Portable Devices**

All smartphones and non-Microsoft mobile devices (i.e. tablets) are not in scope of this policy. Agencies are to devise a methodology to apply patches to devices that do not routinely connect to the enterprise network. Refer to ITP-SEC035 *Mobile Device Security Policy* for guidance on mobile devices (e.g. iOS, Android).

### **Critical Patches**

Critical (i.e. Heartbleed) type security patches shall be dealt with on an ad-hoc basis as determined by OA, agency, and external supplier security officers.

## **Active Outbreaks**

If there is an active outbreak that uses an exploit patched in a security patch, testing may be foregone and OA/OIT may direct the agency to immediately deploy the patch to all systems. If a quarantine is required, at the discretion of the Commonwealth Chief Information Officer (CIO) in coordination with the Commonwealth Chief Information Security Officer (CISO), Commonwealth Chief Technology Officer (CTO), the impacted agency's CIO or designee, and agency Information Security Officer (ISO), the agency may be disconnected from the Commonwealth network until the outbreak is resolved.

## **Security Patching Schedule**

The Commonwealth-defined severity levels, along with maximum timelines for deployment for each severity rating are listed in the following Security Patching Matrix. Agencies are to use the following Security Patching Matrix to determine the appropriate patching schedule.

OPD-SYM006A *Agency IT Resources Patching Schedule* is for internal agency use, is optional, and may be modified as needed. It is recommended that agencies develop a standardized internal patching policy aligned with this policy and OPD-SYM006A.

## **Security Patching Matrix**

| <b>Technology Category</b> | <b><u>Critical</u> Rating</b>   | <b><u>Important</u> Rating</b>   | <b><u>Moderate</u> Rating</b>   | <b>Agency Schedule Required</b> |
|----------------------------|---|--|---|---------------------------------|
| Microsoft software         | <ul style="list-style-type: none"> <li>• Testing: Immediate</li> <li>• Deployment: 5 business days</li> </ul> | <ul style="list-style-type: none"> <li>• Testing: 5 business days</li> <li>• Deployment: 10 business days</li> </ul> | <ul style="list-style-type: none"> <li>• Testing: 10 business days</li> <li>• Deployment: 15 business days</li> </ul> | No                              |
| Oracle software            | <ul style="list-style-type: none"> <li>• Testing: Immediate</li> <li>• Deployment: 5 business days</li> </ul> | <ul style="list-style-type: none"> <li>• Testing: 5 business days</li> <li>• Deployment: 10 business days</li> </ul> | <ul style="list-style-type: none"> <li>• Testing: 10 business days</li> <li>• Deployment: 15 business days</li> </ul> | No                              |
| Adobe software             | <ul style="list-style-type: none"> <li>• Testing: Immediate</li> <li>• Deployment: 5 business days</li> </ul> | <ul style="list-style-type: none"> <li>• Testing: 5 business days</li> <li>• Deployment: 10 business days</li> </ul> | <ul style="list-style-type: none"> <li>• Testing: 10 business days</li> <li>• Deployment: 15 business days</li> </ul> | No                              |
| AIX                        | <ul style="list-style-type: none"> <li>• Testing: Immediate</li> <li>• Deployment: Agency Schedule</li> </ul> | Agency Schedule  | Agency Schedule   | Yes                             |
| Mainframe OS               | <ul style="list-style-type: none"> <li>• Testing: Immediate</li> </ul>  | Agency Schedule  | Agency Schedule   | Yes                             |

|  |   |                 |                 |     |
|--|---|-----------------|-----------------|-----|
|  | <ul style="list-style-type: none"> <li>• Deployment: Agency Schedule</li> </ul>                               |                 |                 |     |
| Linux OS                                   | <ul style="list-style-type: none"> <li>• Testing: Immediate</li> <li>• Deployment: Agency Schedule</li> </ul> | Agency Schedule | Agency Schedule | Yes |
| Network hardware firmware/OS               | <ul style="list-style-type: none"> <li>• Testing: Immediate</li> <li>• Deployment: Agency Schedule</li> </ul> | Agency Schedule | Agency Schedule | Yes |
| Other technologies (software and firmware) | <ul style="list-style-type: none"> <li>• Testing: Immediate</li> <li>• Deployment: Agency Schedule</li> </ul> | Agency Schedule | Agency Schedule | Yes |

## 5. Responsibilities

- 5.1** The Office of Administration, Office for Information Technology is to utilize systems management server (SMS) and other reporting mechanisms to monitor the enterprise computing resources and ensure that current software, service pack, and patch levels defined in the above policy are in place across the Commonwealth.
- 5.2** Commonwealth agencies are to designate contacts responsible for patching all applicable systems or computing resources as dictated in this policy within that agency.

## 6. Related ITPs/Other References

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- OPD-SYM006A - *Agency IT Resources Patching Schedule*
- ITP-SEC000 – *Information Security Policy*
- ITP-SEC001 – *Enterprise Host Security Software Suite Standards and Policy*
- ITP-SEC021 – *Security Information and Event Management Policy*
- ITP-SEC023 – *Information Technology Security Assessment and Testing Policy*
- ITP-SEC035 – *Mobile Device Security Policy*
- US-CERT - <https://www.us-cert.gov>

## 7. Authority

Executive Order 2016-06, Enterprise Information Technology Governance

## 8. Publication Version Control

It is the user's responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 9. Exemption from This Policy

In the event an agency chooses to seek an exemption, for reasons such as the need to comply with requirements for a federally mandated system, a request for waiver may be submitted via the Commonwealth of PA Procurement and Architectural Review (COPPAR) process. Requests are to be entered into the COPPAR Tool located at <http://coppar.oa.pa.gov/>. Agency CIO approval is required.

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision  |
|----------|------------|--|
| Original | 11/20/2009 | Base Document  |
| Revision | 12/20/2010 | ITP Refresh  |
| Revision | 04/10/2015 | ITP Refresh  |
| Revision | 01/04/2017 | ITP Reformat<br>ITP title change<br>Add language clarifying non-Microsoft patching<br>Add Definitions and References sections<br>General revisions to provide clarity<br>Added supplemental OPD-SYM006A <i>Agency IT Resources Patching Schedule</i><br>Created a Security Patching Matrix for better viewing<br>Clarified Active Outbreak authority to quarantine |

# Information Technology Policy

## *Enterprise Change Management Maintenance Policy*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SYM010  | <b>Effective Date</b><br>March 2014      |
| <b>Category</b><br>Systems Management  | <b>Supersedes</b><br>ITP-NET015          |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>December 2020 |

### 1. Purpose

To establish policy, responsibilities, and procedures for Change Management maintenance, specifically the creation of blackout periods and maintenance windows, on the Commonwealth's enterprise Information Technology platforms.

### 2. Scope

This Information Technology Policy (ITP) applies to all departments, boards, commissions and councils under the Governor's jurisdiction.

Agencies, independent boards, and commissions not under the Governor's jurisdiction that consume Commonwealth IT resources must conform to the established blackout windows and other guidance established in this ITP and OPD-SYM010B *Enterprise Maintenance Windows and Scanning Guidance*.

### 3. Definitions

**Automated Pre-Approved Change** – Supports maintenance for server builds generated through the VRealize process.

**Blackout/Change Freeze** - Submitted to change management to request a freeze on all or certain types of maintenance for business reasons.

**Change Management** – A process responsible for formal assessment of a new or changed IT service to mitigate risks and impact.

**Emergency Change** – Supports maintenance in response to a reported incident, when a problem exists on any infrastructure component or service that is causing business disruptions to one or more agencies.

**Expedite Change** – Supports maintenance which follows all the steps of normal maintenance but in a time frame of zero (0) to five (5) business days.

**Incident** – Unplanned interruption of an IT service or reduction in the quality of an IT service.

**Maintenance Window** - The period in which changes can be implemented. Weekly maintenance windows are pre-defined by the Change Manager. Maintenance outside of



these pre-defined windows will require approval (refer to OPD-SYM010B *Enterprise Maintenance Windows and Scanning Guidance*).

**Normal Change** – Supports maintenance performed by a service provider. This type of maintenance is performed on the service offering which affects multiple customers and is vital to the integrity of the services provided.

**Standard Change** – Supports maintenance that is low risk-assessed, pre-authorized, and is administratively routine. Appropriate change management reviews and processes apply.

#### 4. Policy

The Office of Administration/Office for Information Technology (OA/OIT) established the following maintenance procedures to ensure that Enterprise Services are available during the most critical and heavily used time periods:

- Established predetermined dates and times for implementing scheduled maintenance
- Established blackout windows

Approved changes classified as Enterprise will be implemented on a weekly basis during a scheduled "Enterprise Maintenance Window".

The dates and times for implementation of Enterprise maintenance are referenced in OPD-SYM010B *Enterprise Maintenance Windows and Scanning Guidance*. Contact [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov) or [RA-BIOCAB@pa.gov](mailto:RA-BIOCAB@pa.gov) for details (*authorized CWOPA personnel only*).

#### **Exceptions to This Policy**

Enterprise maintenance that cannot be scheduled during one of the previously listed fixed routine scheduled maintenance windows would need approval from the Enterprise Change Board.

Emergency maintenance can be scheduled at any time and does not need to adhere to the maintenance windows.

Emergency changes for break/fixes or imminent security threats are exempt from blackout restrictions.

All High-Risk changes will provide a notification to the Chief Information Security Officer (CISO).

All changes involving security CI's will require CISO approval.

Scanning activities are excluded. Scanning guidance is referenced in OPD-SYM010B *Enterprise Maintenance Windows and Scanning Guidance*. Contact [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov) or [RA-BIOCAB@pa.gov](mailto:RA-BIOCAB@pa.gov) for details (*authorized CWOPA personnel only*).

## **Limited, Shared Infrastructure, and Comprehensive Production Blackout/Freeze Window Requests**

### Limited

A limited blackout only affects single agencies and the blackout is limited to the agency requesting it. (This is inclusive of OA/OIT). Changes submitted during a limited blackout will require the blackout agency approval only if a CI referenced on the change request is related to the agency that has the blackout maintenance.

The agency is to complete the Blackout/Freeze Request Form (OPD-SYM010A) and e-mail the form to [RA-BIOCAB@pa.gov](mailto:RA-BIOCAB@pa.gov). The Functional Group Change Managers and Enterprise Change Management will determine if a delay in maintenance can be accommodated and respond to the agency.

Scenario 1: If Pennsylvania State Police (PSP) has a blackout and the Department of Corrections (DOC) is creating a change request within the PSP blackout window, and the affected CI's do not relate to PSP no PSP blackout approval is required.

Scenario 2: If PSP has a blackout and the DOC is creating a change request within the PSP blackout window, and the affected CI's do relate to PSP, a PSP blackout approval is required.

### Shared Infrastructure

In that OA/OIT manages Shared Infrastructure, the blackout processes work as listed below.

Scenario 3: If OA/OIT has a blackout (limited, not comprehensive) and PSP is creating a change request within the OA/OIT blackout window, and the affected CI's do not relate to OA/OIT managed CI's, no OA/OIT Blackout approval is needed.

Scenario 4: If OA/OIT has a blackout (limited, not comprehensive) and PSP is creating a change request within the OA/OIT blackout window, and the affected CI's do relate to OA/OIT managed CI's, an OA/OIT blackout approval is required.

Scenario 5: If DOC has a blackout, and PSP is creating a change request within DOC blackout window, and the affected CI's are on shared infrastructure at OA/OIT on which DOC is operating, a DOC blackout approval is required.

### Comprehensive

The scope of a comprehensive blackout is different from limited. No maintenance can be performed by any agency during a comprehensive blackout period. Usually these occur during critical events within the Commonwealth (elections, official state visits, etc.). If a comprehensive blackout is to occur, the agency is to provide Enterprise Change Manager with a thirty (30) business-day notice prior to the blackout/freeze window.

The agency is to complete the Blackout/Freeze Request Form (OPD-SYM010A) and send to [RA-BIOCAB@pa.gov](mailto:RA-BIOCAB@pa.gov). The Functional Group Change Managers and Enterprise Change Management will determine if a delay in maintenance can be accommodated and respond to the agency.

When it is determined that a comprehensive blackout for all maintenance is needed, approvals must be obtained from the Commonwealth Chief Technology Officer (CTO). The Enterprise Change Managers will post this blackout in the system once approval is received.

### **Override Authority**

The Commonwealth's CIO, CTO, or CISO has the authority to override a blackout rejection via the Enterprise Change Advisory Board (CAB) process. In addition, the Commonwealth's CIO, CTO, or CISO has the authority to delay and/or block standard or normal change to mitigate any risks associated with the standard or normal change.

## **5. Responsibilities**

### **Agency Responsibilities:**

- Coordinate agency (non-enterprise) maintenance around the enterprise maintenance windows
- Submit and coordinate blackout/freeze requests

### **Office of Administration, Office for Information Technology (OA/OIT) Responsibilities:**

- Receive or initiate changes
- Assess risk of changes
- Review and approve all enterprise changes

## **6. Related ITPs/Other References**

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 – *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- IT Service Management Tool – Refer to the OA/OIT Enterprise Service Catalog: <https://itcentral.pa.gov/Pages/Enterprise-Services.aspx> (CWOPA access only)
- OPD-SYM010A– *Blackout/Freeze Form*
- OPD-SYM010B *Enterprise Maintenance Windows and Scanning Guidance (Authorized CWOPA access only)*
- ITP-SEC000– *Information Security Policy*
- ITP-SYM006 – *IT Resources Patching Policy*

## **7. Authority**

Executive Order 2016-06, Enterprise Information Technology Governance

## **8. Publication Version Control**

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Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 9. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this IT policy, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision  | Redline Link   |
|----------|------------|--|--|
| Original | 03/2014    | Base Document  | N/A  |
| Revision | 04/01/2014 | Update Blackout/Freeze Request Form  | N/A  |
| Revision | 03/22/2017 | Removed unnecessary language from Scope section<br>Added Exemption, Expanded References sections<br>Removed and replace Maintenance Calendar URL<br>Added roles of approving blackout requests<br>Removed Objectives section   | N/A  |
| Revision | 01/19/2018 | Expanded guidance on Change Management processes in Policy section<br>changed ITP name to Enterprise Change Management Maintenance Policy from Enterprise Services Maintenance Scheduling<br>All information relating to Removal of references to Pre-Approval Standards are exempt from Blackout/Freeze windows<br>Added section Limited and Comprehensive Production Blackout/Freeze Windows | N/A  |
| Revision | 08/09/2018 | Added guidance on CI scanning process<br>Added authority for blackout rejection overrides<br>Added verbiage to Section 4 Exceptions to this policy<br>Replaced some verbiage from maintenance to changes<br>Added OPD-SYM010B <i>Enterprise Maintenance Windows and Scanning Guidance</i>  | N/A  |
| Revision | 12/03/2019 | Added additional Definitions<br>Added reference to "Change Management processes" to Standard<br>Changes definition to ensure appropriate governance<br>Added guidance on automated pre-approved change type<br>Removed references to OA/OIT "Enterprise" and "Delivery Center" throughout  | <a href="#">Revised IT Policy Redline 12/03/2019</a> |

# Information Technology Policy

## *Keystone Login and Identity Proofing*

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-SEC039  | <b>Effective Date</b><br>August 11, 2020    |
| <b>Category</b><br>Security  | <b>Supersedes</b><br>ITP-SEC013, ITP-SEC014 |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>December 2021    |

### 1. Purpose

This Information Technology Policy (ITP) is to establish and maintain a centralized account management system for online services for the Commonwealth and to establish standards for online identity proofing of public users accessing Commonwealth IT web services or online applications.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions, and councils under the Governor's jurisdiction (collectively "agencies"). Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

### 3. Definitions

**3.1 Keystone Login** - is an account management system for Commonwealth of Pennsylvania online services.

### 4 Policy

#### Keystone Login

All citizen facing applications are to use Keystone Login for [Authentication](#) services. Keystone Login is an account management system for Commonwealth of Pennsylvania online services. The Keystone Login portal provides the following capabilities: account creation and management, [Identity Verification](#), [Authentication](#) services and [Single Sign-On \(SSO\)](#) (sign on once to access multiple applications), social media login (e.g., Google), and risk-based multi-factor authentication. The Keystone Login provides citizens with a single credential (username and password) that can be used to access online services from multiple state agencies.

Keystone Login Accounts that have not been accessed in 18 months will be purged.

#### Identity Proofing

Identity Proofing is the process of verifying the real-life identify being claimed by a person. For purposes of this ITP, Identity Proofing shall be limited to identity proofing levels and corresponding authentication requirements. Authorization focused on the actions or activities the public user is permitted after authentication has occurred is outside of the scope of this ITP. This ITP DOES NOT seek to establish or to impose business requirements on agency applications or services, particularly with regard to authorization of a public user. Such requirements are left to the agency and/or the appropriate business unit within the agency to determine.

The following Levels of Assurance (LOA) are established for the Commonwealth:

**LOA1:** Self-asserted identity with little or no confidence in who the *person* behind the identity is. This is the lowest level of assurance and should only be used in circumstances where anonymous logons would be allowed and where the true identity of the person is irrelevant.

Examples of such use would include:

- 1.1 Portal logon to greet returning people
- 1.2 Dissemination of publicly available information
- 1.3 Preliminary application or registration for a program where the identity is established at a later step.

**LOA2:** Identity for which there is some level of confidence in who the *person* behind the identity is. The identity may be verified in a number of ways such as presentation of proofing materials (e.g. driver's license) or something that they have knowledge of (e.g. knowledge based Q&A). A minimum of user ID and password is sufficient for authentication and shall be in compliance with current Commonwealth password policies (ITP-SEC007 *Minimum Standards for User IDs and Passwords*). This level is generally sufficient for most online interactions.

## 5 Service Description

There are two options to interface agency applications with Keystone Login: Keystone Login Portal and a suite of Keystone Login [APIs](#). The following list of functionalities is supported by either option:

**Account Creation and Management** – Keystone Login provides this functionality by interacting with the Commonwealth's only approved citizen-facing user account domain called SRPROD. Keystone Login allows citizens to create an account in the SRPROD domain, maintain that account by changing account information, and manage that account by adding other features to the account.

**[Authentication](#)** – Keystone Login provides this functionality by interacting with the citizen-facing user account domain and the Commonwealth employee account domain.

**[Identity Verification](#)** – Keystone Login allows SRPROD account owners to verify themselves as [LOA2](#) authenticated accounts.

**[Multi-Factor Authentication Services \(MFA\)](#)** – Keystone Login allows account owners who have chosen to elevate their accounts to [LOA2](#), to also enable [MFA](#) on those accounts

**[Single Sign-On \(SSO\)](#)** – Keystone Login promotes a [SSO](#) experience.

Keystone Login also offers the ability to login using an existing Google social media account. This is available only by using the Keystone Login Portal, as it cannot be extended through an [API](#).

## 6 Responsibilities

6.1 **Service Owner** – Enterprise Information Security Office

6.2 **Service Provider** – Enterprise Solutions Office

## 7 Related ITPs/Other References

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- ITP-SEC007 – *Minimum Standards for IDs, Passwords and Multi-Factor Authentication*
- Executive Order 2019-04 – *Establishing a "Citizen First" Directory and Promoting Customer Service Transformation*

## 8 Authority

[Executive Order 2016-06 Enterprise Information Technology Governance](#)

## 9 Publication Version Control

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## 10 Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this IT policy, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision   | Redline Link  |
|----------|------------|---|---|
| Original | 08/11/2020 | Consolidate SEC013 and SEC014 to align with new technology standards  | N/A   |
| Revision | 12/07/2020 | Added hyperlinks to OA Glossary and removed words from definition section<br>Consolidated SEC037 and SEC039 | <a href="#">Revision Redline Link &lt;12/7/2020&gt;</a> |



# Information Technology Policy

## *Information Technology Digital Accessibility Policy*

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-ACC001  | <b>Effective Date</b><br>March 16, 2006 |
| <b>Category</b><br>Accessibility   | <b>Supersedes</b><br>None               |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>January 2022 |

### 1. Purpose

This Information Technology Policy (ITP) establishes guidance for planning, designing, building, testing, maintaining and procuring [accessible](#) Digital Content and Services so that citizens and employees, including those with Disabilities, can access information and services provided by the Commonwealth of Pennsylvania.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions and councils under the Governor's jurisdiction (collectively "agencies"). Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

### 3. Definitions

**3.1 Archived Digital Content:** Digital Content that is no longer actively available to end-users but is still subject to record retention plans.

**3.2 Authors:** People who produce digital content, including but not limited to web developers, designers, writers, etc.

**3.3 Authoring Tools:** Software and services that Authors use to produce digital content, including but not limited to content management tools.

**3.4 Authoring Tool Accessibility Guidelines (ATAG):** ATAG are an industry-recognized standard published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C) that addresses Authoring Tools. ATAG includes three levels of conformance: A, AA, and AAA.

**3.5 Digital Accessibility:** Digital Accessibility is providing Digital Content and Services that can be used by any user, including those with visual, auditory, motor, or cognitive Disabilities.

**3.6 Digital Accessibility Maturity Assessment:** A tool for measuring the degree of maturity attained in implementing and managing Digital Accessibility. The assessment will help people in agencies understand the ten dimensions of an accessibility program and allow them to plan and work on improving the accessibility of Digital Content and Services year over year.

**3.7 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:



- **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);
- **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));
- **Hardware:** Computers & laptops, servers, tablets, printers and copiers, scanners, peripheral equipment (e.g., keyboards, mice), kiosks and mobile phones;
- **Support documentation and services:** Training services, help desk or call center, automated self-service & technical support, and product informational materials.

### 3.8 Disability (with respect to an individual):

1. A physical or mental impairment that substantially limits one or more major life activities of an individual.
2. A record of such an impairment; or
3. Being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. § 802.

**3.9 Legacy Digital Content and Services:** Digital Content and Services designed and implemented prior to the latest revision date of this policy (located at the bottom of this document).

**3.10 New and Updated Digital Content and Services:** Digital Content and Services designed and implemented after the latest revision date of this policy.

**3.11 PDF/UA (PDF/Universal Accessibility):** PDF/UA is a technical specification intended for developers implementing PDF writing and processing software. PDF/UA provides definitive terms and requirements for accessibility in PDF documents and applications. For those equipped with appropriate software, conformance with PDF/UA ensures accessibility for people with Disabilities who use assistive technologies such as screen readers, screen magnifiers, joysticks, and other technologies to navigate and read electronic content. PDF/UA is included within the revised Section 508 Standards.

**3.12 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).

**3.13 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.*

**3.14 User Agents:** User Agents include browsers, browser extensions, media players, readers and other applications that render web content.

**3.15 User Agent Accessibility Guidelines (UAAG):** UAAG are an industry-recognized standard published by the WAI of the W3C that addresses User Agents. UAAG includes three levels of conformance: A, AA, and AAA.

**3.16 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.

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

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

#### **4. Objective**

The goal of this policy is to ensure that when an agency provides information through the web or through other information technologies such as mobile applications, and video and audio recordings, it is taking reasonable measures to ensure that persons with Disabilities can access, navigate, and otherwise obtain the same or equivalent information as persons without Disabilities.

#### **5. Policy**

##### **a) Standards**

Agencies shall provide access to Digital Content and Services by complying with the revised Section 508 Standards and the current version of WCAG. WCAG Levels A and AA are required, and level AAA is encouraged.

Agencies shall procure or use Content Management Systems (CMS) that meet the current version of the W3C's ATAG.

Agencies shall procure or use User Agents that meet the current version of the W3C's UAAG.

##### **b) New and Updated Digital Content and Services**

Agencies shall comply with the applicable standards set forth in Section 5a, of this policy.

##### **c) Legacy Digital Content and Services**

Agencies shall create a plan to update Legacy Digital Content and Services to comply with the applicable standards set forth in Section 5a, of this ITP, or the content shall otherwise be made available in an accessible format, and in a timely manner, to any individual requesting access.

Each agency shall establish its own priorities and timetables for updating Legacy Digital Content and Services, or plan for its transition to archival status or its removal.

##### **d) Archived Digital Content**

Archived Digital Content shall be made available in an accessible format to any individual eligible for, and requiring access to, such content. The agency responsible for the maintenance of the Archived Digital Content shall be responsible for providing the Digital Content in an accessible format.

##### **e) Commonwealth's Accessibility Testing**

All Digital Content and Services shall be tested to meet applicable standards set forth in Section 5a of this ITP.

##### **f) Digital Accessibility Planning**

Agencies, in collaboration with the Office for Technology (OIT), shall follow the timeline below to achieve accessible Digital Content and Services. Agencies shall maintain and make

available to OIT; including the Commonwealth’s Chief Accessibility Officer, documentation showing the completion of these items.

| Deliverable  | Due Date  |
|--|---|
| Digital Accessibility Maturity Assessment – Assess your organization against the dimensions of a successful Digital Accessibility Program.   | Six (6) months after the revision date of this policy; annually thereafter. |
| Accessibility Roadmap - Based on the results of the assessment, create a multi-year plan to continually improve the accessibility of your Digital Content and Services by addressing the components of a successful accessibility program. | One year after the revision date of this policy; annual updates thereafter. |

Additional reporting requirements will be determined as a part of the pilots planned in each IT Delivery Center.

## 6. Responsibilities

### All Commonwealth Agencies shall:

- Create a plan to make internally developed/delivered agency Digital Content and Services accessible to individuals with Disabilities, consistent with any pertinent federal regulations, state regulations, and OIT policies and standards.
- Create a plan to make any contractual agreement for supplier developed/delivered agency Digital Content and Services adhere to any pertinent federal regulations, state regulations, and OIT policies and standards.
- Establish a mechanism for users to report Digital Accessibility issues or concerns.
- Respond to requests from individuals with Disabilities, to make agency Digital Content and Services available in an accessible, alternative format, or provide an effective accommodation, within a reasonable time-period, that is consistent with any pertinent federal or state regulations.
- Identify agency personnel, involved in planning, designing, building, testing, maintaining, and procuring Digital Content and Services so they:
  - Receive appropriate and regular accessibility training, consistent with their assigned roles; and
  - Understand that Digital Accessibility must be complied with as part of planning, designing, building, testing, maintaining and procurement activities as stated in this policy.
- Create a plan to make communication with employees and citizens with a Disability effective and inclusive. This includes, but is not limited to, accessible emails or videos and webinars with captions, audio descriptions and transcripts.
- Create a plan to run applicable tests on Digital Content and Services, to confirm compliance with this policy.

- Identify and implement supplier digital accessibility requirements for various types of procurements (Requests for Proposals, contractual agreements, etc.)
- Revise information technology Requests for Proposals, contracts, and other procurement mechanisms for supplier compliance with this policy.
- Include in solicitations for IT products, such as hardware, software (COTS), electronic content and support documentation and services, a requirement for a VPAT. If more than one product is included in the solicitation, each product must have a VPAT.
- Include in solicitations for IT purchases for products and professional/ technical services (such as creating websites and videos) a PDAA Assessment.
- Receive approval from the agency head and chief counsel prior to submitting a request for exemption from this policy.

**The Office for Information Technology shall:**

- Establish a plan for the appropriate testing of Digital Content and Services using the enterprise accessibility testing tools.
- Identify OIT personnel involved in planning, designing, building, testing, maintaining, and procuring Digital Content and Services so they receive appropriate and regular accessibility training, consistent with their assigned roles.
- Integrate accessibility standards as defined in this policy throughout all stages of the software development life cycle (e.g. initiate, plan, implement, sustain) for OIT developed Digital Content and Services.
- Promote education and awareness of Digital Accessibility to Commonwealth employees.
- Create a plan to run applicable tests on Digital Content and Services, to confirm compliance with this policy.
- Identify and implement supplier digital accessibility requirements for various types of procurements (Requests for Proposals, contractual agreements, etc.)
- Include in solicitations for IT products, such as hardware, software (COTS), electronic content and support documentation and services, a requirement for a VPAT. If more than one product is included in the solicitation, each product must have a VPAT.
- Include in solicitations for IT purchases for products and professional/technical services (such as creating websites and videos) a PDAA Assessment.

**Commonwealth Agencies and the Office for Information Technology shall:**

- Collaborate and plan appropriate investments to comply with this Policy.

**Suppliers shall:**

- Comply with the Accessibility Standards in Section 5a of this ITP for all provided products and services.
- Submit a completed VPAT for proposed/provided products and services in response to Requests for Proposals, IFBs, RFIs, RFEIs and any resulting contract.
  - Suppliers must use the most current version of the VPAT template
  - If VPATs are submitted, using an older version of the template, suppliers must also provide an explanation, as to why the most current version is not being used.

Upon review of the older version template, VPAT content, and the explanation provided, agencies may require suppliers to provide additional information for items listed on the new VPAT that are missing from the old template.

- The VPAT template should be filled out in its entirety and include testing methodology, conformance level, and remarks for any partially supported or non-supported level.
- Submit other artifacts (PDAA Assessment, Accessibility Testing Plans, Accessibility Issue Reports, Accessibility Roadmaps, etc.) when requested.
- For any known accessibility issue or WCAG success criteria, which the product or service either only partially meets, or does not meet, the supplier shall provide a road map setting forth the expected timeframe and release cycle that will resolve each accessibility issue.
- Provide additional required/requested information to document the accessibility of proposed/provided products and services (for example, when responding to Requests for Proposals, and/or as part of contractual agreements).
- Promptly fix accessibility noncompliance issues that are reported to them.

## 7. Related ITPs/Other References

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Executive Order 2019-04 *Establishing a "Citizen-First" Government and Promoting Customer Service Transformation*
- Executive Order 2016-04 *Equal Employment Opportunity*
- Executive Order 2016-03 *Establishing "Employment First" Policy and Increasing Competitive Integrated Employment for Pennsylvanians with a Disability*
- Executive Order 2002-5 *Disability-Related Policy*
- Management Directive 205.34 *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 205.25 *Disability-Related Employment Policy*
- Management Directive 205.26 *The Americans With Disabilities Act of 1990, Title II, Subtitle A, Nondiscrimination in State and Local Government Services*
- ITP-BUS002 *IT Investment Review Process*
- ITP-SFT000 *Systems Development Life Cycle (SDLC) Policy*
- ITP-SFT002 *Commonwealth of PA Design Standards*
- The Americans With Disabilities Act of 1990, (Pub. L. 101- 336, 104 Stat. 328) (ADA) 42 U.S.C. §12101 *et seq.*
- Sections 504 and 508 of the Rehabilitation Act of 1973, (Pub. L. 93–112, 87 Stat. 355) 29 U.S.C. § 701 *et seq.*

- The Pennsylvania Human Resources Act (PHRA), 43 P.S. §§ 951-963
- World Wide Web Consortium (W3C) Web Accessibility Initiative - <https://www.w3.org/WAI/>

## 8. Authority

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## 10. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review Process](#) for guidance.

The waiver request is to state why the Digital Accessibility Policy cannot be met. Details are required about the plan to bring the Digital Content and Services into compliance and the accommodations or workarounds that will be used to provide the Digital Content and Services in an accessible format while the waiver is valid.

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision  | Redline Link   |
|----------|------------|--|--|
| Original | 03/16/2006 | Base Document  |  |
| Revision | 11/18/2010 | Moved product standards to new STD-ACC001B<br>Rescinded OPD-ACC001B, OPD-ACC001D   |  |
| Revision | 01/12/2018 | Reformat to new ITP layout<br>Revised ITP Title<br>Expanded policy to cover other technologies Added<br>Accessibility Timeframe Table<br>Added Federal Law/Mandate requirements<br>Rescinded OPD-ACC001A, STD-ACC001B, OPD-ACC001C |  |
| Revision | 01/26/2021 | Added definitions section<br>Added industry standards<br>Added responsibilities for OIT, Procurement and Vendors<br>Updated Related ITPs/Other references<br>Updated exemption language  | <a href="#">Revised IT Policy Redline &lt;01/26/2021&gt;</a> |

# Information Technology Policy

## *IT Service Organization Management and Cloud Requirements*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-BUS011  | <b>Effective Date</b><br>July 18, 2018   |
| <b>Category</b><br>Business  | <b>Supersedes</b><br>--                  |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>December 2021 |

### 1. Purpose

This Information Technology Policy (ITP) establishes guidance on the management of Service Organizations and establishes requirements for the procurement and implementation of cloud computing services for the Commonwealth that support enterprise and agency business processes.

### 2. Scope

This ITP applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction that utilize Commonwealth [IT Resources](#) are to follow this ITP.

### 3. Definitions

**3.1 Cloud Computing Service** - A model for enabling convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction that is provided from a cloud service provider.

**3.1.1 Infrastructure as a Service (IaaS)** – A Cloud Computing Service that provides processing, storage, networks, and other computing resources where the consumer can deploy and run software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, and deployed applications, and possibly limited control of select networking components.

**3.1.2 Platform as a Service (PaaS)** – A Cloud Computing Service that provides the ability to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages, libraries, services, and tools supported by the cloud service provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly configuration settings for the application-hosting environment.

**3.1.3 Software as a Service (SaaS)** – A Cloud Computing Service that provides the capability using the cloud service provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through either a thin client interface, such as a web browser or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, apart from limited user-specific application configuration settings.



- 3.2 Cloud Service Provider (CSP)** - An entity (private or public) that provides Cloud Computing Services.
- 3.3 Commonwealth Data** – Any recorded information, regardless of form, the media on which it is recorded or the method of recording, that is owned, managed, processed, generated or stored by the Commonwealth, which may be protected by law, order, regulation, directive or policy and may be sensitive or confidential so that it requires security controls and compliance standards.
- 3.4 Internal Control** - A process that provides reasonable assurance of the achievement of an organization’s objectives.
- 3.5 Service Organization** – An entity that is external to the Commonwealth that provides services to the Commonwealth (also known as a user organization) that are part of the Commonwealth’s information system.
- 3.6 Supplier Management** - Refers to the governance and processes of obtaining and managing third-party entities that supply the Commonwealth with essential goods and services.
- 3.7 System and Organization Controls (SOC)** – A suite of service offerings provided in connection with system-level controls of a Service Organization or entity-level controls of other organizations.
- 3.8 United States Jurisdiction** - Consists of all fifty (50) States of the United States and the District of Columbia.

#### 4. Policy

All cloud computing services must meet the requirements outlined in this policy. Any cloud computing service that does not meet these requirements are not to be procured or implemented for use by the Commonwealth.

A Cloud Use Case Request approval is required for:

- deploying at any stage (staging, development, production, etc.) any cloud computing service not on a state contract;
- deploying at any stage (staging, development, production, etc.) any cloud computing service [Proof of Concept](#) or [Pilot](#);
- Any procurement for cloud computing services;
- Original scope of an approved cloud use case has significantly changed.

The agency should perform an internal assessment of the cloud services requirements (detailed below) prior to submitting a Cloud Use Case Review service request to define the scope and determine if the requirements will be met. The internal assessments of potential cloud service solutions should include a comparison of the cloud services requirements and the solution capabilities to ensure the cloud service requirements are met prior to the selection of a solution, if applicable, and submission for a Cloud Use Case Review to avoid non-compliance and rejection of a Cloud Use Case Review.

If business requirements demand a “non-compliant” cloud computing service, an IT policy waiver against this policy must be submitted through the enterprise policy waiver process (refer to ITP-BUS004 *IT Policy Waiver Process*). The submission for the policy waiver must include a completed and signed Acceptance of Risk and Risk Registry document (OPD-BUS011A *Acceptance of Risk / Risk Registry – Cloud Services Requirements*) and must set forth the business requirements that demand a “non-



compliant” cloud computing service. Approval of the waiver request is required for potential approval of a “non-compliant” cloud computing service Cloud Use Case Review request.

Adherence to the cloud services requirements, set in the table below, and submission of all required documentation does not guarantee approval of the Cloud Use Case Review request.

| Risk ID                    | Category  | Requirement  |
|----------------------------|---|--|
| <b>Legal / Procurement</b> |   |  |
| CSR-L1                     | <b>Procurement Requirements</b>                         | <ul style="list-style-type: none"> <li>Must procure, or plan to procure, the cloud computing services through some existing approved contract or other approved procurement mechanism</li> </ul>   |
| CSR-L2                     | <b>Legal Review</b>                                     | <ul style="list-style-type: none"> <li>Must ensure legal review to discern appropriateness of terms in existing or planned contracts and to advise Agencies other legal requirements.</li> </ul>   |
| CSR-L3                     | <b>Data Storage Provisioning</b>                        | <ul style="list-style-type: none"> <li>Under no circumstances will Commonwealth Data be directly or indirectly transmitted or downloaded to, stored in, or accessible from any location that is not subject to the laws and jurisdiction of the United States</li> </ul>   |
| CSR-L4                     | <b>Data Hosting</b>                                     | <ul style="list-style-type: none"> <li>Service Organization must offer a data hosting solution that ensures Commonwealth Data is hosted in physical locations subject to the laws and jurisdiction of the United States.</li> </ul>  |
| CSR-L5                     | <b>System and Organization Controls (SOC) Reporting</b> | <ul style="list-style-type: none"> <li>Must submit appropriate Systems and Organizations Controls (SOC) per guidance set in contracts. Refer to section 4.1 System and Organization Controls (SOC) Reporting Requirements of this ITP and to OPD-BUS011B <i>System and Organization Controls (SOC) Reporting Procedure</i> (refer to Reference section of this ITP);</li> <li>Solicitations for the procurement of cloud services shall include a requirement that suppliers submit a SOC 3 report as part of the response to the solicitation.</li> </ul> |

| <b>Security</b> |   |  |
|-----------------|---|--|
| <b>CSR-S1</b>   | <b>System Monitoring / Audit logging (Security)</b> | <ul style="list-style-type: none"> <li>• Must be enabled and accessible to the Agency Information Security Officer or designee. (Refer to Section 4.1 for additional guidance) <ul style="list-style-type: none"> <li>• Verbose recommended</li> <li>• Ability to correlate events and creates security alerts</li> <li>• Maintain reports online for a minimum of 90 days and archive for a minimum of 1 year. If the customer (i.e. agency) requires longer retention periods, the customer's longer retention requirement takes precedence.</li> <li>• Reports should be easily accessible and in a readable format</li> </ul> </li> </ul>                  |
| <b>CSR-S2</b>   | <b>Data Segmentation / Boundary Protection</b>      | <ul style="list-style-type: none"> <li>• Must provide a network/architecture diagram showing what technical controls are performing the network segmentation and how the technical control is used to protect COPA's networks connections both from the internet and back to COPA datacenters (i.e. border gateway, perimeter firewall, web application firewall (WAF), VPN tunnels, etc.)</li> </ul>  |
| <b>CSR-S3</b>   | <b>Endpoint Protection</b>                          | <ul style="list-style-type: none"> <li>• Must provide security controls if the cloud services are accessed from the internet. These are required to identify attacks, identify changes to files, protect against malware, protect user web services, data loss prevention (DLP), and perform forensic analysis. <ul style="list-style-type: none"> <li>• File Monitoring Controls</li> <li>• Antivirus Controls</li> <li>• Intrusion Detection System (IDS)/Intrusion Prevention System (IPS) Controls</li> <li>• Data Loss Prevention (DLP) Controls</li> <li>• Forensic Controls</li> <li>• Advanced Persistent Threat (APT) Controls</li> </ul> </li> </ul> |
| <b>CSR-S4</b>   | <b>Encryption</b>                                   | <ul style="list-style-type: none"> <li>• Must enable encryption for all records involved with the proposed cloud services</li> <li>• Must provide encryption technical controls to protect Data in Transit and Data at Rest. Both are required to protect Data in Use</li> <li>• It is recommended that agencies safeguard cryptographic keys and secret keys by using keys that are protected by Hardware Security Module (HSMs). (Will become a requirement in future policy revision)</li> </ul>  |
| <b>CSR-S5</b>   | <b>Identity &amp; Access Management</b>             | <ul style="list-style-type: none"> <li>• Must provide technical controls for authenticating users, provisioning and deprovisioning users, identity interaction and nonrepudiation needs for admins, internet users, and internal users</li> <li>• Must use Commonwealth Authentication services</li> <li>• Must use Commonwealth Multi-Factor Authentication services</li> </ul>   |
| <b>CSR-S6</b>   | <b>Vulnerability Assessment</b>                     | <ul style="list-style-type: none"> <li>• Must ensure all cloud applications are securely coded, vetted, and scanned</li> <li>• Must conduct a third-party independent vulnerability assessment quarterly or sooner if due to compliance regulations or other requirements, or upon a major change to the solution</li> <li>• Must provide vulnerability assessment results to the Commonwealth on a quarterly basis during the term of the contract and upon Commonwealth request and required on a</li> </ul>   |

|                       |   |   |
|-----------------------|---|---|
|                       |   | <p>quarterly basis from the time of contract is active (Refer to ITP-SEC021 and ITP-SEC023 for reporting guidance)</p> <ul style="list-style-type: none"> <li>• Must be able to identify and validate vulnerabilities required for remediation</li> <li>• Must ensure patching is up to date</li> </ul>   |
| <b>CSR-S7</b>         | <b>Data Protection / Recovery</b>                         | <ul style="list-style-type: none"> <li>• Must provide a business continuity plan that addresses the following: <ul style="list-style-type: none"> <li>• Data/Database Recovery</li> <li>• Application Recovery</li> <li>• Operating System Recovery</li> <li>• Infrastructure Recovery</li> </ul> </li> </ul>   |
| <b>CSR-S8</b>         | <b>Compliance</b>   | <ul style="list-style-type: none"> <li>• Agencies must determine the type of data (Refer to ITP-SEC019 for categorization guidance) and ensure all cloud service providers meet compliance requirements based upon the Commonwealth data and any applicable laws, regulations, policies, best practices and protections</li> </ul>  |
| <b>CSR-S9</b>         | <b>Security Incident Handling</b>                         | <ul style="list-style-type: none"> <li>• Must ensure the incident management processes, and the responsibilities of each party, are documented</li> </ul>   |
| <b>CSR-S10</b>        | <b>Inventory</b>  | <ul style="list-style-type: none"> <li>• Must ensure a complete, accurate, and up-to-date inventory of Commonwealth deployed resources within the cloud infrastructure and must be made available for review upon request</li> </ul>  |
| <b>Infrastructure</b> |   |   |
| <b>CSR-I1</b>         | <b>Connectivity</b>                                       | <ul style="list-style-type: none"> <li>• Must utilize the Commonwealth's Enterprise Perimeter Security (EPS) solution for inspection for all traffic sourcing from a non-Commonwealth facility/network.</li> </ul>  |
| <b>CSR-I2</b>         | <b>Interface Requirements</b>                             | <ul style="list-style-type: none"> <li>• Must conform to the Commonwealth's Network Interoperability Standards (See References section for details)</li> </ul>  |
| <b>CSR-I3</b>         | <b>System Monitoring / Audit logging (Infrastructure)</b> | <ul style="list-style-type: none"> <li>• Must ensure real-time application and performance monitoring is enabled. Monitoring must include system and network impact</li> <li>• Stakeholders must have access as required. <ul style="list-style-type: none"> <li>• Verbose recommended</li> <li>• Ability to correlate events and create operational alerts</li> <li>• Generate reports for a minimum of 90 days, archive for 1 year</li> <li>• Reports should be easily accessible and in a readable format</li> </ul> </li> </ul> |

## 4.1 System and Organization Controls (SOC) Reporting Requirements

### 4.1.1 SOC Reporting Requirements

Agencies and Service Organizations are to follow SOC report procedures as detailed in OPD-BUS011B *Systems & Organization Controls (SOC) Reporting Procedure*. The following guidance should be used by agencies when determining when to request a SOC report and what type of SOC report should be requested from a Service Organization. It may be appropriate for the Commonwealth to request more than one type of report if circumstances make requiring multiple reports necessary.

**4.1.1.1 SOC 1 Type II Report** is required if any of the following conditions exist:

- The Service Organization is processing or hosting financial information that could affect or have a material impact on a Commonwealth agency's financial statements and/or reporting; or
- Compliance mandate for federal or state audit requirements and/or policy; or
- A third-party provides financial service(s) (such as, but not limited to, payroll processing, accounts receivable, payable, or collection service)

**Note:** SOC 1 Type II reports will provide findings for Finance/Accounting controls and IT controls for services with integrated systems associated with financial transactions and reporting.

**4.1.1.2 SOC 2 Type II Report** is required if any of the following conditions exist:

- The Service Organization is hosting, handling, or processing Class "C" Classified Records or Closed Records as defined in ITP-SEC019 *Policy and Procedures for Protecting Commonwealth Electronic Data*; or
- Compliance mandated with federal or state audit requirements and/or policy.

**4.1.1.3 SOC for Cybersecurity Report** is required if any of the following conditions exist:

- Reoccurring findings in SOC 1-Type II or SOC 2-Type II reports; or
- A cybersecurity incident or breach has occurred; or
- Cybersecurity incidents or breaches that are not being detected, prevented, reported, and/or mitigated in a timely manner (as determined by the Commonwealth); or
- Cybersecurity incidents or breaches are not being properly managed by the Service Organization; or
- Uncertainty that the Service Organization has an effective cybersecurity risk management program; or
- The Service Organization has been engaged in a merger or acquisition during the term of the contract; or
- The Service Organization has restructured its service offerings and/or business model.

**4.1.1.4 SOC 3 Report** is required if any of the following conditions exist:

- Pre-RFP selection technical evaluation artifact or services that would require a SOC 1-Type II or SOC 2 Type II report; or
- As determined during a Commonwealth review and/or evaluation of cloud services that would require a SOC 1-Type II or SOC 2 Type II report.

**4.1.1.5 SOC 1 and 2 Report Required Data**

At a minimum the following information must be contained within any SOC 1 and SOC 2 report that is provided in compliance with this ITP:

- Cover letter indicating whether the Service Organization and all subcontractors are or are not performing services in accordance with the contract. The cover letter must summarize the results of the audit and the audit tests performed. The letter must highlight unusual items, deficiencies, qualifications and any inconsistencies with professional standards and provide an indication of actions being taken to address, remedy or mitigate these or other weaknesses noted in the applicable report;
- Independent Auditor's Summary Report and Service Auditor's Responsibilities;
- Service Organization's Management Assertion;
- Independent Auditor's Assertion;
- Overview of Service Organization (i.e. company overview, services provided to the Commonwealth, related information systems);
- Scope of SOC report and description of all control objectives and related description of controls examined, descriptions of tests for operational effectiveness, and test results;
- Service Organization Management responses to deviations when performing the tests of operating effectiveness of controls; and
- Detailed description of all findings, exceptions and opinions rendered (i.e. qualified, disclaimer, adverse) during the SOC reporting period.

**4.1.1.6 SOC for Cybersecurity Report Required Data**

At a minimum the following information must be contained within any Cybersecurity report that is provided in compliance with this ITP:

- Independent Auditor's Opinion letter (either point in time or period of time);
- Management's Assertion (description criteria and control criteria) regarding the description and effectiveness of the program's controls; and
- Management's Description of the cybersecurity risk management program.

**4.1.1.7 SOC Reporting Contract Language:**

SOC Reporting requirements shall be inserted in new or amended cloud-based Service Organization agreements that support business and/or IT operations. Service Organization agreements shall require the Service Organization use an independent CPA-certified auditor to review/monitor Service Organization's controls for all types of SOC reports.

### 4.1.2 SOC Report Review/Evaluation Requirements

The SOC report, in accordance with the type of SOC report, that is provided to the Service Organization by an independent CPA-certified auditor shall provide the Service Organization's customers assurance on the internal controls over financial reporting and IT controls relevant to security, availability, processing integrity, confidentiality, privacy, and/or specific frameworks and procedures relevant to an entity's cybersecurity risk management program.

## 4.2 System Monitoring / Audit logging (Security) Guidance

Agencies are responsible for configuring auditing at the application, database, and virtual machine level as necessary to capture the following events:

### Operating System (OS) Events

- start up and shut down of the system
- start up and down of a service
- network connection changes or failures
- changes to, or attempts to change, system security settings and controls

### OS Audit Records

- log on attempts (successful or unsuccessful)
- the function(s) performed after logged on (e.g., reading or updating critical file, software installation)
- account changes (e.g., account creation and deletion, account privilege assignment)
- successful/failed use of privileged accounts

### Application Account Information

- successful and failed application authentication attempts
- application account changes (e.g., account creation and deletion, account privilege assignment)
- use of application privileges

### Application Operations

- application startup and shutdown
- application failures
- major application configuration changes
- application transactions, such as:
  - e-mail servers recording the sender, recipients, subject name, and attachment names for each e-mail
  - web servers recording each URL requested and the type of response provided by the server
  - business applications recording which financial records were accessed by each user

The details logged for each event may vary widely, but at minimum, each event should be captured.

- timestamp
- event, status, and/or error codes
- service/command/application name
- user or system account associated with an event
- object access
- policy change
- privilege functions
- process functions
- process tracking
- system events
- all administrator activity
- authentication checks
- authorization checks
- data deletions
- data access
- data changes
- permission changes
- network event information (at minimum source and destination IPs, port(s), terminal session ID, web browser)

## 5. Responsibilities

- 5.1 Office of Administration, Office for Information Technology (OA/OIT)** will manage the service request process for all cloud-based services and is responsible for working with agencies in developing the appropriate business and technology architecture requirements to provide the appropriate cloud computing service.

OA/OIT will conduct audits of approved cloud use cases as needed and may submit requests for information (RFI) that support the agency's cloud use case prior and after approval. This action is necessary to ensure compliance and aligns with the expectations of the cloud use case.

- 5.2 Commonwealth Agencies** shall submit a new use case request for any cloud computing service if at least one criterion is met:

- any new cloud computing service, (i.e. product, platform, or provider not under state contract);
- a [Proof of Concept](#) or [Pilot](#);
- a Request for Proposal (RFP);
- original scope of an approved cloud use case has significantly changed

Agencies may only procure and implement on the Commonwealth infrastructure cloud computing services that are approved through the Cloud Use Case Request process.

Agencies are to ensure that external Service Organization SOC reporting requirements are detailed in contracts with those Service Organizations. Agencies are to develop and maintain internal SOC reporting procedures that comply with the

guidance set in this ITP and OPDs. SOC reports are to be maintained and accessible upon request from authorized Commonwealth personnel.

Agencies are responsible for developing and managing internal policy for cloud computing service that adhere to all Management Directives and IT policies. Appropriate [IT governance](#) and access control measures for cloud-based administrators should be developed and followed as detailed in ITP-SEC003 *Enterprise Security Auditing and Monitoring*.

## 6. **Related ITPs/Other References**

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 - *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 325.13 – *Service Organization Controls*
- Requirements for non-Commonwealth Hosted Applications/Services\_ <https://collab.pa.gov/dgs/home/BOP/Pages/Contract-Preparation.aspx> (*Limited Access*)
- OPD-BUS011A – *Acceptance of Risk / Risk Registry – Cloud Services Requirements*
- OPD-BUS011B – *System and Organization Controls (SOC) Reporting Procedure*
- OPD-BUS011C – *System and Organization Controls (SOC) Correspondence Procedure*
- SOC Repository - [https://itcentral.pa.gov/Pages/SOC\\_Reports.aspx](https://itcentral.pa.gov/Pages/SOC_Reports.aspx) (*CWOPA Limited Access*)
- Commonwealth's Network Interoperability Standards (Contact [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov) for information; *CWOPA authorized personnel only*)
- ITP-SFT000 - *Software Development Life Cycle (SDLC) Policy*
- ITP-SEC000 – *Information Security Policy*
- ITP-SEC003 - *Enterprise Security Auditing and Monitoring*
- ITP-SEC005 – *Commonwealth Application Certification and Accreditation*
- ITP-SEC019 – *Policy and Procedures for Protecting Commonwealth Electronic Data*
- ITP-SEC020 – *Encryption Standards for Data at Rest*
- ITP-SEC021 - *Security Information and Event Management Policy*



- ITP-SEC023 - *Information Technology Security Assessment and Testing Policy*
- ITP-SEC031 – *Encryption Standards for Data in Transit*
- ITP-SEC034 – *Enterprise Firewall Rule Set*
- ITP-SEC038 - *COPA Data Center Privileged User Identification and Access Management Policy*
- NIST SP 800-92 - *Guide to Computer Security Log Management*
- NIST SP 800-144 – *Guideline on Security and Privacy in Public Cloud Computing*
- NIST SP 800-145 – *NIST Definition of Cloud Computing and Deployment Models*
- NIST SP 800-146 – *NIST Cloud Computing Synopsis and Recommendations*

## 7. Authority

Executive Order 2016-06 *Enterprise Information Technology Governance*

## 8. Publication Version Control

It is the [Authorized User](#)'s responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 9. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this IT policy, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision  | Redline Link   |
|----------|------------|--|--|
| Original | 07/18/2018 | Base Document  | N/A  |
| Revision | 01/27/2020 | Clarified policy language throughout<br>Added SOC guidance and OPD-BUS011B, OPD-BUS011C<br>Updated Cloud Service Requirements table and added "Responsible Party" column<br>Updated References section | <a href="#">Revised IT Policy Redline &lt;01/27/2020&gt;</a> |
| Revision | 12/1/2020  | Updated definition section and added hyperlinks to OA Glossary<br>Updated 4.1.1.2 to address all categories that are Class "C" as defined by SEC019.   | <a href="#">Revised IT Policy Redline &lt;12/1/2020&gt;</a>  |

# Information Technology Policy

## Commonwealth Code Standards

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-INF006  | <b>Effective Date</b><br>August 17, 2007 |
| <b>Category</b><br>Information   | <b>Supersedes</b><br>None                |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>May 2022      |

### 1. Purpose

This Information Technology Policy (ITP) establishes the Commonwealth of Pennsylvania enterprise standard for county and city codes to be utilized for Commonwealth information technology system exchanges.

### 2. Scope

This ITP applies to all departments, offices, boards, commissions and councils under the Governor’s jurisdiction (hereinafter referred to as “agencies”). Agencies not under the Governor’s jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the requirements of the Commonwealth’s ITPs that are applicable to the products and services provided to the Commonwealth.

### 3. Policy

#### County Code Guidance

The enterprise standard for county codes is a two-digit numeric sequence ranging from 01 to 67 which corresponds alphabetically to each of the 67 Commonwealth counties from Adams to York. Two additional codes, 97 and 99, are reserved for instances when the county is unknown or belongs to another state, respectively. A table of the counties and their corresponding codes can be found in RFD-INF006A *Codes Listing Reference*.

Agencies shall use these codes as the standard for exchanging Pennsylvania county code data within the Commonwealth. These codes shall be used on all system interfaces in which a county code is present, as well as for exchanges of data between systems.

Agencies have the discretion to implement this policy as follows:

- Completely convert existing county code information into the new format.
- Build a mapping or transformation mechanism that will be used to map the agency’s existing scheme into the standard scheme. This mapping needs to be used whenever sending or receiving the code.

All new systems, as well as major upgrades or enhancements to existing systems, shall utilize this code structure when creating and maintaining county codes on and after the Effective Date detailed in RFD-INF006A *Codes Listing Reference*.

## **City Code Guidance**

The enterprise standard for city codes is a three-letter alphabetic sequence corresponding alphabetically to most cities in the Commonwealth of Pennsylvania.

Agencies shall use these codes as the standard for exchanging Pennsylvania city code data within the Commonwealth. These codes shall be used on all system interfaces in which a city code is present, as well as for exchanges of data between systems.

Agencies have the discretion to implement this policy as follows:

- Completely convert existing city code information into the new format.
- Build a mapping or transformation mechanism that will be used to map the agency's existing scheme into the standard scheme. This mapping then needs to be used whenever sending or receiving the code.

All new systems, as well as major upgrades or enhancements to existing systems, shall utilize this code structure when creating and maintaining city codes on and after the Effective Date detailed in RFD-INF006A *Codes Listing Reference*. Commonwealth building codes are detailed in RFD-INF006B *Commonwealth Building Codes*.

## **4. Responsibilities**

**4.1** Agencies with IT systems and assets that manage and/or handle Commonwealth county and/or city data must design and implement those systems and assets with the requirements set forth in this policy, RFD-INF006A *Codes Listing Reference*, and RFD-INF006B *Commonwealth Building Codes*.

**4.2** Third-party vendors, licensors, contractors, or suppliers shall comply with the requirements as outlined in this ITP.

## **5. Related ITPs/Other References**

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 Amended *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- RFD-INF006A *Codes Listing Reference (authorized CWOPA personnel only)*
- RFD-INF006B *Commonwealth Building Codes (authorized CWOPA personnel only)*

## **6. Authority**

Executive Order 2016-06, *Enterprise Information Technology Governance*

## **7. Publication Version Control**

It is the [Authorized User](#)'s responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 8. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Policy Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision   | Redline Link   |
|----------|------------|---|--|
| Original | 08/17/2007 | Base Document   | N/A  |
| Revision | 11/18/2010 | ITP Refresh   | N/A  |
| Revision | 11/19/2018 | ITP re-format<br>Rescinded BPD-INF006A, migrated to RFD-INF006A Added city code guidance<br>Removed unnecessary language throughout | <a href="#">Revised IT Policy Redline 11/19/2018</a>         |
| Revision | 05/13/2021 | ITP Refresh   | <a href="#">Revised IT Policy Redline &lt;05/13/2021&gt;</a> |

**Information Technology Policy  
Commonwealth of Pennsylvania  
Governor's Office of Administration/Office for Information Technology**

|                               |  |   |
|-------------------------------|--|---|
| <b>ITP Number:</b>            | <b>ITP-INF009</b>                                  |   |
| <b>ITP Title:</b>             | <b>e-Discovery Technology Standard</b>             |   |
| <b>Issued by:</b>             | <b>Deputy Secretary for Information Technology</b> |   |
| <b>Date Issued:</b>           | <b>August 26, 2008</b>                             | <b>Date Revised:</b> <b>November 18, 2010</b> |
| <b>Domain:</b>                | <b>Information</b>                                 |   |
| <b>Discipline:</b>            | <b>Records Management</b>                          |   |
| <b>Technology Area:</b>       | <b>Search</b>                                      |   |
| <b>Revision History Date:</b> | <b>Description:</b>                                |   |
| <b>11/18/2010</b>             | <b>ITP Refresh</b>                                 |   |

**Abstract:**

The purpose of this Information Technology Policy (ITP) is to establish an enterprise-wide product standard for use by all Commonwealth agencies to identify, collect, search, and analyze electronically stored information (ESI) for purposes of electronic discovery (e-discovery) in litigation matters. e-discovery refers to any process in which ESI is identified, collected, searched, and analyzed for the purpose of production in the discovery phase of litigation.

When the Commonwealth's counsel determines that ESI is to be produced as part of discovery to opposing counsel, the Commonwealth's counsel directs IT support staff to assist in the initial searching for the ESI. ESI can be collected from a variety of sources. E-mail and e-documents are the most common forms of ESI and they are found on shared or network drives and archives (including backup tapes). Once the ESI sources are identified, counsel will use the product to collect, search, and analyze the ESI.

The solution provided by this ITP is a method to significantly reduce time and costs associated with the production of ESI in litigation.

**General:** This ITP applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are strongly encouraged to follow this policy.

**Policy:**

All ESI to be produced by Commonwealth agencies under the Governor's jurisdiction for purposes of e-discovery in litigation matters is to be identified, collected, searched, and analyzed utilizing the product named in STD-INF009A, *e-Discovery Product Standards*.

**Refresh Schedule:**

All standards identified in this ITP are subject to periodic review and possible revision, or upon request by the Enterprise Architecture Standards Committee (EASC).

**Exemption from This Policy:**

In the event an agency chooses to seek an exemption, for reasons such as the need to comply with requirements for a federally mandated system, a request for waiver may be submitted via the Commonwealth of PA Procurement and Architectural Review (COPPAR) process. Requests are to be entered into the COPPAR Tool located at <http://copper.oa.pa.gov/>. Agency CIO approval is required. Contact your agency [CoP Planner](#) for further details or assistance.

**Questions:**

Questions regarding this policy are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

**Policy Supplements:**

[STD-INF009A - e-Discovery Product Standards](#)

**Information Technology Policy  
Commonwealth of Pennsylvania  
Governor's Office of Administration/Office for Information Technology**

|                                   |  |  |
|-----------------------------------|--|--|
| <b>ITP Number:</b>                | <b>ITP-INFRM001</b>  |  |
| <b>ITP Title:</b>                 | <b>The Life Cycle of Records: General Policy Statement</b> |  |
| <b>Issued by:</b>                 | <b>Deputy Secretary for Information Technology</b>         |  |
| <b>Date Issued:</b>               | <b>September 21, 2007</b>                                  | <b>Date Revised: November 18, 2010</b> |
| <b>Domain:</b>                    | <b>Information</b>   |  |
| <b>Discipline:</b>                | <b>Records Management</b>                                  |  |
| <b>Technology Area:</b>           | <b>Database and System Design for Information Systems</b>  |  |
| <b>Revision History<br/>Date:</b> | <b>Description:</b>  |  |
| <b>11/18/2010</b>                 | <b>ITP Refresh</b>   |  |

**Abstract:**

The purpose of this Information Technology Policy (ITP) is to define the life cycle concept for the management of Commonwealth records that are in an electronic or digital format, and to provide a series of guidelines for the appropriate management of those records. This is to be read and applied in conjunction with Management Directive 210.5, "Records Management," which establishes the Commonwealth Records Management Program for records in all formats.

Electronic record or data life cycle management is the management of information that is in an electronic format throughout its existence--from creation to final disposal--across various systems and media and within various operational constraints.

Defining stages in the life cycle of electronic records and mapping records to those stages is the key process in the effective and efficient management of electronic records. Electronic records management begins with an analysis of the activities, transactions, and systems that arrange the data into an electronic format and also includes an examination of the type, format, and location of records produced by the business processes. Records typically exist in one of four stages during their life cycle: creation, current, semi-current, and inactive. A slight variation with an alternative terminology may also be useful when defining the stages of an electronic record's life cycle: online, near-line, offline, and expired. Likewise, it may be valuable for some of the more complex business processes to be broken into more than four stages.

The most critical factor in the successful management of electronic records is active management of the record at each stage in its life cycle, with recognition that each stage is interconnected from the rest. Planning for records that will require long-term or permanent preservation is to begin as early as possible and, unlike paper records, this process is to be active, not passive. The key to the successful management of electronic records is proactivity at every stage. For example, the cost of permanently preserving an electronic record may escalate dramatically based on a decision or minor cost avoidance during an earlier stage in the record's life cycle. Likewise, the ultimate authenticity, integrity, or reliability of a record in one stage of its life may be determined by actions or a lack of action during an earlier stage.

**General:**

This ITP applies to all departments, boards, commissions and councils under the governor's jurisdiction. Agencies not under the governor's jurisdiction are strongly encouraged to follow this policy.

**Policy:**

Commonwealth agencies are to conduct a systematic analysis of each type of electronic record throughout each stage in its life cycle. The analysis is to include the following factors:

- Expected usage
- Business continuity demands
- Quantity or volume
- Number of copies or backups
- Storage location and description of storage
- Legal, auditable, and business risks associated with keeping or losing records
- Legal, auditable, and business costs associated with keeping or losing records
- Security and privacy concerns
- Migration and format issues

If the schedule does not already exist for the record, the required retention and disposition schedule is to be created based on the analysis of the records during each stage in the record's life cycle. Likewise, the design of all systems and processes related to the record will take into consideration results of the analysis. The analysis is to occur prior to the implementation of any new business activity and/or related information technology systems.

The analysis will consider:

- the length of time a record is to be kept;
- the kind of system that will retain the record;
- the format to be used for retention of the record;
- the type of media and the type of backup media to be used;
- the security to be implemented during the holding of the record;
- the privacy procedures to be initiated;
- the scheduled migration of the record to the next system, with different parameters addressing each of the issues above; and
- the point at which the record will enter its final disposition (destruction or permanent retention).

Systems are to facilitate the migration of records to different formats or media as the records pass from one stage to another, as well as the purging of records as they reach the end of their life cycle.

#### **Refresh Schedule:**

All standards identified in this ITP are subject to periodic review and possible revision, or upon request by the Enterprise Architecture Standards Committee (EASC).

#### **Exemption from This Policy:**

In the event an agency chooses to seek an exemption, for reasons such as the need to comply with requirements for a federally mandated system, a request for waiver may be submitted via the Commonwealth of PA Procurement and Architectural Review (COPPAR) process. Requests are to be entered into the COPPAR Tool located at <http://coppa.pa.gov/>. Agency CIO approval is required. Contact your agency [CoP Planner](#) for further details or assistance.

#### **Questions:**

Questions regarding this policy are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

#### **References:**

[ITP-INFRM004](#): Management of Web Records

[ITP-INFRM005](#): System Design Review of Electronic Information Systems

[MD 210.5](#): Records Management

# Information Technology Policy

## Management of Web Records

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-INFRM004  | <b>Effective Date</b><br>September 21, 2007 |
| <b>Category Information</b>  | <b>Supersedes</b><br>None                   |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>June 2022        |

### 1. Purpose

This Information Technology Policy (ITP) establishes guidance regarding the retention and disposition of web resources that meet the criteria of a record. This is in accordance with Management Directive 210.5 *The Commonwealth of Pennsylvania State Records Management Program*.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions and councils under the Governor’s jurisdiction (hereinafter referred to as "agencies"). Agencies not under the Governor’s jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of this ITP that are applicable to the products and services provided to the Commonwealth.

### 3. Policy

The Commonwealth’s presence on the Internet is an important method for providing information and services to citizens and the business community. The Internet is a venue for the transaction of business and the delivery of services, both public and private. Record of this activity is necessary for accountability in cyberspace as it is in the more traditional material world.

While planning for a website, analysis of the content of the website needs to take place to determine which elements are records and the associated retention periods that have been established for each series of records. Web records may include content generated externally by customers, suppliers, or partners, who may submit or exchange information through an agency website. Web records may be generated internally and include documents such as policy statements, contracts, or other information that agency customers or partners rely upon to conduct business. Such internal records may include publications that are Web-only versions and are to adhere to Management Directive 205.23 *Submission of Commonwealth Publications to the State Library for Collection and Distribution to Other Designated Libraries*. Whether generated externally or internally, the contents of websites are to be analyzed and scheduled. Web content management systems are being employed to manage aspects of Web content control such as versioning, security, and workflows, and they should also be implemented to manage the retention of records.

When planning a website in order to meet business needs, an agency needs to make sure its website is trustworthy. Trustworthy websites involve numerous qualities. A trustworthy website is one that is reliable and in which the content can be trusted as full, accurate,



complete, and unaltered; it is authentic and has been created by the entity for which it is identified; and it is usable - its content can be easily located and retrieved.

An untrustworthy website may lead to risks. These risks include the inability to document or validate transactions, the inability to reconstruct views of Web content that were created dynamically, and the loss of versions of policies, procedures or other content that were only posted to the Web with no other copies retained.

Other ITPs and policies may be referenced that impact the construction and maintenance of a website and include guidance on accessibility, search engines, file name standards, hardware and software standards, privacy concerns, and Right-to Know policies.

All Web content, including, but not limited to, forms, policy, charts, graphics, and announcements, shall be inventoried and analyzed to define records series, and maintained and disposed of in accordance with approved records retention and disposition schedules.

The life cycle of a Web record shall be determined prior to or during creation and managed according to established policies and procedures, reference ITP-INFRM001 *Life Cycle of Records*.

These policies shall be based upon the business needs of the agency to either retain content or destroy content. Destroying content that is no longer useful reduces costs, confusion, and contradictions. Likewise, maintaining content systematically and with appropriate metadata reduces the cost of locating information when it is needed and allows the use of more automation in managing records and further reduces costs.

No Web applications or content shall be developed without taking into consideration the life cycle, retention, and disposition of the resulting records. If Web content is generated via a Web application, ITP INFRM005 *System Design Review of Electronic Systems* applies.

### **Retention and Scheduling of Web Records:**

Some Web content may already be governed by existing records retention and disposition schedules. For example, Web records may be covered under general records retention and disposition schedules and, in particular, the General Administrative Schedule. Some Web records may be duplicate copies of records maintained in another format or system and, thus, already scheduled on existing agency-specific records retention and disposition schedules.

Some Web content may only be partially governed by existing schedules or may be entirely new records. For example, databases that operate with a Web interface shall be scheduled as part of the process of scheduling the records within the database, mentioning that they are Web interactive. In some cases, the Web interface or data entry forms related to such a database may be new records and may be scheduled separately if they govern the content of the database. In particular, versions of a Web form used to input data into a database shall be retained as long as the data is retained as part of the documentation of how that data was generated.

When determining retention periods for website-related records, as with other records, the agency needs to assess how long the information is needed to satisfy business needs and provide government accountability. If specific Web content is available in places other than the website, consider whether the existence of the information in other records affects the retention needs for the Web records. If the information is unique to the website, the Web version is, by definition, the official record copy and needs to be scheduled.

The options for analyzing the addition of a website to a records retention and disposition schedule depends on associated record management risk factors. An agency may want to breakdown the website; however, this is not recommended because most websites have a variety of content types and each is to be evaluated separately for possible records management risks. A website may be analyzed as a whole, minus one or two portions that may have different characteristics, such as an e-government application. An agency may also need to break down the website by function for evaluation and scheduling purposes. This could result in a large number of independent records series. Whatever specific process is used, the entire website is to ultimately be inventoried with records series defined and scheduled.

As an example, some Web sites may have very dynamic content that may be a record (i.e., Web pages that reflect the status of various systems). If the information is used as the basis for decisions, then a log shall be created and maintained as the record. If the information is similar to a status report, then it shall be kept only as long as it is useful. All sorts of transitory announcements are entered or displayed on websites (i.e., jobs announcements and conferences) and, in most cases, it is important to keep a copy of both the announcement and the date the copy was posted and removed. Such records are to be scheduled. In many cases, the Web announcement is not the official copy, but it may still be important to retain the knowledge of when it was posted and removed from the Web site for a period of time.

The inventory process shall be coordinated with the agency Web content managers and the agency records coordinator, as well as the website manager/Web master for implementation.

#### **Records Management Requirements for Websites:**

- All agency websites shall be inventoried to define records series and establish records retention and disposition schedules for all records on the websites.
- When records on a website duplicate records stored in other formats or systems, a clear determination shall be made regarding which copy is the duplicate and which is the official record copy that is subject to the records retention and disposition schedule.
- The duplicate- and information-only Web pages are to be destroyed when they are no longer needed as indicated on the General Administration Records Retention and Disposition Schedule.
- As Web content management systems are implemented, they shall be integrated with records management systems, if possible, or have records management requirements specified in the content management system as records are created or ingested. For example, expiration dates for documents shall correspond to retention periods (unless the document on the website is a duplicate as indicated in the previous paragraph).
- When record series of official record copy containing long-term and archival records exist on a Web site, special arrangements shall be made to preserve them. They may be maintained in a separate system or format or moved to such a system after their active life on the website. If maintained on the website itself, security and access rights as well as backup provisions are to be more rigorous. For Web publications, if a permanent copy is kept on the agency servers, the State Library shall accept a persistent URL (i.e., a permanent link to the document) instead of the document itself according to the policy set forth in Management Directive 205.23 *Submission of Commonwealth Publications to the*

*State Library for Distribution to Other Designated Libraries*. The link shall be permanently maintained with redirects to its current location from the old address.

- Version control is especially important with policies, contracts, and other documents, available via the Web, which are updated or revised. This is critical for any document in which visitors to the Web site may base business decisions or actions. The date and time that specific records are posted and removed may be needed for business or administrative needs. Revised or rescinded policies are to be retained according to the Records Retention and Disposition Schedule(s). Policies will generally be archived and subject to permanent retention. It is recommended that agencies remove revised or rescinded policies from public-facing Web sites in order to prevent those policies from being mistaken with current policies. Agencies are to make provisions to keep copies of each version of policies along with the dates that the policies were issued, revised, and/or rescinded utilizing a configuration management system, document management system, agency file shares, or hard copy. Likewise, Web-based forms or other documents related to the entry of information into a database shall be maintained as long as the content generated by the forms is scheduled to be retained. For Web publications, all Web-only document versions are to be forwarded to the State Library of Pennsylvania as set forth in Management Directive 205.23 *Submission of Commonwealth Publications to the State Library for Distribution to Other Designated Libraries*.

#### **4. Responsibilities**

- 4.1 Agencies** shall comply with the requirements as outlined in this ITP.
- 4.2 Office of Administration, Office of Information Technology** shall comply with the requirements as outlined in this ITP.
- 4.3 Third-party vendors, licensors, contractors, or suppliers** shall comply with the requirements as outlined in this ITP.

#### **5. Related ITPs/Other References**

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.23 *Submission of Commonwealth Publications to the State Library for Collection and Distribution*
- Management Directive 205.34 Amended *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 210.5 *The Commonwealth of Pennsylvania State Records Management Program*
- ITP-ACC001 *Information Technology Digital Accessibility Policy*
- ITP-INFRM005 *System Design Review of Electronic Systems*

#### **6. Authority**

Executive Order 2016-06 *Enterprise Information Technology Governance*

## 7. Publication Version Control

It is the [Authorized User](#)'s responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 8. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Policy Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision   | Redline Link   |
|----------|------------|---|--|
| Original | 09/21/2007 | Base Document   |  |
| Revision | 11/18/2010 | ITP Refresh   |  |
| Revision | 06/22/2021 | <ul style="list-style-type: none"><li>ITP Refresh</li><li>Added to current ITP template</li><li>Added third-party vendors to Scope and Responsibilities Sections</li><li>Updated Related ITPs and Exemption Section</li></ul> | <a href="#">Revised IT Policy Redline &lt;06/22/2021&gt;</a> |

# Information Technology Policy

## System Design Review of Electronic Systems

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-INFRM005  | <b>Effective Date</b><br>September 21, 2007 |
| <b>Category Information</b>  | <b>Supersedes</b><br>None                   |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>June 2022        |

### 1. Purpose

This Information Technology Policy (ITP) establishes the components of proper records management throughout the design phase of information system development. In addition to specific parameters in the Policy section below, STD-INFRM005A, *System Design Review of Electronic Information Systems Questionnaire*, will assist planners, in accordance with Commonwealth records retention and disposition requirements, with assessing an electronic information system's ability to maintain records within a specified system.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions and councils under the Governor's jurisdiction (hereinafter referred to as "agencies"). Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors or suppliers shall meet the policy requirements of this ITP that are applicable to the products and services provided to the Commonwealth

### 3. Policy

Records management is an important, yet often overlooked, element of any new electronic information system.

New information systems shall address records management needs as a part of cost estimates and high-level project objectives and descriptions during the Communities of Practice (CoP) or other internal and external reviews utilizing STD-INFRM005A *System Design Review of Electronic Information Systems Questionnaire*.

New information systems or major enhancements to existing systems, whether custom-developed or Commercial-off-the-Shelf (COTS) package implementations, shall address records retention throughout the course of its development or implementation life cycle in the following ways:

- STD-INFRM005A *System Design Review of Electronic Information Systems Questionnaire*, shall be completed before final approval and implementation of an electronic information system. If records within the system are scheduled for retention beyond ten (10) years by their associated records retention and disposition schedule, a more extensive analysis shall be completed as outlined by the questionnaire.
- Requirements management plans and subsequent requirements development shall take into account records retention specifications. Records retention specifications shall:
  - Identify any records to be created by, or maintained in, the system.
  - Determine if these records are on either the general or the specific agency's approved records retention and disposition schedule. If such a schedule does

not exist for the specified records, the retention requirements shall be reviewed in accordance with the policies and procedures in Management Directive (MD) 210.5 *The Commonwealth of Pennsylvania State Records Management Program*, in order to establish a record retention schedule.

- Subsequent system life cycle activities (e.g., software design, infrastructure specification, or content) shall recognize and fulfill the records retention requirements described above.

For those systems for which it is determined that long-term or permanent records exist (as defined in STD-INFRM005A), schedule an electronic records review with the agency records coordinator and an archival appraisal with the Pennsylvania Historical and Museum Commission in accordance with the guidance provided in MD 210.5 *The Commonwealth of Pennsylvania State Records Management Program*. At the review, the following records retention topics are to be covered by the agency:

- Identify the person(s) responsible for the content of or creation of the records in the system and identify the specific organizational unit or program responsible for the records and specify whether this responsibility remains constant throughout the life of the records. The role of outside vendors shall be included if they have responsibilities to maintain the records at any stage in the record's lifecycle.
- Explain how the system will comply with the retention and disposition schedule for each series of records in the system. The composition or components of a record in a database may be dynamic, and different data or parts of records may have varying retention periods.
  - How will records scheduled for disposal be identified and how will the system fulfill the implementation of the schedule?
  - How often will this disposal occur, (i.e., daily, weekly, monthly, or annually, based on the date associated with the record)?
  - How will the date of record be determined and maintained within the system?
- Provide information for the maintenance of the records for their full life cycle according to requirements identified in ITP-INFRM001 *The Life Cycle of Records: General Policy Statement*. If records are categorized and stored according to different levels or phases of activity (i.e., active, semi-active, inactive), explain maintenance accession for each phase. Determine the different formats, platforms, software, and/or media that may be used to maintain the records during the various phases.
- Explain how the authenticity of records will be maintained throughout their life cycle.
- Explain consideration for the migration of records to future hardware and software platforms. Systems with records which are to be retained for ten (10) years or longer shall include a discussion of the strategy that will be used to plan and fund migrations. Systems with permanent records may have very high costs associated with them and are to be reviewed carefully to ensure that short-term or immediate cost savings do not result in long-term inefficiencies. For example, records stored in standard formats, rather than proprietary formats, may be less expensive to migrate. Some media may be more expensive to maintain or refresh. Paper or other human readable formats may be required.
- Describe how records that may be accessible to the public or other agencies will be maintained and made available while observing appropriate security and authenticity

requirements.

#### 4. Responsibilities

- 4.1 **Agencies** shall comply with the requirements as outlined in this ITP.
- 4.2 **Office of Administration, Office of Information Technology** shall comply with the requirements as outlined in this ITP.
- 4.3 **Third-party vendors, licensors, contractors, or suppliers** shall comply with the requirements as outlined in this ITP.

#### 5. Related ITPs/Other References

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 Amended *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 210.5 Amended *The Commonwealth of Pennsylvania State Records Management Program*
- ITP-ACC001 *Information Technology Digital Accessibility Policy*
- ITP-INFRM001 *The Life Cycle of Records: General Policy Statement*
- OPD-INFRM005A *System Design Review of Electronic Information Systems Questionnaire*

#### 6. Authority

Executive Order 2016-06 *Enterprise Information Technology Governance*

#### 7. Publication Version Control

It is the [Authorized User](#)'s responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

#### 8. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Policy Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision | Redline Link |
|----------|------------|---------------------|--------------|
| Original | 09/21/2007 | Base Document       |              |

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|----------|------------|--|--|
| Revision | 11/18/2010 | ITP Refresh  |  |
| Revision | 06/25/2021 | <ul style="list-style-type: none"> <li>• ITP Refresh</li> <li>• Added Third-party vendors to Scope and Responsibilities sections</li> <li>• Updated Related ITPs/Other References sections</li> <li>• Updated Exemption section</li> </ul> | <a href="#">Revised IT Policy Redline &lt;06/25/2021&gt;</a> |



# Information Technology Policy

## *Electronic Document Management Systems*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-INFRM006  | <b>Effective Date</b><br>June 21, 2007 |
| <b>Category</b><br>Domain  | <b>Supersedes</b><br>None              |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>July 2022   |

### 1. Purpose

This Information Technology Policy (ITP) establishes an enterprise-wide policy for all Commonwealth agencies pertaining to Electronic Document Management Systems (EDMS) software and activities associated with EDMS procurement and implementation.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions, and councils under the Governor’s jurisdiction (collectively "agencies"). Agencies not under the Governor’s jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of this ITP that are applicable to the products and services provided to the Commonwealth.

### 3. Definitions

**3.1 Electronic Document Management Systems (EDMS)** – the use of a computer system and software to store, manage, and track electronic documents and electronic images of paper-based information captured through the use of a document scanner.

### 4. Policy

Agencies shall consider and evaluate the user of an EDMS solution for business processes that necessitate simultaneous access and management of documents and files, conversion of hardcopy materials to electronic images, or automatic workflow processes.

Agencies shall adhere to the following in the procurement, implementation, and upgrade of EDMS software and hardware:

- Industry standard file formats as outlined in STD-INFRM006A *File Formats Supported by Electronic Document Management Systems*.
- Commonwealth’s EDMS software standards as detailed in STD-INFRM006B *Electronic Document Management Product Standards*.
- Other applicable ITPs and Management Directives (MDs) addressing records management.

Agencies shall coordinate with the agency CoP planner to determine if an Information Technology Investment submission and/or a Community of Practice (CoP) IT Project Proposal based on the criteria outlined in ITP-BUS001 *IT Planning and Projects* and ITP-BUS002 *IT Investment Review Process* are required prior to engaging in the implementation or upgrade of an EDMS.

The agency shall complete the documentation in RFD-INFRM006C *EDMS System Evaluation*

*Questionnaire* and include it as an attachment to the submission.

Agencies implementing EDMS solutions shall ensure that their implementation:

- Has an infrastructure sufficiently robust to transport the required volume of transactions.
- Is image-based and uses electronic files to allow easy exchange with other agency or Commonwealth systems for ease of document and information dissemination with internal and external users.
- Has flexible reader content into multiple renditions for the easy output of selected image(s) and associated file name(s) in whatever standard or industry-predominate image file/data format that is in use by the Commonwealth at the time of the implementation.
- Allows native access that does not require a proprietary intermediary format.
- Interoperates with the enterprise-wide Microsoft Exchange email network for the transmission of ad-hoc electronic document records/images/data between agencies under the Governor's jurisdiction.
- Uses defined file formats and compression ratio.
- Outputs associated nonproprietary basic index data to an American Standard Code for Information Interchange (ASCII) format.
- Permits the transfer of larger volume image/index files via disk or tape media.

Agencies implementing EDMS shall perform the following:

- Approve the scanning of the documents prior to the purchase of scanners after consultation with appropriate entities as defined in Management Directive 210.4 *Central Microfilm Management*.
- Contact the Enterprise Records Information Manager to assist with scanner recommendations for correct file format output/resolution, and to review document types to be scanned.
- Determine the level of mission criticality of their EDMS and design the infrastructure, security, and operational procedures necessary to support the EDMS commensurate to the level of mission criticality of the EDMS.
- Contact the agency records coordinator to amend the Agency-Specific Records Retention and Disposition Schedule to reflect records series amendments/additions.
- Appropriately design the system to maintain and manage the resulting records for their defined retention period(s).
- Arrange for image storage on servers that are secured and backed up.
- Test the system throughput with a volume/type/quality of documents sufficient to simulate "peak production processing" and assess the impact (e.g. performance degradation) on the network and infrastructure.
- "Lock-down" scanning applications to prohibit image manipulation/alteration; restricting these capabilities to system administrators or assigned staff in consultation with agency legal counsel.
- Address and define a quality control regimen to assure image quality and indexing accuracy.
- Document and design scanning processes to include policy and training manuals, audit processes, benchmark tests and quality assurance (image quality and index values).
- Design systems and processes to provide for system security, trustworthiness, accuracy, integrity and preservation of contextual records origin information (e.g., date of creation, creating organization, record format).
- Perform a post-implementation review six months after the successful completion of system acceptance testing to assess the performance measures and benefits realized

from the project.

## 5. Responsibilities

**5.1 Agencies** shall comply with the requirements as outlined in this ITP.

**5.2 Third-party vendors, licensors, contractors, or suppliers** procuring and/or implementing EDMS solutions on behalf of the Commonwealth shall comply with the requirements as outlined in this ITP.

## 6. Related ITPs/Other References

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 Amended *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 210.4 Amended *Central Microfilm Management*
- ITP-ACC001 *Information Technology Digital Accessibility Policy*
- ITP-BUS001 *IT Planning and Projects*
- ITP-BUS002 *IT Investment Review Process*
- STD-INFRM006A *File Forms Support by Electronic Document Management Systems*
- STD-INFRM006B *Electronic Document Management Product Standards*
- RFD-INFRM006C *EDMS System Evaluation Questionnaire*

## 7. Authority

Executive Order 2016-06 *Enterprise Information Technology Governance*

## 8. Publication Version Control

It is the [Authorized User's](#) responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 9. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Policy Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision | Redline Link |
|----------|------------|---------------------|--------------|
| Original | 06/21/2007 | Base Document       | N/A          |

|          |            |  |  |
|----------|------------|--|--|
| Revision | 05/13/2020 | <ul style="list-style-type: none"> <li>• Revised policy format</li> <li>• Removed reference to COPPAR tool</li> <li>• Removed EDMS resource account and reference to EDMSIT Specialist</li> </ul>      |  |
| Revision | 07/19/2021 | <ul style="list-style-type: none"> <li>• ITP Refresh</li> <li>• Added Definition Section</li> <li>• Added Third-party vendors to Scope and Responsibilities</li> <li>• Updated Related ITPs</li> </ul> | <a href="#">Revised IT Policy Redline &lt;07/19/2021&gt;</a> |

# Information Technology Policy

## Commonwealth of PA Electronic Information Privacy Policy

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|--|--|
| <b>ITP Number</b><br>ITP-PRV001  | <b>Effective Date</b><br>August 07, 2006 |
| <b>Category</b><br>Privacy   | <b>Supersedes</b><br>None                |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>March 2019    |

### 1. Purpose

Establishes guidance on the management of privacy of Commonwealth electronic information.

### 2. Scope

This Information Technology Policy (ITP) applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

### 3. Background

Information can be accessed from a multitude of technologies, including, but not limited to:

- Internet/Intranet/Extranet sites and applications;
- Internal client-server and mainframe applications; and
- Data storage devices.

To address the privacy and protection of information, federal and state governments have developed the following legislative mandates (not a full listing):

#### Health

Health Insurance Portability and Accountability Act (HIPAA) of 1996  
Centers for Medicare & Medicaid Services (CMS) Minimum Acceptable Risk Standards for Exchanges (MARS-E)  
Confidentiality of HIV-Related Information Act, 35 P.S. §§ 7601 et. seq.  
Disease Prevention and Control Law of 1955, 35 P.S. §§ 521.1 et. seq.

#### Financial

Sarbanes-Oxley Act of 2002  
Gramm-Leach-Bliley Act  
Internal Revenue Service (IRS) Publication 1075 Safeguards Privacy and Audit Requirements

#### Identity

Real ID Act of 2005

#### Public Safety

Pennsylvania Criminal History Record Information Act (CHRIA), 18 Pa. C.S.A Section 9101 et seq.

#### General

Federal Privacy Act of 1974  
Pennsylvania House Resolution 351  
Commonwealth of Pennsylvania Breach of Personal Information Notification Act (73 P.S. §

2301 et seq.)

Family Educational Rights and Privacy Act (FERPA)

Visitors accessing Commonwealth websites are to be provided with a policy that encompasses a collection of information online so these users can make informed choices about interacting with the Commonwealth electronically. The Commonwealth is to ensure that agencies enforce and meet all federal and state legislative mandates related to information privacy for each system interacting with electronic information.

#### **4. Policy**

This policy establishes the Commonwealth's electronic information privacy standards specific to the following areas:

- Commonwealth-Owned Websites - Outlines standards for commonwealth-owned websites and applications with respect to privacy considerations;
- Agency Electronic Information Confidentiality Agreement - Provides guidance for the creation and enforcement of agency electronic information confidentiality agreements;
- Creating/Maintaining Auditable Data - Provides guidance for categorization of data and user types for authentication and access logging for use in audits;
- Privacy Impact Assessment – Annual review of in-scope information technology (IT) systems.

Agencies are responsible for annually reporting compliance with this policy to the Office of Administration/Office for Information Technology Enterprise (OA/OIT Enterprise). If there are areas in which an agency is not compliant, the agency is to provide a planned course of action to bring the agency within compliance of this policy.

#### **Commonwealth-Owned Websites**

All Commonwealth-owned websites and web-based applications will link to the privacy statement defined in the Pennsylvania Privacy Policy, located at: <http://www.pa.gov/privacy-policy/>. Refer to ITP-SFT002 *Commonwealth of PA Website Standards* for additional guidance on the management of agency-owned web sites. Agencies are responsible for ensuring agency websites and applications are in adherence with this privacy statement.

#### **Agency Electronic Information Confidentiality Agreement**

Each agency is to provide a confidentiality agreement defining the responsibilities of the agency's employees and business partners (e.g., contractors, vendors) in maintaining the privacy of that agency's electronic information. Per ITP-PRV002, *Electronic Information Privacy Officer*, the agency electronic information privacy officer, in conjunction with the agency human resources department, is responsible for the development and administration of this confidentiality agreement. The agency confidentiality agreement may include additional agency-specific information deemed appropriate by the agency electronic information privacy officer.

The agency confidentiality agreement is to:

- Identify the state and federal legislation that applies to the agency-specific business;
- Identify relevant policies the agency is to meet (i.e., agency level);
- Clarify that use of and access to electronic information is audited;

- Address ongoing responsibility for an employee to maintain, upon departure from the agency, the privacy of electronic information the individual was privy to during employment with the agency, pursuant to Commonwealth policy; and
- Include a signature sheet, which includes name and date of signature.

All Commonwealth employees and business partners are to verify through signature that they have read and accepted the terms of the agreement. All signed signature sheets are to be maintained by each agency in the appropriate office.

Agencies are to maintain signature sheets for a period in compliance with Commonwealth document retention policies including, but not limited to, Management Directive 210.5 *The Commonwealth of Pennsylvania State Records Management Program*.

### **Creating/Maintaining Auditable Data**

Agencies are to categorize both data and users permitted to access various categories of electronic information, based on the guidelines provided ITP-SEC019 *Policy and Procedures for Protecting Commonwealth Electronic Data*. Agencies are to determine and identify all electronic information access activities that are to be logged, based on the categorized electronic information and are to capture and maintain, at a minimum, the required log data as defined below.

### **Log Data Requirements**

For any electronic information defined as Sensitive Security, Protected, or Privileged as defined in ITP-SEC019, as well as data that agencies opt to maintain log/audit information for, agencies are to maintain a log/history of all transactions resulting in inserts, updates, and deletes. Agencies are to have the capability to capture log information for inquiry requests.

For electronic information defined as Prerequisite-Required as defined in ITP-SEC019, the agencies' discretion prevails as to whether log information is maintained.

### **Types of users**

Users are to be broken into the following categories:

- *Employee* – employee/contractor roles for accessing electronic information as part of the definition of the job;
- *Public* – citizen, business, non-commonwealth-related users;
- *Auditor* - individual with specific business need to access electronic information for purposes of performing audits;
- *Other Agency* - other Commonwealth agencies with a business need to access electronic information; and
- *Business Partner* - users defined as business partners based on agency specification.

### **Auditable logs**

Based on the type of electronic information and user access, agencies are responsible for maintaining auditable logs for electronic information access as specified by their applicable state and federal legislation.

At a minimum, audit/log information is to include:

- user identification;
- user level (type of user);
- date and time of activity;
- type of activity (insertion, update, deletion, read/request); and
- key value or identifier for record accessed.

### **Privacy Impact Assessments (PIA)**

Agencies are to conduct a PIA when they begin to develop a new or significantly modified information technology system as well as conduct an annual privacy impact assessment on all information technology systems and data to ensure that all data and user access is categorized appropriately. Results of this annual survey are to be available for review by the Office of Administration upon request. The agency electronic information privacy officer is responsible for ensuring these provisions are met. Agencies are to use OPD-PRV001A *Privacy Impact Assessment Template* to document the assessment findings.

### **PIA Content**

The PIA is to contain, at a minimum, the following information:

1. Analysis and description of the Sensitive Security, Protected, or Privileged electronic information that is collected by the agency;
2. Explanation of why this information is collected;
3. Description of how the agency utilizes this information, including those categories of users which have access to the data and why;
4. Description of with whom the information can be and is shared, including the types of categorized users;
5. Description of any notice or opportunities for consent that would be provided to individuals regarding what information is collected and how that information is shared;
6. Description of how this information is to be secured; and
7. Description of how access to this information is logged/archived in coordination with this policy; and
8. Detail laws, policies, directives, standards, and other privacy-related requirements that apply to data; and
9. Detail potential impact to organizations or individuals should a breach occur.

## **5. Responsibilities**

**Commonwealth agencies** under the Governor's jurisdiction are to actively manage their websites, applications, and other electronic assets to ensure proper privacy protections are in place. This includes:

- Point all in-scope websites and applications to the to the privacy statement defined in the Pennsylvania Privacy Policy
- Obtaining and retaining all required confidentiality agreements
- Adhering the Log Data Requirements
- Conducting annual privacy impact assessments (PIA), using OPD-PRV001A *Privacy Impact Assessment Template* to document the assessment findings



## 6. Related ITPs/Other References

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 210.5 – *The Commonwealth of Pennsylvania State Records Management Program*
- Pennsylvania Privacy Policy statement: <http://www.pa.gov/privacy-policy/>
- OPD-PRV001A *Privacy Impact Assessment Template*
- ITP-PRV002 – *Electronic Information Privacy Officer*
- ITP-SEC000 – *Information Security Policy*
- ITP-SEC015 – *Data Cleansing Policy*
- ITP-SEC019 – *Policies and Procedures for Protecting Commonwealth Electronic Data*
- ITP-SEC024 – *IT Security Incident Reporting Policy*
- ITP-SFT002 – *Commonwealth of PA Website Standards*
- NIST SP 800-122 – *Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)*

## 7. Authority

Executive Order 2016-06, Enterprise Information Technology Governance

## 8. Publication Version Control

It is the user's responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 9. Exemption from This Policy

In the event an agency chooses to seek an exemption, for reasons such as the need to comply with requirements for a federally mandated system, a request for waiver may be submitted via the Commonwealth of PA Procurement and Architectural Review (COPPAR) process. Requests are to be entered into the COPPAR Tool located at <http://coppa.oa.pa.gov/>. Agency CIO approval is required.

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision   |
|----------|------------|---|
| Original | 08/07/2006 | Base Document   |
| Revision | 03/01/2017 | ITP format revision (no policy revisions)<br>Updated Privacy Policy URL<br>Updated ITP references |

|          |            |  |
|----------|------------|--|
| Revision | 03/23/2018 | Annual Review<br>Clarified language throughout<br>Corrected HIPAA name in Background section<br>Added additional regulation references<br>Removed Privacy Domain Team references<br>Revised the Log Data Requirements subsection<br>Added OPD-PRV001A <i>Privacy Impact Assessment Template</i><br>Added reference to ITP-SFT002<br>Added Responsibilities section |
|----------|------------|--|

# Information Technology Policy

## *Information Security Policy*

|  |                                   |
|--|-----------------------------------|
| <b>ITP Number</b><br>ITP-SEC000  | <b>Effective Date</b><br>May 2016 |
| <b>Category</b><br>Security  | <b>Supersedes</b><br>None         |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>Annual |

### 1. Purpose

This Information Technology Policy (ITP) establishes a program to ensure that the Commonwealth meets or exceeds its legal and ethical responsibilities for securing its IT Resources including, but not limited to, its critical and sensitive information technology resources. This ITP is necessary to ensure that the Commonwealth:

- Establishes an enterprise-wide approach to information security, including appropriate security awareness training, and education.
- Complies with federal and state guidelines and regulations regarding the collection, maintenance, use, and security of IT Resources.
- Provides a mechanism for agencies to collaborate with the Office of Administration, Office for Information Technology (OA/OIT) on new and emerging technologies in order to effectively develop and share enterprise and security architecture deliverables by:
  - Establishing and implementing prudent, reasonable, and effective practices for the protection and security of IT Resources, resources which includes the protection of sensitive and confidential information against accidental or deliberate unauthorized disclosure, modification, or destruction.
  - Developing information security policies and effective mechanisms for responding to incidents, breaches or misuse of IT Resources.
  - Providing a minimum level of Information Technology (IT) security requirements that have been determined acceptable for the transmission, processing, and storage of sensitive system data and business processes.
  - Reducing the overall and specific risks of breach or misuse of Commonwealth IT Resources and the damages and costs associated with a breach or misuse.

### 2. Scope

This ITP applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

### 3. Definitions

- 3.1 Enterprise Information Security Office (EISO):** Office within OA/OIT tasked with managing the enterprise IT security posture for the Commonwealth as it pertains to governance, risk, and compliance.
- 3.2 Federal Information Processing Standards (FIPS):** A federal IT standard established by the NIST.
- 3.3 IT Resources:** Include, but are not limited to, the staff, software, hardware, systems, services, tools, plans, data, and related training materials, and documentation that in combination support business activities. Examples of IT Resources include, but are not limited to, desktop computers, mobile devices, email, telephones, servers, and network switches/routers.
- 3.4 National Institute of Standards and Technology (NIST):** A division of the federal Department of Commerce tasked with research and the establishment of federal IT standards.
- 3.5 Offshore:** Any country or territory outside the Continental United States or Hawaii.
- 3.6 CONUS:** Any of the Continental United States and Hawaii.

### 4. Policy

OA/OIT is responsible for protecting the Commonwealth's IT Resources in accordance with all applicable federal and state guidelines and regulations; as well as, with effective information security practices and principles generally accepted as "due diligence" within the business community.

All agencies must comply with Commonwealth Information Security Policies. Information Security Policies are identified as ITPs by the Security (SEC) designation.

Appropriate action will be taken when loss, damage, or breach of confidentiality results from non-compliance with Commonwealth policies and Management Directives. Any agencies found to be in non-compliance with ITPs must employ immediate corrective actions. Agencies must also have compliance and risk management methodology in place to ensure agencies are maintaining compliance, remediating vulnerabilities and reducing IT security risks.

In the absence of existing policies or procedures that cover new or existing security implementation, the Commonwealth will follow industry security best practices and/or well-known security standards such as the FIPS and Special Publications (SP) published by the NIST. If there is not a Security ITP that covers the scope of the security implementation, agencies must submit a waiver for this policy accompanied by the specific proposed solution through the policy waiver process for review by EISO. Refer to Section 8 and ITP-BUS004 *IT Waiver Review Process* for guidance on the policy waiver process.

#### 4.1 Offshore Access

Offshore access to Commonwealth production systems, whether hosted by the Commonwealth or by third parties, is prohibited by anyone not physically located in CONUS. This includes, but is not limited to:

- Virtual Private Network (VPN);
- Remote desktop;
- Virtual Desktop Infrastructure (VDI);

- Cloud infrastructure such as Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) offerings; and
- All access to Commonwealth “C” designated data, as defined in ITP-SEC019.

It is required that all Commonwealth “C” designated data, as defined in ITP-SEC019, reside in CONUS where it is subject to the laws and regulations of the United States and the various jurisdictions within the United States. Transmission to Offshore systems or storage on Offshore systems is prohibited.

- 1) Offshore direct remote access to “C” designated data on any Commonwealth production system is prohibited regardless of the file type or storage medium. This includes, but is not limited to:
  - Databases;
  - Documents (PDF, Word, Text, etc.);
  - Spreadsheets; and
  - Images.
- 2) Offshore direct remote access to networking equipment (including but not limited to routers, switches, firewalls, etc.) which could be changed to gain access to “C” designated data on any internal system in the Commonwealth is prohibited.

Offshore work will be strictly limited to lower and test environments. There should be no Offshore access to production servers or to production environments. Offshore resources will only receive test or anonymized data that is not traceable or linkable to “C” designated data. Offshore resources should have no access to production data.

Offshore work should be performed in accordance with the OPD-SEC000A *Security Requirement Traceability Matrix*. All maintenance and support after system implementations should be performed by resources located and authorized to work within CONUS. Offshore resources should not be used for any post go live support.

## 5. Related ITPs/Other References

Definitions of associated terms of this policy are published on the Office of Administration’s public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration’s public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- National Institute of Standards and Technology (NIST) Special Publications (SP) - <http://csrc.nist.gov/publications/PubsSPs.html>
- Federal Information Processing Standards Publications (FIPS PUBS) - <http://csrc.nist.gov/publications/PubsFIPS.html>

## 6. Authority

*Executive Order 2016-06 Enterprise Information Technology Governance*

## 7. Publication Version Control

It is the user’s responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 8. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this IT policy, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review Process](#) for guidance.

This chart contains a history of this publication’s revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision  | Redline  |
|----------|------------|--|--|
| Original | 05/19/2016 | Base Document  | N/A  |
| Revision | 05/07/2020 | Clarified language throughout<br>Revised Definitions section<br>Added Exemption section<br>Removed references to COPPAR throughout<br>Offshore Access added<br>OPD-SEC00A Security Requirement Traceability Matrix created | <a href="#">Revised ITP Policy</a><br><a href="#">Redline &lt;05/07/2020&gt;</a> |

# Information Technology Policy

## *Internet Accessible Reverse-Proxy Servers and Services*

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-SEC002  | <b>Effective Date</b><br>November 8, 2005 |
| <b>Category</b><br>Security  | <b>Supersedes</b>                         |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>June 2022      |

### 1. Purpose

This Information Technology Policy (ITP) provides direction regarding the use of Reverse-Proxy Servers and services by Commonwealth agencies, establishes the policy for the utilization of the Office of Administration (OA)/Office for Information Technology (OIT) Reverse Proxy Managed Services and establishes the approval process to continue to use existing or obtain new servers/services.

The Commonwealth of Pennsylvania has been rapidly deploying mission critical web accessible applications to meet the business needs of the Commonwealth agencies and constituents. Security vulnerabilities and cyber terrorism threats have become common, so it is imperative that the Commonwealth take the necessary steps to ensure the integrity and availability of mission critical applications that rely on Reverse-Proxy Servers by mitigating these vulnerabilities.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions and councils under the Governor's jurisdiction (hereinafter referred to as "agencies"). Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of this ITP that are applicable to the products and services provided to the Commonwealth.

### 3. Definitions

**3.1 Reverse-Proxy Server:** a type of proxy server that typically sits behind the firewall and directs client requests to the appropriate backend server.

**3.2 Reverse Proxy Managed Services:** The service follows a defined standardized process to implement reverse proxy requests that includes Service Request, Solution proposal, and monitoring.

## 4. Policy

To ensure maximum security within the Commonwealth, OA/OIT maintains managed reverse proxy services for agency use. Agencies are required to utilize the OA/OIT Reverse Proxy Managed Services to fulfill their business requirements for Reverse-Proxy Servers and services.

An approved exception waiver is required if an agency desires to implement their own Reverse-Proxy Server and/or utilize the standard reverse proxy service for a web server at an agency location. Due to the criticality of enterprise-wide security standards for web applications, OA/OIT strongly discourages agencies from seeking exemptions to this policy.

Reverse-Proxy Servers, and all corresponding web servers, whether at an OA/OIT enterprise data center location or at an agency location, will be subject to security scans and vulnerability scans prior to network connectivity and on a regular basis, and will be required to comply with ITP SEC001 *Enterprise Host Security Software Policy*.

The Enterprise Information Security Office will contact the OA/OIT enterprise data center or the respective agency contact, if a security vulnerability exists and/or a security incident occurs on a Reverse-Proxy Server or web server. A timeframe will be established for the required resolution of the concern. If the concern is not addressed within the requested timeframe, OA/OIT will take appropriate action to mitigate the threat.

## 5. Responsibilities

**5.1 Agencies** that want to seek an exemption to this policy, the agencies shall submit a request for a policy waiver via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Policy Waiver Review Process](#) for guidance. An Agency shall include in the policy waiver request the reason why the standard Reverse Proxy Managed Services offering option cannot be used. Details are required about the application, connectivity, server requirements, and equipment location. Network diagrams shall be included to illustrate the security components that will protect the Reverse-Proxy Server(s) and the corresponding web servers that are housed at the agency or in a co-location space.

OA/OIT will review each waiver request. After the reverse-proxy server waiver has been reviewed, one of the following responses will be forwarded to the agency:

- **Approved** – Web server may reside at agency location(s) and/or Agency managed reverse-proxy server solution may be utilized.
- **Approved with conditions** – Web server can reside at agency location(s); however it is to utilize the enterprise reverse-proxy services.
- **Disapproved** - Web server is to reside in an OA/OIT enterprise data center.

If an agency is granted an exemption in whole or in part, the agency must install server agents as per ITP-SEC001 *Enterprise Host Security Software Policy* on the Reverse-Proxy Servers and the internal web servers that are serviced by the Reverse-Proxy Server. Additionally, the agency must ensure access through all agency access firewalls to allow OA/OIT Enterprise Information Security Office to complete required internet scans and vulnerabilities scans of these servers.

**5.2 Third-party vendors, licensors, contractors, or suppliers** providing reverse proxy servers and services shall comply with the requirements outlined in this ITP and OPD-SEC000B *Security Policy Requirements for Third Party Vendors*.



## 6. Related ITPs/Other References

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 Amended *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*

## 7. Authority

Executive Order 2016-06 *Enterprise Information Technology Governance*

## 8. Publication Version Control

It is the Authorized user's responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 9. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this IT policy, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Policy Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision  | Redline Link   |
|----------|------------|--|--|
| Original | 11/8/2005  | Base Document  |  |
| Revision | 4/2/2014   | ITP Reformat   |  |
| Revision | 06/04/2021 | Updated Bureau Names<br>Changed policy name from proxies to reverse proxies<br>Added Definitions Section<br>Added Third party vendors to Scope and Responsibilities Sections | <a href="#">Revised IT Policy Redline &lt;06/04/2021&gt;</a> |

# Information Technology Policy

## *Enterprise Web Application Firewall*

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-SEC004  | <b>Effective Date</b><br>January 15, 2010 |
| <b>Category</b><br>Security  | <b>Supersedes</b>                         |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>May 2022       |

### 1. Purpose

This Information Technology Policy (ITP) establishes the policy and enterprise-wide standards for web application firewalls.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions, and councils under the Governor's jurisdiction (hereinafter referred to as "agencies"). Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of this ITP that are applicable to the products and services provided to the Commonwealth.

### 3. Objective

To establish policy and enterprise-wide standards for use of the web application firewalls.

### 4. Definitions

**Web application firewall (WAF):** address the needs of limiting Internet attacks and monitoring of Web applications located in the Commonwealth. A web application firewall provides a number of key benefits to the Commonwealth's Enterprise Data Center (EDC) and the agencies that house web applications there. These benefits include:

- Protecting against web attacks.
- Minimizing the threat window for each exposure by blocking access to vulnerability until the vulnerability can be fixed in the source code.
- Meeting compliance requirements.
- Monitoring end-user's transactions with a web application.
- Providing an additional layer of web application hardening.

### 5. Policy

In order to ensure the highest levels of security and overall effectiveness of protecting Internet-facing web applications, compliance rule sets will be invoked by the Enterprise Information Security Office to automatically block attacks coming from the Internet. Internet-facing web application located in Commonwealth datacenters are encouraged to use the web

application firewall standard for protecting sensitive, protected, privileged, or prerequisite required information.

Other WAF security control standards include but not limited to the following:

- A business-determined mission critical internet-facing web application infrastructure can be secured by either a hardware or software formfactor.
- The web application firewall may not disallow an authorized request from an internet user and may not affect legitimate business traffic in the IT infrastructure while protecting web applications.
- The web application firewall default configuration must be able to monitor and prevent specific web application attacks until emergency patches and/or source-code changes can be made to the vulnerable web application.
- The default web application rule configuration must be able to monitor and immediately block types of Web attacks targeting the webapplication.
- A SSL certificate is required by the web application firewall to inspect data passed between the Web servers.
- The web application firewall must be able to track, log, and inspect the following information relating to the web applications access by the end-user:
  - Application layer network traffic;
  - External and internal user sessions;
  - External and internal user-encrypted sessions;
  - Simulated attacks;
  - Blocked attacks; and
  - HTTP, HTTPS, Proxy error logging to Security Information and Event Management (SIEM).
- Real-time automated failover architecture is required when web application firewall is integrated inline and could impact the flow of business-critical network traffic.

**Monitoring**

In accordance with Management Directive 205.34 Amended, *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*, communication with a Commonwealth authorized user may be audited by the Enterprise Information Security Office on a random basis to ensure compliance with set Web application firewall protection rules.

**6. Product Standards for Web Application Firewalls**

**CURRENT STANDARDS**

(These technologies or products meet the requirements of the current architecture and are recommended for use.)

| <b>Technology or Product</b> | <b>Product or Platforms</b> | <b>Technology Classification</b> |
|------------------------------|-----------------------------|----------------------------------|
| Telecom Service Provider     | Service Provider Product    | Current                          |
| Cloud Service Provider       | Service Provider Product    | Current                          |
| iMPERVA (SecureSpere)        | Hardware based (Appliance)  | Current                          |

## CONTAIN

(These technologies or products no longer meet the requirements of the current architecture and are not recommended for use. These technologies are to be phased out over time. No date has been set for their discontinuance.)

| Technology or Product | Product or Platforms | Technology Classification |
|-----------------------|----------------------|---------------------------|
| --                    | --                   | Contain                   |

## RETIRE

(These technologies or products are being phased out. Plans are to be developed for their replacement, especially if there is risk involved, such as lack of vendor support. A date for retirement has been set.)

| Technology or Product | Product or Platforms | Technology Classification |
|-----------------------|----------------------|---------------------------|
| --                    | --                   | Retire mm/dd/yy           |

## EMERGING / RESEARCH

(Emerging technologies have the potential to become current standards. At the present time, they are to be used only in pilot or test environments where they can be evaluated. Use of these technologies is restricted to a limited production mode, and requires approval of a waiver request. Research technologies are less widely accepted and time will determine if they will become a standard.)

| Technology or Product | Product or Platforms | Technology Classification |
|-----------------------|----------------------|---------------------------|
| --                    | --                   | Emerging / Research       |

## 7. Web Application Firewall Compliance Standards

These minimum compliance standards are intended to provide a default set of Web application firewall protection rules to protect Commonwealth data from internet web attacks. The minimum Web application compliance standard consists of protection categories with the following settings:

### Web Application Firewall Standard Protection

(A shaded category indicates blocking is enabled for the protection rule)

| Category type for a protection rule | Counter measures  |
|-------------------------------------|---|
| Application Buffer Overflow         | Sending too much data in a request to the application.                        |
| Cross-site scripting (XSS)          | Inserting scripting language into text fields to be displayed to other users. |

|  |   |
|--|---|
| Cookie Poisoning                             | Modifying the cookie file causing the return of unauthorized information or enabling performance of activity on behalf of another user.                                     |
| Forceful Browsing                            | Gaining access to the constrained areas in a Web server directory.  |
| Hidden Field Manipulation                    | Modifying form fields allowing damaging data to pass to the Web application.  |
| Parameter Tampering                          | Modify the parameters being passed as part of the URL.  |
| Stealth Commanding (e.g., SQL/OS Injections) | A code injection technique that exploits a security vulnerability occurring in the database layer of an application.  |
| URL & Unicode encoding                       | Encoding certain characters in the URL to bypass application filters, thus accessing restricted resources on the Web server.  |
| GEOIP Blocking                               | GEO IP policies are configured to block traffic based on the originating county source.   |
| IP Reputation                                | A technique for accurate, early, and frequently updated identification of compromised and malicious clients so attackers can be blocked before they target web application. |

No additional “protection rules” may appear before these enterprise “protection rules” without approval from the Enterprise Information Security Office.

Agencies may request additional “protection rules” for their agencies’ business requirements by contacting the Enterprise Information Security Office.

**8. Responsibilities**

**8.1** The Commonwealth's Chief Information Security Officer (CISO) will regularly audit for

compliance with this policy and its associated standards.

- 8.2 Agency Information Security Officers (ISOs) or designates are to ensure agency internet traffic is in accordance with this policy.
- 8.3 Third-party vendors, licensors, contractors, or suppliers utilizing web application firewalls shall comply with the requirements as outlined in this ITP.

**9. Related ITPs/Other References**

Definitions of associated terms of this policy are published on the Office of Administration’s public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT policies are published on the Office of Administration’s public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>

- MD 205.34 Amended – *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- ITP-SEC019 - *Policy and Procedures for Protecting Commonwealth Electronic Data*

**10. Authority**

- Executive Order 2016-06, Enterprise Information Technology Governance

**11. Publication Version Control**

It is the [Authorized User’s](#) responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

**12. Exemption from This Policy**

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review Process](#) for guidance.

This chart contains a history of this publication’s revisions:

| Version  | Date       | Purpose of Revision  | Redline Link   |
|----------|------------|--|--|
| Original | 01/15/2010 | Base Document  |  |
| Revision | 04/2/2014  | ITP Reformat; Merged OPD-SEC004B, STD- SEC004A into ITP  |  |
| Revision | 05/05/2021 | Added Definition section<br>Add Telecom Service provider<br>Add Cloud Service provider<br>Add GeoIP blocking<br>Add IP Reputation<br>Added Exemption from This Policy Section<br>Added third party vendors to Scope and Responsibilities section | <a href="#">Revised IT Policy Redline &lt;05/05/2021&gt;</a> |

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## Information Technology Policy

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### *Minimum Contractor Background Checks Policy*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SEC009  | <b>Effective Date</b><br>March 1, 2006 |
| <b>Category</b><br>Recommended Policy  | <b>Supersedes</b>                      |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>July 2022   |

#### 1. Purpose

This Information Technology Policy (ITP) establishes the enterprise-wide policy for minimum contractor employee background checks. The purpose of this policy is to establish the requirement that, as a condition for award of a contract or purchase order, contractors providing services to the Commonwealth (hereinafter referred to as *Provider*) conduct criminal background checks for all contractor employees (hereinafter referred to as *Contract Resources*) who will perform services onsite at Commonwealth owned or leased facilities, who will have access to Commonwealth owned or leased facilities via onsite or remote computer access or who will have access to Commonwealth data. This policy is intended to ensure the protection, security, and privacy of Commonwealth employees, customers, and Commonwealth data, information, and information systems.

#### 2. Scope

This ITP applies to all offices, departments, boards, commissions, and councils under the Governor’s jurisdiction (hereinafter referred to as “agencies”). Agencies not under the Governor’s jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of this ITP.

This policy applies to all contracts issued by agencies through which Contract Resources of a *Provider*, or of its subcontractors, have access to Commonwealth data or have on-site or remote computer access to Commonwealth owned or leased facilities.

#### 3. Policy

This policy requires *Providers*, as a condition of award of a contract or purchase order, to conduct a pre-employment background check on any *Contract Resource* who will perform services onsite at Commonwealth owned or leased facilities, who will have access to Commonwealth owned or leased facilities via onsite or remote computer access, or who will have access to Commonwealth data. Criminal records shall be checked for the previous five (5) years. For *Contract Resources* retained by the Commonwealth for more than one year, the *Provider* shall conduct such criminal record checks annually.

For *Contract Resources* that reside in the Commonwealth, criminal background checks shall be conducted by the Pennsylvania State Police via a Criminal Record Check form and procedure.

For *Contract Resources* that reside out of the Commonwealth, Provider shall have a criminal background check conducted in the state that the Contract Resource currently resides.

- A contact list has been provided by the Department of Homeland Security here for [Out of State Background Checks](#).

Background checks of a prospective *Contract Resource* shall include checks that screen against state and local systems containing information on criminal arrests, convictions, warrants, and incarcerations. A reinvestigation shall be conducted within 10 years from the date of the previous background investigation for *Contract Resources* requiring access to Federal Tax Information (FTI).

A fingerprint database search shall be required for *Contract Resources* having access to the PA Commonwealth Law Enforcement Assistance Network (CLEAN), any Criminal Justice Information (CJI), Federal Tax Information (FTI), or any Criminal History Record Information (CHRI) data, by either onsite or remote computer access.

*Providers* shall be responsible for the payment of all fees associated with background checks for their *Contract Resources* and/or subcontracted employees.

In addition to the above procedure, the following language, or language similar to the following language, shall be included in all Commonwealth procurement vehicles and documents, including: Requests for Proposal (RFPs), Invitations to Qualify (ITQs), Requests for Quote (RFQs), sole-source contracts, renewals, amendments, and agency Statements of Work (SOWs) for services to be performed onsite at Commonwealth owned or leased facilities, via onsite or remote computer access, or who have access to Commonwealth data:

"The *Provider* shall, 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 Commonwealth owned or leased facilities, either through onsite or remote access or who will have access to Commonwealth data. Background checks are to be conducted via the Request for Criminal Record Check for in-state *Contract Resources* or via a criminal background check through the appropriate State Agency for the out of state *Contract Resources*. The background check is to be conducted prior to initial access by the *Contract Resources* and annually thereafter.

Before the Commonwealth will grants a *Contract Resource* access to Commonwealth owned or leased facilities or Commonwealth data, the *Provider* shall 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 a *Contract Resource* has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, the *Provider* is not to assign that employee to any Commonwealth facilities, is to remove any access privileges already given to the employee, and is not to permit that employee remote access to Commonwealth facilities or systems or access to any Commonwealth data, unless the agency consents, in writing, prior to the access being



provided. The agency may withhold its consent at its sole discretion. Failure of the *Provider* to comply with the terms of this paragraph may result in default of the *Provider* under its contract with the Commonwealth."

#### 4. Responsibilities

**4.1 Agencies** may exceed this policy at their discretion and may enter into an amendment solely for the purpose of implementing this policy.

**Note:** Obtaining a DGS-issued photo ID card will ensure that background checks are obtained annually for the *Contract Resource*, since a criminal background check is required to obtain the photo ID card. Vendor/contractor Photo ID cards expire one (1) year from the date the background check was performed. In addition, the ID card will expire at the end of a project or upon removal of the *Contract Resource*, even if a year has not passed.

**4.2 Third-party vendors, licensors, contractors, or suppliers** providing services to the Commonwealth shall comply with the requirements outlined in this ITP and [OPD-SEC000B Security Policy Requirements for Third Party Vendors](#).

#### 5. Related ITPs/Other References

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>

- [Request for Criminal Record Check](#)
- Out of State Background Check
- [OPD-SEC000B – Security Policy Requirements for Third Party Vendors](#)
- [IRS Publication 1075](#)

#### 6. Authority

Executive Order 2016-06, *Enterprise Information Technology Governance*

#### 7. Publication Version Control

It is the [Authorized User](#)'s responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>.

Questions regarding this publication are to be directed to [RA- itcentral@pa.gov](mailto:RA-itcentral@pa.gov).

#### 8. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Policy Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions:

| Version | Date | Purpose of Revision | Redline Link |
|---------|------|---------------------|--------------|
|---------|------|---------------------|--------------|

|          |            |   |  |
|----------|------------|---|--|
| Original | 11/25/2002 | Base Policy   |  |
| Revision | 12/27/2002 | Policy refresh  |  |
| Revision | 3/23/2006  | Reissue as SEC ITB  |  |
| Revision | 04/2/2014  | ITP Reformat  |  |
| Revision | 07/12/2021 | <ul style="list-style-type: none"> <li>• Language added regarding reinvestigations for contract resources with access to FTI to be consistent with Pub 1075.</li> <li>• Removed objective (language from objective was stated in Purpose).</li> <li>• Language added for out of state contract staff.</li> <li>• ITP updated to include all services not just IT services.</li> <li>• Standard language for third party vendors added to scope and responsibilities</li> <li>• Adjusted expiration period for ID badge</li> <li>• Pub 1075 link added to Other References section</li> <li>• Added Exemption section</li> </ul> | <a href="#">Revised IT Policy Redline &lt;07/12/2021&gt;</a> |

# Information Technology Policy

## Data Cleansing Policy

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SEC015  | <b>Effective Date</b><br>May 1, 2013   |
| <b>Category</b><br>Security  | <b>Supersedes</b><br>ITP-SYM009        |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>August 2022 |

### 1. Purpose

This Information Technology Policy (ITP) establishes policy, responsibilities, and procedures for the sanitization and/or destruction of Commonwealth electronic media.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions and councils under the Governor's jurisdiction (hereinafter referred to as "agencies"). Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of this ITP that are applicable to the products and services provided to the Commonwealth.

### 3. Policy

[Agency personnel](#) are to ensure that Commonwealth [electronic media](#) data is:

1. Assessed by agency records manager's office;
2. Securely erased; and
3. Physically removed from state-owned, leased, and contractor-owned/leased devices containing agency data pursuant to law or court order and in accordance with the policies outlined in this ITP.

Agencies assume all responsibility for ensuring all electronic media has been degaussed, wiped, or destroyed and removed from [electronic devices](#) prior to decommissioning of assets. The Department of General Services (DGS) Bureau of Supplies & Surplus Operations is not responsible for any information loss or damages that may result from an agency's failure to follow the procedures outlined in this policy.

The DGS Bureau of Supplies & Surplus Operations will not accept any electronic devices that contain electronic media and any such devices will be rejected by DGS personnel. Refer to DGS policy and procedures for electronic media handling referenced in part II of this section below.

For records management guidance, refer to [Management Directive 210.5 The Commonwealth of Pennsylvania State Records Management Program](#).

## I. Cleansing of Electronic Media on State-Owned and/or State-Leased Electronic Devices

1. **Degauss, Wipe, or Destroy electronic media.** All data residing on electronic media shall be cleansed in accordance with the [NIST Guidelines for Media Sanitization \(SP 800-88 Rev. 1\)](#) and shall be securely erased by using either a National Security Agency (NSA) or [Department of Defense \(DoD\) rated degausser](#), or by performing a [DoD 5220.22-M](#) wipe where data is overwritten using a three-pass approach.

**Note:** If using the wiping method to securely erase data, the status log shall be checked each time the process is completed to ensure that the entire disk wiping procedure finished successfully without any errors. Disk wiping is a time-consuming and labor-intensive process that demands high levels of quality control review by IT staff. The agency is fully responsible and liable for taking the necessary measures to ensure that data is securely erased.

2. **Store in a Secure Location.** The electronic media shall be stored in a secure location pending delivery or collection. Refer to [ITP-SEC029 Physical Security Policy for IT Resources](#) for physical security procedures.

## II. Surplus, Recycle, Package/Palletize

For IT resources that will be surplus, or recycled, DGS policy and procedures must be followed and are located at:

[DGS State Surplus Program](#)

## III. Reassignment of State-Owned Electronic Devices between Employees of the Agency

1. **Wipe the electronic media.** All data residing on electronic media shall be wiped by performing a [DOD 5220.22-M](#) wipe where data is overwritten using a three-pass approach. *Do not use a degausser for the reassignment of electronic devices.*
2. **Re-image the electronic media.** Once the electronic media has been wiped, use a backup image to reinstall the operating system and software applications.

**Note:** Special cases may exist that do not warrant a DoD [disk wipe](#) upon reassignment between users of Commonwealth owned electronic devices. In such cases, a Commonwealth department manager has the discretion to determine and request that the wipe procedure not be utilized. By allowing special-case discretion to management, the Commonwealth will be able to promote business efficiency and prevent unnecessary work from being done, while at the same time, not compromising its ability to maintain the confidentiality of its sensitive and private data.

## IV. Cleansing of Electronic Media on Electronic Devices Owned by Contractors and Used on Behalf of the Commonwealth

Contractor owned electronic devices that are used to perform work for the Commonwealth are to adhere to [ITP-SEC019 Policy and Procedures for Protecting Commonwealth Electronic Data](#). If any contractor owned electronic devices contain data that is classified in one of the classifications described in ITP-SEC019, once a contractor has completed their engagement, the electronic media utilized for the engagement shall be securely erased by the disk wiping method described in the following paragraph. This can be done by the contractor, a Commonwealth employee, or a verified third party; however, successful completion of this process is the contractor's responsibility and shall be verified by a Commonwealth employee.

**Wipe the electronic media.** All data residing on electronic media shall be wiped by performing a DOD 5220.22-M where data is overwritten using the three-pass approach. *Do not use a degausser for this scenario.*

If a contractor has a "Statement of Destroyed Materials" or similar policy/program, the agency will not be required to pay for the replacement of the destroyed electronic media. This policy recognizes that electronic media contains confidential, sensitive data and cannot be returned. The contractor will credit the Commonwealth as if the drive had been returned.

## V. Failed Electronic Media

All electronic media that fail due to a physical malfunction or other reasons are to be destroyed if the media cannot be properly sanitized through degaussing or wiping. Methods of destruction include Disintegrate, Pulverize, Melt, Incinerate, or Shred. These methods are detailed in [NIST SP 800-88 Rev. 1](#).

## VI. Chain of Custody

Equipment designated for DGS Surplus must be accompanied by [OPD-SEC015A Commonwealth of Pennsylvania Chain of Custody Tracking Form](#) that is completed and signed by the agency personnel responsible for sanitizing the equipment. DGS will not accept equipment that is not accompanied by a signed Chain of Custody Tracking Form.

For all properly sanitized electronic media DGS accepts as surplus and ultimately disposes of, a date/time-stamped Chain of Custody Tracking Form (OPD-SEC015A) will be returned to the agency signatory.

## 4. Responsibilities

| Action   | Responsibility                               |
|--|--|
| Determine if equipment requires data cleansing   | Agency ISO                                   |
| The agency records manager should provide assistance to agency/delivery center IT personnel as needed in determining the content of electronic media prior to data cleansing | Agency Records Manager office representative |
| Degauss, Wipe, or Destroy, and Remove and Validate data cleansing the electronic media prior to delivery to DGS  | Agency                                       |
| Package / Palletize electronic devices   | Agency                                       |
| Surplus electronic devices/media as per the Chain of Custody Tracking Form   | Agency                                       |
| Determine final disposition for electronic devices/media   | DGS  |
| Wiping or Reimaging electronic media for repurpose   | Agency                                       |
| Ensure a contractor has properly wiped Commonwealth electronic data residing on contractor equipment and collecting signed Statement of Destroyed Material document          | Agency                                       |

**Third-party vendors, licensors, contractors, or suppliers** providing services to the Commonwealth must comply with the requirements outlined in this ITP and [OPD-SEC000B Security Policy Requirements for Third Party Vendors](#).

## 5. Related ITPs/Other References

Definitions of associated terms of this policy are published on the Office of Administration's public portal: <http://www.oa.pa.gov/Policies/Pages/Glossary.aspx>

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 Amended *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 210.5 *The Commonwealth of Pennsylvania State Records Management Program*
- OPD-SEC000B – *Security Requirements for Third Party Vendors*
- OPD-SEC015A – *Chain of Custody Tracking Form*
- DGS Bureau of Supplies and Surplus Operations – [Process Guidelines for Surplus of IT Equipment](#)
- ITP-SEC019 – *Policy and Procedures for Protecting Commonwealth Electronic Data*
- ITP-SEC029 – *Physical Security Policy for IT Resources*
- DoD 5220.22-M – [National Industrial Security Program Operating Manual](#)
- NIST SP 800-88 Revision 1 – [Guidelines for Media Sanitization](#)

## 6. Authority

Executive Order 2016-06, *Enterprise Information Technology Governance*

## 7. Publication Version Control

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## 8. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Policy Waiver Review Process](#) for guidance.

This chart contains a history of this publication's revisions. Redline documents detail the revisions and are available to CWOPA users only.

| Version  | Date       | Purpose of Revision  | Redline Link |
|----------|------------|--|--------------|
| Original | 05/01/2013 | Base Document  | N/A          |
| Revision | 05/01/2013 | Includes all mobile devices, rescinds ITP-SYM009.  | N/A          |
| Revision | 03/26/2014 | Updated Section II. <u>Proper Return of State-Leased Computers</u> with updated State Contract numbers and eMarketplace links. | N/A          |

|          |            |  |  |
|----------|------------|--|--|
| Revision | 08/20/2015 | <p>Added Chain of Custody form (OPD-SEC015A)</p> <p>Removed state contract references</p> <p>Added language requiring agencies to remove all electronic media from electronic devices before DGS acceptance of delivery</p> <p>Added additional definitions</p> <p>Added records management language and references</p> <p>Added methods of destruction in Failed Electronic Media (Section V)</p> <p>Added Responsibilities table (Section 5)</p> <p>Added reference to DGS Guidelines for Surplus document</p> |  |
| Revision | 09/09/2016 | <p>Corrected ITP number for “Physical Security...” from SEC019 to SEC029 in Section 4I</p> <p>Revised Section 6 for clarity</p> <p>Added Exemption Section 7</p> <p>Updated Enterprise Information Technology Governance EO reference number in Section 8</p>  | N/A  |
| Revision | 10/04/2018 | <p>Removed Bureau of Supplies &amp; Surplus Operations from specific responsibilities</p> <p>Moved Definitions to Policy Glossary</p> <p>Updated language throughout adding Delivery Centers and removing Agencies where appropriate to reflect Shared Services organization</p> <p>Minor revisions to OPD-SEC015A</p>   | <a href="#">Revised IT Policy Redline 10/04/2018</a>         |
| Revision | 08/09/2021 | <ul style="list-style-type: none"> <li>• Added third party vendors to Scope and Responsibilities Sections</li> <li>• Removed references to Delivery Centers,</li> <li>• Updated links and policy references.</li> <li>• Updated Exemption Section</li> </ul>   | <a href="#">Revised IT Policy Redline &lt;08/09/2021&gt;</a> |

# Information Technology Policy

## *Policy and Procedures for Protecting Commonwealth Electronic Data*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SEC019  | <b>Effective Date</b><br>November 16, 2007 |
| <b>Category</b><br>Security  | <b>Supersedes</b><br>--                    |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>December 2021   |

### 1. Purpose

This Information Technology Policy (ITP) addresses the policies and procedures for the identification of, and safe transmittal, transport, storage, and overall protection of Commonwealth electronic data.

### 2. Scope

This ITP applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

These guidelines apply to environments supporting Commonwealth applications and data. Contractors and Contractor staff are responsible to understand and comply with this policy.

The policy is developed using the following guidelines:

- National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53 Rev4 (Security and Privacy Controls for Federal Information Systems and Organizations).
- NIST SP 800-60 Rev1 (Guide for Mapping Types of Information and Information Systems to Security Categories).

### 3. Background

There are many forms of electronic records within the Commonwealth that require special treatment and/or heightened protections. These types of electronic records, known as closed or "C" Classification records, are defined below. Open records are defined by Management Directives: 205.36 Right-to-Know Law Compliance and 210.5 The Commonwealth of Pennsylvania State Records Management Program. Commonwealth employees and contractors shall identify the Classification of these electronic records and protect this information from improper disclosure based on the Classification of the records.

Categorization of data will follow the NIST SP 800-60 terminology leveraging the security impact levels for data types and information systems. This activity determines the level of security controls to be implemented from NIST SP 800-53.

### 4. Definitions

**4.1 Categorization** is the process of placing data into groups or types of data that are in some way similar to each other, based on characteristics of the data.



**4.2 Classification** is the process of assigning labels to data according to a predetermined set of principles, which define that data class based on the treatment and use of the data.

For example, both apples and tomatoes are fruit (categorization), but tomatoes are not typically added to fruit salad (classification).

**4.3 Commonwealth Enterprise Storage Solutions** are information technology services, applications, or programs procured, obtained, created, or license by the Office of Administration for the storage or maintenance of records, data, or other information controlled, maintained, or possessed by the Commonwealth and its agencies, departments, boards, commissions, or councils. Commonwealth Enterprise Storage Solutions include, but are not limited to, the suite of applications provided as part of Microsoft 365 (Outlook 365, OneDrive, SharePoint, etc.) and the PACS environment (Pennsylvania Compute Services).

## 5. Classification

### **"C" CLASSIFICATION RECORDS or CLOSED RECORDS**

The use of a **"C"** designation indicates that all or part of the record requires special treatment and/or heightened protections, including, but not limited to, as appropriate, non-disclosure to the public, non-disclosure to any person without a need to know, non-disclosure outside of certain workgroups, non-disclosure without certain prerequisites, etc.

Although a **"C"** designation usually equates to a **"non-public record"** designation under the Right to Know Law (65 P.S. Section 67.101, et seq.), the two designations are not the same. A record's treatment under the Right to Know Law must be determined in consultation with an agency's legal and Right-to-Know Law staff at the time of the Right to Know Law request.

Failure to classify records as **"C"** does not give rise to any presumption, implication, or indication that records are open or accessible to the public.

Only the originating agency may remove the **"C"** designation.

A **"C"** designation, and the more granular **"class"** within that designation, is a determination made by an agency head or designee. If another data designation or class is deemed necessary; justification shall be provided to OA for why a data element or group of data elements does not fit into the classes below.

Closed or **"C"** records shall be placed into one of the following Classifications:

**A. Sensitive Security Information.** This type of information may fall under another class, but it is placed in this one because of the significant consequences of potential disclosure, and the high degree of protection it requires. It is information maintained by an agency:

1. In connection with homeland security, national defense, military, law enforcement or other public safety activity the disclosure of which would be reasonably likely to jeopardize public safety or preparedness. Homeland Security information includes, but is not limited to, records designed to prevent, detect, respond to, and recover from acts of terrorism, major disasters and other emergencies, whether natural or manmade; emergency preparedness and response, including volunteer medical, police, emergency management and fire personnel; intelligence activities; critical infrastructure protection; border security; ground, aviation and maritime transportation security; bio-defense; detection of nuclear and radiological

materials; and research on next-generation security technologies; or the disclosure of which creates a reasonable likelihood of endangering the life or safety of a natural person or threatening public safety or the physical security of a building, resource, infrastructure facility or information storage system, including:

- i. documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;
- ii. lists of critical infrastructure, key resources and significant special events, which are deemed critical due to their nature and which result from risk analysis, threat assessments, consequences assessments; vulnerability assessments; anti-terrorism protective measures and plans; counter-terrorism measures and plans; security and response needs assessments; and
- iii. building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility critical systems, such as information technology, communication, electrical, structural, fire suppression, ventilation, water, wastewater, sewage and gas systems.

**B. Protected Information:** This is information that is subject to some degree of protection under any Pennsylvania or federal statute, law, order, or regulation. The degree of protection necessary will vary based on the law or order in question, and the potential consequences of disclosure. This information includes, but is not limited to:

1. Data elements as defined in the Breach of Personal Information Notification Act, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301-2329.
2. Information received from a federal or Commonwealth entity bound by specific - regulations, including, but not limited to the following sources:
  - i. Social Security Administration (SSA).
  - ii. Internal Revenue Service (IRS).
  - iii. Centers for Medicare and Medicaid Services (CMS).
  - iv. Criminal Justice Agencies in accordance with the Criminal History Record Information Act (CHRIA).
  - v. Educational Institutions subject to the Family Education Rights and Privacy Act (FERPA).
  - vi. Entities subject to the Payment Card Industry (PCI) data security standards.
  - vii. Health care entities subject to the Health Insurance Portability and Accountability Act (HIPAA) or other data privacy or security law in the health care industry (including internal entities).
3. Third Party Data: Information associated with and specific to the Commonwealth's regulated entities, vendors, suppliers, business partners, contractors, and other third-party entities, including the trade secrets of third parties. The degree of protection necessary will vary based on the law or order in question, and the

potential consequences of disclosure.

4. **Geographic Data:** Information associated with addresses, locational information, or elements from a Geographic Information System (GIS).
5. **Contract Data:** Information associated with contract, award, and bidding activities related to procurement of supplies or services, at appropriate stages of procurement.

**C. Privileged Information:** This is information that is protected by a recognized privilege or doctrine, such as attorney-client privilege, the attorney work product doctrine, executive privilege or deliberative process privilege.

**D. Prerequisite-Required Information:** This includes the data that are not exempt or precluded from public disclosure under any Pennsylvania law or order (including the Right to Know itself), but that require certain protections to ensure that the prerequisites to disclosure are met. The degree of protection necessary will vary based on the record in question, and the potential consequences of disclosure. For example, this includes records that may be disclosed only after a form is signed, etc.

## 6. Policy

### a. Data Categorization and Classification

- i. Agencies shall categorize and classify all data.
  - Data categorization shall follow the NIST SP 800-60 Guide for Mapping Types of Information and Information Systems to Security Categories volumes 1 and 2.
  - Data classified as open records shall adhere to Management Directive 205.36 and 210.5.
  - "C" designated data shall be placed in one of the following classes: Sensitive Security, Protected, Privileged, Prerequisite-Required.
- ii. "C" designated electronic records (Sensitive Security, Protected, Privileged, or Prerequisite-Required Information) as defined above, shall be stored in an approved storage solution. Approved storage solutions include:
  - Commonwealth Enterprise Storage Solutions;
  - Agency On Premise Data Centers;
  - Commonwealth Data Centers; or
  - Other storage facilities approved in writing by the Agency Information Security Officer (ISO) or equivalent.
- iii. No "C" designated electronic records can leave an approved storage solution without prior electronic approval from the Agency ISO or equivalent. Additionally, all requests for information relating to "C" designated electronic records must be made in writing to the Agency ISO.
- iv. Encryption standards are outlined in the following ITP and shall be followed for any actions that specify encrypting data under the "C" classification.

ITP-SEC031 - *Encryption Standards*
- v. Encryption protection mechanisms are detailed in Section 7, Data Classification Tables, and shall be followed.

- vi. Systems that store, process, transmit or otherwise handle Sensitive Security, Protected, or Privileged Information are recommended to be protected with a Database Firewall (DBFW) to protect database-related systems or other compensating controls, matching the risk appetite of the authorizing official or data owner.
  - Agencies designing modernized and new database-related systems shall include DBFW configurations to meet DBFW data owner requirements and future requirements to ensure the highest level of required security controls.
- vii. Systems that store, process, transmit or otherwise handle Sensitive Security, Protected, or Privileged Information must be protected with a Web Application Firewall (WAF) to protect internet-accessible websites/services.
- viii. Systems that store, process, transmit or otherwise handle Prerequisite-Required Information may be protected with a Web Application Firewall (WAF) and/or Database Firewall (DBFW).

Agencies shall evaluate the impact of third-party WAF/DBFW agents on their computing resources prior to the deployment of the WAF/DBFW agents.

#### **b. Data Inventory**

- Each Commonwealth agency shall produce a data inventory for internal use and shall provide an appropriate inventory to any Commonwealth data-holding contractor for all the servers and/or application solutions in the contractor environment or under contractor control. (Refer to OPD-SEC019A – *Data Categorization and Inventory Operating Template*). OA/OIT/Enterprise Information Security Office (EISO) will assess Commonwealth agencies usage of OPD-SEC019A during the annual agency self-assessment (ITP-SEC023 – *Information Technology Security Assessment and Testing Policy*).
- The data inventory provides a list of Commonwealth applications and identifies data classes and sensitivity levels for the data present on each server (and desktops if applicable) and/or in any application solution. A data inventory allows the Commonwealth and/or the contractor to identify protection mechanisms for each server and/or application solution.
- Completing the data inventory will aid the Commonwealth and contractors in the following:
  - Identifying servers and/or application solutions with data that have stringent regulatory requirements (such as commingling requirements of Federal Tax Information (FTI)).
  - Increasing the speed of incident response procedures for breach notifications.
  - Cost saving through selective, strict protection of the highest sensitivity levels of data and not applying strict protections on lesser sensitivity levels.
  - Aiding in the identification of servers requiring special privileged user access.
- Using the OPD-SEC019A template, individuals with an intimate knowledge of data used by Commonwealth applications (legacy and open systems) shall identify the categories and classes of data and their respective sensitivity levels. The Commonwealth agencies shall perform an annual update of the data inventory, and at the following security events including, but not limited to:
  - a. Upon the commencement of the use/holding of the data.
  - b. Upon the initiation of the Commonwealth agency migration into contractor facilities or

into facilities under contractor control.

- c. New data elements introduced to the server or application solution.
- d. Repurposing of the server or application solution.
- e. Major upgrades to the IT system, application, or databases.
- f. Changes in regulations or policies regarding data elements present.
- g. Any significant change that affects or introduces "C" classified data

## 7. Data Classification Tables

The following data classification tables pertain to electronic records with a "C" classification and details the requirements for the various levels of protection determined by the various forms of data and transmission methods pertaining to:

- 1. Sensitive Security Information
- 2. Protected Information
- 3. Privileged Information
- 4. Prerequisite-Required Information
- 5. Open Records Information

### SENSITIVE SECURITY

| Action   | Requirement  |
|--|--|
| Storage on Fixed Media                                 | Encrypted  |
| Storage on Exchangeable Media                          | Encrypted  |
| Copying  | Permission of Owner Required   |
| Faxing   | Transmitted over an encrypted link to a password-protected mailbox or, if sent to a public or multi-user fax machine, received (printed) using Attended Receipt                        |
| Sending by Public Network                              | Encrypted  |
| * Disposal   | Electronic data or media on which it is stored are to be sanitized or destroyed per <i>ITP-SEC015 Data Cleansing Policy</i> , subject to any applicable records retention requirements |
| Release to Third Parties                               | Owner Approval and Non-Disclosure Agreement  |
| Electronic Media Labeling Required                     | External and Internal Labels   |
| Internal and External email                            | Addressed to Specific Person but Label only on Inside  |
| Packaging  | Envelope   |
| Granting Access Rights                                 | Owner Only   |
| Tracking distribution and lifecycle of electronic data | Logging of Recipients, Copies Made, Locations, Addresses, Those who Viewed, and Destruction  |
| Web Application Firewall                               | Required (for Web Applications/Services)   |
| Database Firewall                                      | Recommended (for Database systems)   |

### PROTECTED

| Action                        | Requirement  |
|-------------------------------|--|
| Storage on Fixed Media        | Encrypted or Physical Access Control   |
| Storage on Exchangeable Media | Encrypted  |
| Copying                       | Permission of Owner Advised  |
| Faxing                        | Transmitted over an encrypted link to a password-protected mailbox or, if sent to a public |

|  |  |
|--|--|
|  | or multi-user fax machine, received (printed) using Attended Receipt   |
| Sending by Public Network                              | Encrypted  |
| * Disposal   | Electronic data or media on which it is stored are to be sanitized or destroyed per <i>ITP-SEC015 Data Cleansing Policy</i> , subject to any applicable records retention requirements |
| Release to Third Parties                               | Owner Approval and Non-Disclosure Agreement  |
| Electronic Media Labeling Required                     | External and Internal Labels   |
| Internal and External email                            | Addressed to Specific Person but Label only on Inside  |
| Granting Access Rights                                 | Owner Only   |
| Tracking distribution and lifecycle of electronic data | Not Required   |
| Web Application Firewall                               | Required (for Web Applications/Services)   |
| Database Firewall                                      | Recommended (for Database systems)   |

### PRIVILEGED

| Action   | Requirement  |
|--|--|
| Storage on Fixed Media                                 | Encrypted  |
| Storage on Exchangeable Media                          | Encrypted  |
| Copying  | Permission of Owner Required   |
| Faxing   | Transmitted over an encrypted link to a password-protected mailbox or, if sent to a public or multi-user fax machine, received (printed) using Attended Receipt                        |
| Sending by Public Network                              | Encrypted  |
| * Disposal   | Electronic data or media on which it is stored are to be sanitized or destroyed per <i>ITP-SEC015 Data Cleansing Policy</i> , subject to any applicable records retention requirements |
| Release to Third Parties                               | Owner Approval and Non-Disclosure Agreement  |
| Electronic Media Labeling Required                     | External and Internal Labels   |
| Internal and External email                            | Addressed to Specific Person but Label only on Inside  |
| Granting Access Rights                                 | Owner Only   |
| Tracking distribution and lifecycle of electronic data | Logging of Recipients, Copies Made, Locations, Addresses, Those who Viewed, and Destruction  |
| Web Application Firewall                               | Required (for Web Applications/Services)   |
| Database Firewall                                      | Recommended (for Database systems)   |

### PREREQUISITE-REQUIRED

| Action                        | Requirement  |
|-------------------------------|--|
| Storage on Fixed Media        | Encryption Optional  |
| Storage on Exchangeable Media | Encrypted  |
| Copying                       | No Restrictions  |
| Faxing                        | No Restrictions  |
| Sending by Public Network     | Encrypted Optional   |
| * Disposal                    | Electronic data or media on which it is stored are to be sanitized or destroyed per <i>ITP-SEC015 Data Cleansing Policy</i> , subject to any applicable records retention requirements |

|  |   |
|--|---|
| Release to Third Parties                               | Non-Disclosure Agreement                              |
| Electronic Media Labeling Required                     | No Label Required                                     |
| Internal and External email                            | Addressed to Specific Person but Label only on Inside |
| Granting Access Rights                                 | Local Manager   |
| Tracking distribution and lifecycle of electronic data | Not Advised   |
| Web Application Firewall                               | Optional (for Web Applications/Services)              |
| Database Firewall                                      | Optional (for Database systems)                       |

## OPEN RECORDS

| Action   | Requirement  |
|--|--|
| Storage on Fixed Media                                 | Requestor format, Encryption Optional  |
| Storage on Exchangeable Media                          | Requestor format, Encryption Optional  |
| Copying  | Permission of Owner Required, agency discretion  |
| Faxing   | Record of receipt of electronic request, or date stamp non-electronic written requests   |
| Sending by Public Network                              | Requestor format, Encryption Optional  |
| * Disposal   | Electronic data or media on which it is stored are to be sanitized or destroyed per <i>ITP-SEC015 Data Cleansing Policy</i> , subject to any applicable records retention requirements |
| Release to Third Parties                               | Owner Approval and Agency Open Records Officer   |
| Electronic Media Labeling Required                     | External and Internal Labels   |
| Internal and External email                            | Addressed to Specific Person but Label only on Inside  |
| Granting Access Rights                                 | Owner Only   |
| Tracking distribution and lifecycle of electronic data | Logging of Recipients, Copies Made, Locations, Addresses, Those who Viewed, and Destruction  |
| Web Application Firewall                               | No restrictions  |
| Database Firewall                                      | No restrictions  |

## 7. Responsibilities

Agencies are required to perform the actions outlined in this policy.

## 8. Related ITPs/Other References

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- Management Directive 205.36 *Right-to-Know Law Compliance*
- Management Directive 210.5 *The Commonwealth of Pennsylvania State Records Management Program*
- OPD-SEC019A – *Data Categorization and Inventory Operating Template*
- *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301-2329
- ITP-INFRM001 – *The Life Cycle of Records: General Policy Statement*
- ITP-SEC000 – *Information Security Policy*
- ITP-SEC015 - *Data Cleansing Policy*
- ITP-SEC023 – *Information Technology Security Assessment and Testing Policy*
- ITP-SEC025 - *Proper Use and Disclosure of Personally Identifiable Information (PII)*
- ITP-SEC031 - *Encryption Standards*

- NIST SP 800-53 Rev4 - *Security and Privacy Controls for Federal Information Systems and Organizations*
- NIST SP 800-60 Rev1 - *Guide for Mapping Types of Information and Information Systems to Security Categories*

## 9. Authority

Executive Order 2016-06, Enterprise Information Technology Governance

## 10. Exemption from This Policy

In the event an agency chooses to seek an exemption from the guidance within this ITP, a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review Process](#) for guidance.

## 11. Publication Version Control

It is the [Authorized User's](#) responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision  | Redline link |
|----------|------------|--|--------------|
| Original | 11/16/2007 | Base Policy  |              |
| Revision | 04/02/2014 | ITP Reformat; Merged GEN-SEC019A into ITP  |              |
| Revision | 08/20/2015 | Expanded Scope Section Revised Background Section Clarified Sensitive Security Information "C" data category Expanded Protected Information "C" data category language Added Privileged Information "C" data category (including within Reference Guide Section) Replaced Exempt Information, replaced with Prerequisite-Required Information "C" data category Expanded the Policy Section Added Data Inventory sub section Expanded Related ITPs/Other References Section Added OPD-SEC019A (Data Categorization and Inventory Operating Template) supporting document |              |
| Revision | 05/25/2018 | Added Web Application Firewall and Database Firewall language in Policy section Added Web Application Firewall and Database Firewall in Data Classification Tables Added Encryption requirement for Prerequisite-Required data   |              |



|          |            |   |  |
|----------|------------|---|--|
| Revision | 9/9/2020   | Distinguished between categorization and classification<br>Expanded related ITPs/Other references to include Management Directives for open records<br>Added table for open records   | <a href="#">Revised IT Policy Redline &lt;09/9/2020&gt;</a>  |
| Revision | 12/17/2020 | Included language under "C" designated electronic records to include storage solutions.<br>Changed approval from Commonwealth Chief Information Security Officer to Agency Information Security Officer.<br>Added Commonwealth Enterprise Storage Solution definition | <a href="#">Revised IT Policy Redline &lt;12/17/2020&gt;</a> |



# Information Technology Policy

## Security Information and Event Management Policy

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-SEC021  | <b>Effective Date</b><br>October 10, 2006 |
| <b>Category</b><br>Recommended Policy  | <b>Supersedes</b>                         |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>Annual         |

**This Information Technology Policy (ITP) establishes enterprise-wide guidelines and standards for the procurement of Security Information and Event Manager (SIEM) solutions.**

### 1. Purpose

This policy provides guidelines and standards that agencies must adhere to when procuring a Security Information and Event Managers (SIEM) solution. SIEMs are used to provide real-time analysis of security alerts which are generated by network hardware and applications. SIEMs automate the collection of event data from security devices, such as firewalls, proxy servers, intrusion-detection systems and antivirus software. The SIEM translates the logged data into correlated and simplified formats for real-time alerting and reporting capabilities.

In addition to guidelines to be followed in selecting an SIEM solution, this policy provides agencies with information on how to leverage the Office of Administration, Office for Information Technology (OA/OIT) SIEM solution that can provide agencies with the following services:

- Log collection and consolidation.
- Security event collection from multiple sources (firewalls, routers, servers, etc.).
- Identification of security related events and incidents.
- Some form of automated response/alerting capability when incidents are detected.
- Correlation of events from multiple sources.

### 2. Scope

This Information Technology Policy (ITP) applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

### 3. Definitions

**Event** - An observable occurrence in a system or network. Events include, but are not limited to, a user connecting to a file share, a server receiving a request for a Web page, a user sending electronic mail (e-mail), and a firewall blocking a connection attempt.

**Event Correlation** - The process of monitoring events in order to identify patterns that may signify attacks, intrusions, misuse or failure.

**Incident** - A violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices. Examples of an incident are denial of service, malicious code, unauthorized access and inappropriate usage.

**Incident Response** - The manual and automated procedures used to respond to reported incidents (real or suspected), system failures and errors, and other undesirable events.

**Log** - A file that lists actions that have occurred.

**Security Information and Event Managers (SIEM)** – A SIEM is a set of tools used by IT professionals and system administrators to manage multiple security applications and devices, and to respond automatically to resolve security incidents and provides real-time monitoring and historical reporting of information security events from networks, servers, systems, applications and more.

#### 4. Policy

Agencies that desire leveraging the Enterprise SIEM solution should contact the EISO Office at [ra-ciso@pa.gov](mailto:ra-ciso@pa.gov).

Agencies that have a SIEM solution or that are looking to procure a new SIEM solution must comply with the standards identified in the following section.

#### 5. Standards

Agencies looking to procure a SIEM solution must ensure that it has the ability to provide the agency with the following critical capabilities:

**Scalable Architecture and Deployment Flexibility:** These are derived from vendor design decisions in the areas of product architecture, data collection techniques, agent designs and coding practices. Scalability can be achieved by:

- A hierarchy of SIEM servers — tiers of systems that aggregate, correlate and store data.
- Segmented server functions — specialized servers for correlation, storage, reporting and display.
- A combination of hierarchy and segmentation to support horizontal scaling.

During the planning phase, agencies should take into consideration the volume of event data that will be collected, as well as the scope of analysis reporting that will be required. An architecture that supports scalability and deployment flexibility will enable an agency to adapt its deployment in the face of unexpected event volume and analysis.

**Real-time Event Data Collection:** SIEM products collect event data in near real time in a way that enables immediate analysis. Data collection methods include:

- Receipt of a syslog data stream from the monitored event source.
- Agents installed directly on the monitored device or at an aggregation point, such as a

syslog server.

- Invocation of the monitored system's command line interface.
- Application Programming Interfaces (APIs) provided by the monitored event source.
- External collectors provided by the SIEM tool.

The technology should also support batch data collection for cases where real-time collection is not practical or is not needed. Filtering options at the source also are important methods of data reduction, especially for distributed deployments with network bandwidth constraints.

Agent-based collection options and virtualized SIEM infrastructure options will become more important as organizations move workloads to virtualized and public infrastructure as a service cloud environments. A large percentage of organizations that have deployed SIEM technology must integrate data sources that aren't formally supported by the SIEM vendors.

SIEM products should provide APIs or other functions to support user integration of additional data sources. This capability becomes more important as organizations apply SIEM technology for application-layer monitoring.

**Event Normalization and Taxonomy:** This is a mapping of information from heterogeneous sources to a common event classification scheme. A taxonomy aids in pattern recognition, and also improves the scope and stability of correlation rules. When events from heterogeneous sources are normalized, they can be analyzed by a smaller number of correlation rules, which reduces deployment and support labor. In addition, normalized events are easier to work with when developing reports and dashboards.

**Real-time Monitoring:** Event correlation establishes relationships among messages or events that are generated by devices, systems or applications, based on characteristics such as the source, target, protocol or event type. There should also be a library of predefined correlation rules and the ability to easily customize those rules. A security event console should provide the real-time presentation of security incidents and events.

**Behavior Profiling:** Behavior profiling employs a learning phase that builds profiles of normal activity for discrete event sources, such as NetFlow data, users, servers and so on. The monitoring phase alerts on deviations from normal. Profiling and anomaly detection are emerging capabilities in SIEM that complement rule-based correlation.

**Threat Intelligence:** Intelligence about the current threat environment exists in a variety of sources, including open-source lists, the threat and reputation content developed and maintained by security research teams within security vendors, and data developed by managed security and other service providers. Threat intelligence data can be integrated with an SIEM in the form of watch lists, correlation rules and queries in ways that increase the success rate of early breach detection.

**Log Management and Compliance Reporting:** Functions supporting the cost-effective storage and analysis of a large information store include collection, indexing and storage of all log and event data from every source, as well as the capability to search and report on that data. Reporting capabilities should include predefined reports, as well as the ability to define ad hoc reports or use third-party reporting tools.

**Analytics:** Security event analytics is composed of dashboard views, reports and ad hoc query functions to support the investigation of user activity and resource access in order to identify a threat, a breach or the misuse of access rights.

**Incident Management Support:** Specialized incident management and workflow support should be embedded in the SIEM product primarily to support the IT security organization. Products should provide integration with enterprise workflow systems, and should support ad hoc queries for incident investigation.

**User Activity and Data Access Monitoring:** This capability establishes user and data context, and enables data access and activity monitoring. Functions include integration with identity and access management (IAM) infrastructure to obtain user context and the inclusion of user context in correlation, analytics and reporting. Data access monitoring includes monitoring of database management systems (DBMSs), and integration with file integrity monitoring (FIM) and data loss prevention (DLP) functions. DBMS monitoring can take three forms — parsing of DBMS audit logs, integration with third-party database activity monitoring (DAM) functions or embedded DAM functions. FIM can be provided by the SIEM product directly or through integration with third-party products.

**Application Monitoring:** The ability to parse activity streams from packaged applications enables application-layer monitoring for those components, and the ability to define and parse activity streams for custom applications enables application-layer monitoring for in-house-developed applications. Integration with packaged applications, an interface that allows customers to define log formats of unsupported event sources, and the inclusion of application and user context are important capabilities that enable the monitoring of application activities for application-layer attack detection, fraud detection and compliance reporting.

**Deployment and Support Simplicity:** Deployment and support simplicity is achieved through a combination of embedded SIEM use-case knowledge, and a general design that minimizes deployment and support tasks. Embedded knowledge is delivered with predefined dashboard views, reports for specific monitoring tasks and regulatory requirements, a library of correlation rules for common monitoring scenarios, and event filters for common sources. There should also be an easy way to modify the predefined functions to meet the particular needs of an organization.

## 6. Responsibilities

Agencies are required to perform the actions outlined in this policy.

## 7. Authority

- Executive Order 2011-05, Enterprise Information Technology Governance

## 8. Publication Version Control

It is the user's responsibility to ensure they have the latest version of this publication. Questions regarding this publication are to be directed to [RA-itcentral@pa.gov](mailto:RA-itcentral@pa.gov).

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision |
|----------|------------|---------------------|
| Original | 10/20/2006 | Base Policy         |

ITP-SEC020 – Encryption Standards for Data at Rest

|          |          |  |
|----------|----------|--|
| Revision | 5/9/2013 | Updated the policy to reflect current standards making it easier for agencies to implement SIEM solutions. Rescinds STD-SEC021A and incorporates elements of OPD0SEC021B |
|          | 4/2/2014 | ITP Reformat   |

# Information Technology Policy

## *Information Technology Security Assessment and Testing Policy*

|  |   |
|--|---|
| <b>ITP Number</b><br>ITP-SEC023  | <b>Effective Date</b><br>April 19, 2007 |
| <b>Category</b><br>Security  | <b>Supersedes</b>                       |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>May 2016     |

### 1. Purpose

This policy addresses the enterprise-wide need for IT security assessment and testing. IT security assessment and testing is a security practice designed to proactively identify, remediate, and prevent the exploitation of IT vulnerabilities that exist within an organization. During the process, IT related vulnerabilities are identified and the risks of those vulnerabilities are evaluated. The evaluation leads to correcting the vulnerabilities and removing the risk or providing formal risk acceptance by the management of an organization. Only by identifying and mitigating vulnerabilities in the IT environment can an organization prevent attackers from penetrating their networks and stealing information.

Because vulnerabilities within any agency could potentially pose a threat to all agencies given shared network resources between all agencies, each agency must assess all IT related risk assessment reports and have a plan to mitigate and correct any risks deemed "critical". This policy when adhered to by all agencies minimizes the collective security risk associated with vulnerabilities to all agencies. Therefore, the assessment and testing of security controls and processes are vital exercises for any organization. This Information Technology Policy (ITP) describes the policies surrounding security assessments and testing.

### 2. Scope

This Information Technology Policy (ITP) applies to all departments, boards, commissions and councils under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are strongly encouraged to follow this ITP.

### 3. Policy

The Office of Administration/Office for Information Technology (OA/OIT) Enterprise Information Security Office (EISO) is responsible for conducting ongoing security assessments on IT related systems and applications on the commonwealth's enterprise network. These assessments are used to benchmark the commonwealth's Information Technology (IT) security readiness and risk posture. As part of this process, vulnerability scans are regularly conducted on IT related systems. In addition, agencies will be asked to remediate pertinent vulnerabilities, complete questionnaires, conduct internal audits, and perform IT security tests to ensure that they are compliant with the commonwealth's IT policies, procedures, and standards.

- Systems and services that process or store sensitive or confidential information (as indicated in ITP-SEC019 and ITP-SEC025) or which provide support for critical processes are

to undergo technical security reviews to ensure compliance with implementation standards and to ensure vulnerabilities to subsequently discovered threats are not present.

- Critical agency functions are to be maintained by each agency. Reviews of IT systems and services essential to supporting a critical agency function are to be conducted at least once every year. Reviews of a representative sample of all other systems and services are to be conducted at least once every twenty-four months.
- If an agency chooses to outsource the performance of security assessments to a third party, the Commonwealth CISO is to be notified via email to [ra-CISO@pa.gov](mailto:ra-CISO@pa.gov) prior to finalizing the scope of the assessment in order to ensure the assessment meets commonwealth guidelines and industry best practices.

Agencies are to read and comply with the following sections of this ITP, which will provide the agencies with detailed information about IT security assessments and tests:

- 4. Assessment Testing and Remediation of Deficiencies**
- 5. Network Vulnerability Scanning and Testing**
- 6. Agency Self-Assessment – Nationwide Cyber Security Review (NCSR)**
- 7. Penetration Testing and Assessment**

#### **4. Assessment Testing and Remediation of Deficiencies**

Agencies are to follow a three step process for assessment testing and remediation of deficiencies:

##### **4.1. Assessment Test**

Assessment tests can be performed by agencies or the Enterprise Information Security Office (EISO). Agencies can engage EISO to perform testing by using the Service Engagement Review Process (SERP).

##### **4.2. Mitigate and Remediate**

Agencies are required to initiate mitigation of critical deficiencies within five (5) calendar days of the discovery of a critical deficiency.

Agencies are to report on remediation of critical deficiencies to the EISO at [ra-CISO@pa.gov](mailto:ra-CISO@pa.gov) within thirty (30) calendar day of the discovery of a critical deficiency.

The following information is required in remediation reporting of critical deficiencies. (Agencies may use existing reports or formats that suit agency business needs.)

- Scan Identifier (Name)
- Scan Date
- Application
- Vulnerability Description
- Mitigation Status (not started/initiated/completed)
- Remediation Action (actions to be taken to remediate vulnerability)
- Estimated Remediation Completion Date

##### **4.3. Retest**

Upon completion of the remediation of a vulnerability, agencies are to retest for the existence of the remediated vulnerability. Agencies may perform the retest or request the EISO perform a retest. Agencies can engage EISO to perform a retest by using the



SERP. The EISO is required to complete the retest and provide agencies results within thirty (30) days of an agency request for a retest.

## 5. Network Vulnerability Scanning and Testing

The Office of Administration/Office for Information Technology (OA/OIT) Enterprise Information Security Office (EISO) monitors network activity to ensure that the commonwealth's networks and systems are not compromised by internal and external threats and quickly remediated when they are. As part of this process the Commonwealth Chief Information Officer (CISO) may become aware of potential intrusions by unauthorized personnel. Sometimes these intrusions are real attacks and sometimes they are false positives created by agency security teams who are proactively monitoring their networks. In order to avoid potential false positives and to prevent possible attacks from internal and external threats, agencies are to comply with the following policies and procedures.

- A. Any host or network vulnerability scanning or penetration testing is to be coordinated with the appropriate agency Information Security Officer (ISO) and OA/OIT. As part of this process, the ISO needs to contact the OA/OIT Enterprise Information Security Office to alert it of any potential testing that could set off a security alarm.
- B. All agency-owned hosts that are or will be accessible from outside the agency's network are to be scanned for vulnerabilities and weaknesses before being installed on the network, and are only installed after the resultant software, operating system or configuration changes are made. For both internal and external systems, scans are to be performed annually to ensure that no major vulnerabilities have been introduced into the environment. The frequency of additional scans is determined by the agency ISO and the information owner(s), depending on the criticality and sensitivity of the system's information along with any applicable regulatory requirements.
- C. Network vulnerability scanning is to be conducted after new network software or major configuration changes are made on systems that are essential to supporting a process critical to an agency's mission. Scanning is conducted on all other systems on an annual basis. The output of the scans is to be reviewed in a timely manner by the agency ISO and any vulnerability detected is to be evaluated for risk and mitigated as appropriate. The tools used to scan for vulnerabilities are to be updated periodically to ensure that recently discovered vulnerabilities are included in any scans.
- D. Where an agency has outsourced a server, application or any network service to another agency or entity, both parties are responsible for coordinating any vulnerability scanning. When an agency server or services is hosted by the Enterprise Data Center, the scanning is to be coordinated through the Commonwealth CISO.
- E. Any authorized scanning is to follow a defined and tested process in order to minimize the possibility of disruption.
- F. Results of scans that indicate vulnerabilities are to be shared with the agency ISO and other appropriate staff.
- G. Agencies are to notify the Commonwealth's Chief Information Security Officer (CISO) before performing any external network planning that was previously approved and coordinated with the CISO.
- H. Users are not to test or attempt to compromise computer or network security measures at either the Commonwealth or other Internet sites, unless specifically

authorized to do so. If users probe security mechanisms, alarms are triggered and resources are needlessly spent tracking the activity. Unauthorized attempts to compromise security measures are unlawful and are considered serious violations of commonwealth policy.

## **6. Agency Self-Assessment – Nationwide Cyber Security Review (NCSR)**

The NCSR, or Nationwide Cyber Security Review, is a self-assessment survey designed to evaluate cyber security management. The Federal Government has requested an ongoing effort to chart nationwide progress in cybersecurity and identify emerging areas of concern. In response, the U.S. Department of Homeland Security (DHS) has partnered with the Center for Internet Security's Multi-State Information Sharing and Analysis Center (MS-ISAC), the National Association of State Chief Information Officers (NASCIO), and the National Association of Counties (NACo) to develop and conduct the NCSR. The NCSR is designed to capture the nationwide level of cyber security preparedness and resilience within all State, Local, Territorial and Tribal governments.

The NCSR establishes a uniform Information Technology (IT) security assessment that will identify the commonwealth's IT security readiness. This self-assessment is based on a control security model identified as the NCSR Control Maturity Model. This model was created by the Software Engineering Institute (SEI) at Carnegie Mellon University. The NCSR provides the commonwealth's IT departments with metrics that breaks IT security into categories. These categories are then assessed on a risk assessment metrics that enables them to assess their IT security readiness.

Agencies are to ensure that they comply with the following policies and procedures:

### **Procedure**

As part of the NCSR self-assessment process, agencies will complete the assessment on an annual basis. To ensure baseline reporting and metrics on individual and agency cyber preparedness, all agency primary ISO's (or equivalent) are required to participate in the Nationwide Cyber Security Review (NCSR). The NCSR is to be completed annually from October 1<sup>st</sup> to November 30<sup>th</sup> each year. Normally, the assessment is to take the ISO one to several hours to complete and is to be completed with the assistance of whatever agency technical resources are necessary (e.g., Project Management, Security, Operations, Applications, and Business Groups). In order to complete the survey, the ISO will be provided the link to access the survey 2 weeks before the survey window is initiated. When completed, the assessment is automatically saved by the application and an agency can view where it ranks in the given categories and how they compare to previous results over time.

When completing the NCSR self-assessment, agencies will be asked to select a weighted response that best describes their current status for the given category. The agency will complete the process for all categories. All sections must be completed to ensure 100% completion of the survey.

### **Risk Assessment Metrics**

The model uses an assessment that has six levels that describes the agency's current readiness status. These levels are:

- Ad Hoc – Activities for this control are one or more of the following:
  - Not performed
  - Performed but undocumented / (unstructured
  - Performed and documented, but not approved by management

- Documented Policy – The control is documented in a policy that has been approved by management.
- Documented Standards / Procedures – The control meets the requirements for Documented Policy and satisfies all of the following:
  - Documented standards and procedures to help guide implementation of the policy
  - Communicated to all relevant entities
- Risk Measured – The control meets the requirements for Documented Standards / Procedures and satisfies all of the following:
  - Control is at least partially assessed to determine risk
  - Management is aware of the risks
- Risk Treated - The control meets the requirements for Risk Measured and satisfies all of the following:
  - A risk assessment has been conducted
  - Management makes formal risk based decisions based on the results of the risk assessment to determine the need for the control
  - The control is deployed in those areas where justified by risk, but is not deployed where not justified by risk
- Risk Validated – The control meets the requirements for Risk Treated and satisfies all of the following:
  - If the control is implemented in those areas where justified by risk), the effectiveness of the control has been externally audited/tested to validate that the control operates as intended
  - If the control is not implemented in those areas where not justified by risk), management’s decision to not implement the control was determined to be sound

### **Compliance**

Annual enforcement is conducted. Agencies that do not complete the annual NCSR assessment may be required to complete more extensive surveys and/or receive an onsite audit from the commonwealth’s CISO.

## **7. Penetration Testing and Assessment**

A penetration test is a method of evaluating a computer system’s or network’s security by simulating a malicious attack by a virus, hacker, or cracker. The intent of a penetration test is to determine feasibility of an attack and the toll a successful attack would have on the system or network.

Penetration tests are different than network assessments because they often require the tester to use hacking and cracking tools (e.g., Nmap, Nessus) to exploit known and unknown security vulnerabilities in hardware devices, networks, and/or applications. In some instances, the use of these tools can damage the target that is being tested. Testers and their respective agencies need to be aware of the risks associated with penetration testing.

The typical penetration test involves an analysis of the system for potential vulnerabilities that may result from poor or improper system configuration, hardware or software flaws, or operational weaknesses in process or technical countermeasures. During the test, the tester will document:

- The process used in the analysis of the system
- Any known and/or unknown hardware or software flaws
- Operational weaknesses in process or technical countermeasures Anticipated results (if known)
- Findings
- Recommendations to mitigate the risks discovered during testing

When completed, testers will work with their operations teams, application developers, database administrators, and agency Information Security Officer (ISO) to address any shortcomings discovered during the tests. The tester is to also meet with agency information technology leadership to discuss proper implementation and protection strategies.

## Penetration Testing Strategies

- **Test Plan**

Prior to conducting a penetration test, Agency Information Security Officers (ISOs) are to submit a test plan to the Commonwealth Chief Information Security Officer (CISO). This test plan is to be submitted online to: [ra-CISO@pa.gov](mailto:ra-CISO@pa.gov).

Upon submission, the plan will be reviewed by the CISO to ensure that the test will not interfere with Commonwealth business or damage Commonwealth information technology assets.

**Note:** Failure to submit a test plan could trigger a false alarm in the Commonwealth's security monitoring which could cause the agency to temporarily lose Internet access until the event can be investigated.

- **Findings**

After completing the assessment/test, the ISO is to submit a synopsis of the findings to the CISO. The synopsis is submitted online with the original request and includes:

- Detailed results of the testing performed
- Indications of the results
- Mitigation strategies that were implemented

- **Agreements**

Many aspects of a penetration test are intrusive and can damage the computer system or network. In order for the parties involved in the penetration test to fully understand the risks associated with it, the agency ISO needs to draft an agreement that identifies the risks and mitigation strategies associated with the penetration test process. This agreement is to be signed by the parties involved in the test and is to clearly identify:

- Type of Test
- Potential Risks
  - Potential interruptions
  - Potential loss or damage to data
  - Potential loss or damage to equipment
- Mitigation Strategies

- **Test Environment**

Penetration testing shall be conducted after hours and is to be conducted in a controlled environment. The only exception is when testing needs to be conducted in a production

environment. In these instances, the agency ISO is to ensure that this is described in the test plan and agencies are urged to try to complete their tests during the maintenance window policy referenced in ITP-SYM010 - *Enterprise Services Maintenance Scheduling*.

- **System Archiving**

Testers need to ensure that they archive system configurations and sensitive information before performing a penetration test. Testers also need to archive critical assets that may be jeopardized during the penetration test.

- **Freeware**

The use of freeware penetration tools is permissible as long as they are approved by the CISO and that they comply with ITP-APP033 – *Use of Freeware Policy* prior to being utilized.

## 8. Responsibilities

Agencies are required to perform the actions outlined in this policy.

## 9. References

- ITP-APP033 – *Use of Freeware Policy*
- ITP-SEC019 - *Policy and Procedures for Protecting Commonwealth Electronic Data*
- ITP-SEC024 - *IT Security Incident Reporting Policy*
- ITP-SEC025 - *Proper Use and Disclosure of Personally Identifiable Information (PII)*
- ITP-SYM010 - *Enterprise Services Maintenance Scheduling*
- Service Engagement Review Process (SERP) - <https://www.sp.state.pa.us/>

## 10. Authority

- Executive Order 2011-05, Enterprise Information Technology Governance

## 11. Publication Version Control

It is the user's responsibility to ensure they have the latest version of this publication. Questions regarding this publication are to be directed to [RA-itcentral@pa.gov](mailto:RA-itcentral@pa.gov).

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision  |
|----------|------------|--|
| Original | 4/19/2007  | Base Policy  |
| Revision | 11/17/2011 | Updated edits  |
| Revision | 4/2/2014   | Merged OPD-SEC023A, OPD-SEC023B, OPD-SEC023C, OPD-SEC023D into ITP   |
| Revision | 5/7/2015   | <ul style="list-style-type: none"> <li>• Expanded Purpose Section</li> <li>• Removal of Contingency and Continuity Planning section</li> <li>• Added Assessment Testing and Remediation of Deficiencies section</li> <li>• Updated Agency Self-Assessment section               <ul style="list-style-type: none"> <li>○ Removed biannual Assessments model</li> <li>○ Added annual Nationwide Cyber Security Review (NCSR) model</li> </ul> </li> <li>• Removed ITP-APP001 reference in Section 7 Penetration Testing and Assessment – Freeware; replaced with ITP-APP033 Use of Freeware Policy</li> </ul> |

# Information Technology Policy

## *IT Security Incident Reporting Policy*

|  |  |
|--|--|
| <b>ITP Number</b><br>ITP-SEC024  | <b>Effective Date</b><br>April 2, 2012 |
| <b>Category</b><br>Security  | <b>Supersedes</b><br>None              |
| <b>Contact</b><br><a href="mailto:RA-ITCentral@pa.gov">RA-ITCentral@pa.gov</a> | <b>Scheduled Review</b><br>July 2022   |

### 1. Purpose

This Information Technology Policy (ITP) establishes the policies, procedures and standards related to reporting and managing of Cyber Security Incidents.

### 2. Scope

This ITP applies to all offices, departments, boards, commissions, and councils under the Governor’s jurisdiction (hereinafter referred to as “agencies”). Agencies not under the Governor’s jurisdiction are strongly encouraged to follow this ITP.

Third-party vendors, licensors, contractors, or suppliers shall meet the policy requirements of this ITP that are applicable to the products and services provided to the Commonwealth.

### 3. Background

The Pennsylvania *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329 (P.L. 474, No. 94, 2005), requires notification to affected individuals in instances where personal information has been compromised. This security incident reporting and escalation policy enables the enterprise to respond effectively to security incidents, such as a personal information breach, by clearly detailing the roles and responsibilities of all the parties involved. It provides a precise path for reporting, escalating, auditing and remediating security incidents. Proper reporting and management of Cyber Security Incidents is critical to secure and protect the Commonwealth of Pennsylvania’s critical Information Technology (IT) business processes and assets from cyber-crime or cyber-terrorism.

### 4. Definitions

- 4.1 Cyber Security Incident:** Any occurrence involving the unauthorized or accidental modification, destruction, disclosure, loss, damage, misuse, or access to information technology resources such as systems, files, and databases. It also includes a violation or imminent threat of violation of computer security policies, acceptable use policies, and standard security practices.
- 4.2 Data Breach:** An unauthorized access and acquisition of computerized data that materially compromises the security or confidentiality of a system, data or personal information maintained by the entity that causes or the entity reasonably believes has caused or will cause loss or injury to any resident of this Commonwealth.

- 43 Forensic Analysis:** Evidence found in computers and digital storage media as part of a formal investigation using systematic and sound methods to examine digital media with the aim of identifying, preserving, recovering, analyzing, and presenting facts and opinions about the digital information.
- 44 Incident Response Process Document:** A set of processes that outlines what to do in a Cyber Security Incident or potentially suspected Cyber Security Incident.
- 45 Pennsylvania Computer Security Incident Response Team (PA-CSIRT):** a group of Commonwealth Subject Matter Experts that handle computer security incidents.
- 46 Pennsylvania Information Sharing and Analysis Center (PA-ISAC):** a centralized Commonwealth resource for gathering information on Cyber Security Incidents.

## 5. Policy

The Office of Administration, Office for Information Technology, Enterprise Information Security Office (OA/OIT/EISO) is responsible for coordinating and leading the cyber incident response when a Cyber Security Incident involves: the enterprise, an agency, multiple agencies, and entities such as business partners who have access to Commonwealth's network and data repositories. In addition, OA/OIT/EISO is responsible for the Commonwealth's cyber security readiness, threat analysis, and remediation efforts.

The following IT security incident scenario table provides the responsibilities for OA/OIT/EISO, agency information security officers (ISO), and agency Chief Information Officers (CIO).

| Scenario   | OA/OIT/EISO | Enterprise | DC/Agency ISO |
|--|-------------|------------|---------------|
| Proactively identify potential cyber security threats and take precautions before they can cause potential harm to the Commonwealth's IT infrastructure. | X           | X          |               |
| Proactively identify potential cyber security threats and take precautions before they can cause potential harm to the agency's IT infrastructure.       |             | X          | X             |
| Set and alert the agencies of the current cyber security threat posture.   | X           |            |               |
| Coordinate the recovery of Commonwealth network operations, telecommunications, and IT applications and databases.                                       | X           |            |               |
| Provide assistance to agencies in helping remediate issues caused by Cyber Security Incidents.   | X           |            |               |
| Prepare and educate Commonwealth agencies, and employees as to the dangers of cyber security threats and how to reduce their risk exposure.              | X           | X          |               |

|   |   |   |   |
|---|---|---|---|
| Coordinate remediation efforts with local government representatives through the Pennsylvania Sharing and Advisory Committee (PA-ISAC) to exchange policy and operational information necessary to respond to and recover from Cyber Security Incidents | X |   |   |
| Conduct cyber security Forensic Analysis in investigating and gathering of information related to cyber threats and attacks.  | X |   |   |
| Work with third-party security providers to ensure they respond to and address Cyber Security Incidents reported to them.   | X | X |   |
| Track the status of ongoing investigations and provide reports to agency CIOs, ISOs, and OA executive staff.  | X |   |   |
| Appoint an agency ISO and a secondary point of contact for Cyber Security Incident reporting and handling. Provide OA/OIT/EISO those POCs information.  |   |   | X |
| Collaborate with business unit management to declare an outage for affected systems.  | X | X | X |
| Act as the primary point of contact for Cyber Security Incident response for the agency.  |   | X |   |
| Report incidents bi-directionally from OA/OIT/EISO via the Commonwealth reporting system. Automated SIEM process should be used where available.  | X | X |   |

## Incident Response and Countermeasures

Following the immediate response to a security incident, different countermeasure may be taken, depending on the type and severity of the incident and the value of the affected assets. As part of an incident response, the Commonwealth CISO and/or agency ISOs may prescribe the necessary incident management steps, which may include, but are not necessarily limited to, disconnecting a system from the network, confiscating hardware for evidence, or providing information for investigative purposes and choosing one or more of the following actions:

- **Information gathering:** Depending on the nature of the security event, it may be necessary to examine the situation, enhance logging capabilities, copy documents, back up temporary files, and set up alarms or change threshold values.
- **Configuration changes:** In many cases, configuration changes, including the installation of software patches, reconfiguration of hardware devices or policy revisions will be necessary following a security incident.
- **Forensics:** In certain cases, it may be required to conduct digital forensics on the affected IT resources to identify root cause and/or prevent an infection from spreading across the network. In certain cases, where criminal activity is suspected or confirmed, law enforcement authorities may be notified. In any case, all available evidence collected via digital forensics must be made tamper-resistant and the chain of custody of all such evidence must be maintained throughout the forensics investigative process.

**Note:** In the event, an affected asset or assets must be isolated and excluded from regular service to prevent further security incidents, business unit management will be engaged by the agency CIO or ISO to declare an outage and invoke their disaster recovery plan, or continuity of operations plan.



## 6. Procedures

All Agencies are to follow the incident response process outlined in the Incident Response Process Document which can be found on IT Central when responding to or determining whether a Cyber Security Incident exists.

### Incident Response Process

In the event a Cyber Security Incident has been suspected or confirmed, the agency ISO is to evaluate the Cyber Security Incident according to the following IT Security Incident Reporting Process:

| <b>Security Incident Category 1 (Critical/High)</b> |  |
|---|--|
| Description / Criteria                              | <ol style="list-style-type: none"> <li>1. The agency or EISO has determined there is/was an active attack on an agency system or network (e.g., denial of service or rapidly spreading malicious code); and/or</li> <li>2. The agency or EISO has determined that other organizations' systems are affected, such as business partners or outside organizations; and/or</li> <li>3. The agency or EISO has determined that the data involved is in the category of Sensitive Security or Protected as defined in ITP-SEC019.</li> </ol>  |
| Alerting Requirement                                | <p>The agency ISO or designate is responsible for reporting the incident to the PA-CSIRT within thirty (30) minutes of detection. The following information, at a minimum, is required when reporting the incident:</p> <ul style="list-style-type: none"> <li>• Agency name and business unit;</li> <li>• The point of contact name and phone number; and</li> <li>• Brief description of intrusion and damages (real or anticipated).</li> </ul> <p>Notification can take the form of a phone call to the PA-CSIRT Incident Response Hotline at 1-877-55CSIRT (1-877-552-7478) or online at: <a href="https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home">https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home</a></p> |
| Incident Reporting Requirements                     | <p>Within <b>1 hour</b> of detection, the agency ISO or designate is responsible for submitting the incident information online at: <a href="https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home">https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home</a></p>  |
| Incident Remediation / Closure                      | <p>Critical incidents need to be remediated/closed within <b>5 business days</b> of being reported to OA/OIT/EISO. Incidents that cannot be remediated/closed during this timeframe need to have <b>weekly status updates</b> entered into the incident tracking system until the incident can be closed.</p>  |

| <b>Security Incident Category 2 (Medium)</b> |   |
|--|---|
| Description / Criteria                       | <ol style="list-style-type: none"> <li>1. The agency or EISO has determined that the data involved is in the category of Privileged as defined in ITP-SEC019; and/or</li> <li>2. The incident has an impact or potential impact of: <ul style="list-style-type: none"> <li>• financial loss,</li> <li>• loss or compromise of data,</li> <li>• violation of legislation/regulation,</li> <li>• damage to the integrity or delivery of critical goods, services or information; and/or</li> </ul> </li> <li>3. The agency has been unable to resolve the incident; and/or</li> <li>4. The vulnerability that caused the incident has not been determined or mitigated.</li> </ol>  |
| Alerting Requirement                         | <p>The agency ISO or designate will be responsible for reporting the incident to the PA-CSIRT within <b>1 hour</b> of detection. The following information, at a minimum, is required when reporting the incident:</p> <ul style="list-style-type: none"> <li>• Agency name and business unit;</li> <li>• The point of contact name and phone number; and</li> <li>• Brief description of intrusion and damages (real or anticipated).</li> </ul> <p>Notification can take the form of a phone call to the PA-CSIRT Incident Response Hotline at 1-877-55CSIRT (1-877-552-7478) or online at: <a href="https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home">https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home</a></p> |
| Incident Reporting Requirements              | <p>Within <b>4 hours</b> of detection, the agency ISO or designate is responsible for submitting the incident information online at: <a href="https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home">https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home</a></p>  |
| Incident Remediation / Closure               | <p>Medium incidents need to be remediated/closed within <b>15 business days</b> of being reported to OA/OIT/EISO. Incidents that cannot be remediated/closed during this timeframe need to have <b>biweekly status updates</b> entered into the incident tracking system until the incident can be closed.</p>  |
| <b>Security Incident Category 3 (Low)</b>    |   |
| Description / Criteria                       | <ol style="list-style-type: none"> <li>1. The agency or EISO has determined that the data involved is in the category of Prerequisite-Required as defined in ITP-SEC019 and/or is publicly available; and/or</li> <li>2. The agency has contained or resolved the incident.</li> </ol>  |
| Alerting Requirement                         | <p>The agency ISO or designate will be responsible for reporting the incident to the PA-CSIRT within <b>1 hour</b> of detection. The following information, at a minimum, is required when reporting the incident:</p> <ul style="list-style-type: none"> <li>• Agency name and business unit;</li> <li>• The point of contact name and phone number; and</li> <li>• Brief description of intrusion and damages (real or anticipated).</li> </ul> <p>Notification can take the form of a phone call to the PA-CSIRT Incident Response Hotline at 1-877-55CSIRT (1-877-552-7478) or online at: <a href="https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home">https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home</a></p> |
| Incident Reporting Requirements              | <p>Within <b>8 hours</b> of detection, the agency ISO or designate is responsible for submitting the incident information online at: <a href="https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home">https://grc.pa.gov/RSAarcher/apps/ArcherApp/Home.aspx#home</a></p>  |

|                                |   |
|--------------------------------|---|
| Incident Remediation / Closure | Low incidents need to be remediated/closed within <b>20 business days</b> of being reported to OA/OIT/EISO. Incidents that cannot be remediated/closed during this timeframe need to have <b>monthly status updates</b> entered into the incident tracking system until the incident can be closed. |
|--------------------------------|---|

## 7. Responsibilities

**7.1 Agencies** shall adhere to the policy and procedures of this ITP and are to put in place processes for ensuring that all users of agency systems are aware of the procedures and the importance of reporting security incidents, threats, or malfunctions that may have an impact on the security of agency information.

**7.2 Third-party vendors, licensors, contractors, or suppliers** providing services to the Commonwealth shall comply with the requirements outlined in this ITP and [OPD-SEC000B Security Policy Requirements for Third Party Vendors](#).

## 8. Related ITPs/Other References

Commonwealth policies, including Executive Orders, Management Directives, and IT Policies are published on the Office of Administration's public portal:

<http://www.oa.pa.gov/Policies/Pages/default.aspx>

- Management Directive 205.34 Amended– *Commonwealth of Pennsylvania Information Technology Acceptable Use Policy*
- ITP-SEC000 – *Information Security Policy*
- ITP-SEC016 – *Commonwealth of Pennsylvania Information Security Officer Policy*
- ITP-SEC019 – *Policy and Procedures for Protecting Commonwealth Electronic Data*
- ITP-SEC021 – *Security Information and Event Management Policy*
- ITP-SEC025 – *Proper Use and Disclosure of Personally Identifiable Information (PII)*
- ITP-SYM006 – *Commonwealth IT Resources Patching Policy*
- OPD-SEC000B – *Security Requirements for Third Party Vendors*
- Incident Response Process Document -

<https://itcentral.pa.gov/Security/Services/Incident Response Plan.pdf>

(Limited Access)

## 9. Authority

Executive Order 2016-06 *Enterprise Information Technology Governance*

## 10. Publication Version Control

It is the [Authorized User](#)'s responsibility to ensure they have the latest version of this publication, which appears on <https://itcentral.pa.gov> for Commonwealth personnel and on the Office of Administration public portal: <http://www.oa.pa.gov/Policies/Pages/default.aspx>. Questions regarding this publication are to be directed to [RA-ITCentral@pa.gov](mailto:RA-ITCentral@pa.gov).

## 11. Exemption from This Policy

In the event an agency chooses to seek an exemption a request for a policy waiver is to be submitted via the enterprise IT policy waiver process. Refer to [ITP-BUS004 IT Waiver Review](#)

[Process](#) for guidance.

This chart contains a history of this publication's revisions:

| Version  | Date       | Purpose of Revision  | Redline  |
|----------|------------|--|--|
| Original | 08/02/2012 | Base Document  | N/A  |
| Revision | 05/01/2013 | Consolidated OPD- SEC022A, OPD-SEC24B, STD-SEC024C into base policy  | N/A  |
| Revision | 04/02/2014 | ITP Reformat   | N/A  |
| Revision | 03/09/2017 | <ul style="list-style-type: none"> <li>Added/Revised Definitions</li> <li>Clarified and moved EISO, Agency CIO and Agency ISO responsibilities into scenario table in Policysection</li> <li>Removed Computer Incident Response Technology Standardsection</li> <li>Revised the data category types to align with ITP-SEC019 in the Procedures section</li> <li>Added Security Breach Checklist reference</li> </ul> | N/A  |
| Revision | 03/30/2017 | <ul style="list-style-type: none"> <li>Updated category tables language for clarity</li> </ul>   | N/A  |
| Revision | 06/25/2020 | <ul style="list-style-type: none"> <li>Added language to include required use of IRP.</li> <li>Removed Objective section</li> <li>Updated Exemption section to remove reference to COPPAR</li> <li>Reformatted</li> </ul>  | <a href="#">Revised IT Policy Redline &lt;06/25/2020&gt;</a> |
| Revision | 02/16/2021 | <ul style="list-style-type: none"> <li>Minor revisions</li> <li>Added definitions for PA Computer Security Incident Response Team and PA Information Sharing and Analysis Center</li> </ul>  | <a href="#">Revised IT Policy Redline &lt;2/16/2021&gt;</a>  |
| Revision | 07/16/2021 | <ul style="list-style-type: none"> <li>Updated link to IRP</li> <li>Added language for third party vendors</li> <li>Updated policy references</li> </ul>   | <a href="#">Revised IT Policy Redline &lt;07/16/2021&gt;</a> |

**Exhibit E  
for the Job Order Contracting Consultant Services Contract**

| <b>Comment Number</b> | <b>RFP/IT Terms &amp; Conditions Section</b> | <b>Objection or Addition</b>  | <b>Response to FOS</b>  |
|-----------------------|--|---|---|
| 1                     | Section IV - 4(B)(3) RFP p. 28               | We wish to clarify that our role with respect to the Commonwealth's terms and conditions for design and construction projects does not extend to legal advice.  | The role of the JOC Consultant does not include providing legal advice.   |
| 2                     | Section IV-4(D) RFP pp. 32-33                | We request to change the word "ensure" to "confirm" in Sections 4(a), 4(b), and 5(c). As is customary, FOS's professional liability carrier covers claims arising from errors or omissions that rise to the level of negligence. Accordingly, where the standard of care is raised higher than this by language that may create a guarantee or a warranty or create uncertainty through the incorporation of the ambiguous concept of "satisfaction", the insurability of such claims may become clouded, thereby potentially impairing the insurance resources that protect the Commonwealth. For that reason, we would seek to insert a standard of care in the final agreement that aligns with industry standard and clarify that this standard is consistently applied throughout the contract | DGS accepts the replacement of the term ensure with confirm.  |
| 3                     | IT Terms & Conditions Section 10             | See comment 2. We seek to clarify that the requirements of this section are subject to the standard of care set forth in Section 63(c)  | Required ITPs are listed in the Contract Document and attached in Exhibit D.  |
| 4                     | IT Terms & Conditions Section 12(e)          | See attached Simplebid™ Order Form and End User License Agreement (EULA). The terms of the EULA govern use of the Simplebid™ platform and cost book. To the extent there is conflict between the Contract and the Simplebid™ Order Form and EULA would govern.  | The EULA and Amendment to the EULA have been revised and attached in Exhibits F and G.  |
| 5                     | IT Terms & Conditions Section 20(a)(ii)      | See comment 2. We seek to change "satisfactorily performed" to "performed in accordance with this Contract"   | DGS accepts the replace of performed in accordance with the Contract  |
| 6                     | IT Terms & Conditions Section 23(b)(ii)(3)   | FOS's professional liability carrier covers losses to the proportionate extent that FOS is found liable in dispute resolution for damages caused by negligent errors or omissions. Therefore, in order to protect the insurability of the services to be rendered by FOS, we request that the indemnification be limited to the proportionate extent of losses caused by negligent errors and omissions of FOS and that FOS's responsibility for costs associated with the project upon the rejection of Supplies and after termination for default be subject to a finding of negligence on the part of FOS in a binding dispute resolution proceeding.  | As no supplies are to be provided by the JOC Consultant, this clause should stand as written. Software is not be considered a supply. |
| 7                     | IT Terms & Conditions Section 28(a)*ii)      | See comment 2. We seek to replace "satisfactorily rendered" with "rendered in accordance with this Contract."   | Satisfactorily rendered should stand as written.  |
| 8                     | IT Terms & Conditions Section 28(c)          | See comment 6. In addition, we seek to delete the reference to "liquidated damages  | DGS accepts the removal for liquidated damages.   |
| 9                     | IT Terms & Conditions Section 31(c)          | We request that the last paragraph of this section be subject to Section 46.  | DGS accepts this request.   |
| 10                    | IT Terms & Conditions Section 39(a)          | See comment 6. We seek to insert the word "negligent" before the word "activities" in line 2. Further, as is typical, FOS's professional liability carrier will not reimburse defense costs of an indemnified party until liability for negligence is established, and only to the proportionate extent of the finding of negligence. The inclusion of a duty to defend and pay defense costs of an indemnified party on a current basis clouds the insurability of claims for negligent errors or omissions. In order to protect the insurability of the services to be rendered by FOS, we request that the last two sentences of Section 39(a) be deleted in their entirety.   | Section 39 of the IT Terms & Conditions has been replaced and referenced in the Contract.   |
| 11                    | IT Terms & Conditions Section 42(a)          | We request to remove the word "patent" from line 4 and insert the word "reasonable" before "attorneys fees" in line 23.   | The word patent should stand as written. DGS accepts the addition of the word reasonable before attorneys fees.                       |

| Comment Number | RFP/IT Terms & Conditions Section       | Objection or Addition  | Response to FOS  |
|----------------|---|--|--|
| 12             | IT Terms & Conditions Section 44(b)     | See comment 4. The Simplebid™ Order Form and EULA govern use of the Simplebid™ software and associated cost book. We would request to update Section 44(b) to reflect this. The Commonwealth would not be permitted to use the Simplebid™ Software and associated cost book upon expiration or termination for default to allow the Commonwealth or a third party to complete work under the Contract.   | The EULA and Amendment to the EULA have been revised and attached in Exhibits F and G.                                   |
| 13             | IT Terms & Conditions Section 46        | See comment 4. The Simplebid™ Order Form and EULA govern use of the Simplebid™ software and associated cost book, and the term of the engagement will be set forth in the Order Form. We would request to clarify that Contractor will retain all rights in and to the Simplebid™ Software and associated cost book, including any improvements, customization, modifications or knowledge developed while performing the services, and in any working papers compiled in connection with the services (but not the Commonwealth Information reflected in them), including any copyrights, patents, and/or trademarks therein or associated therewith. The Simplebid™ software and associated cost book will not be considered “works made for hire” and copyrights/inventions will not be assigned to the Commonwealth. Further, FOS would not make a warranty against non-infringement. Finally, we wish to clarify that the copyright notice for the Simplebid™ software and associated cost book will be in the name of FOS, not the Commonwealth. | The EULA and Amendment to the EULA have been revised and attached in Exhibits F and G.                                   |
| 14             | IT Terms & Conditions Section 47        | We would like to clarify that FOS does not intend to share the source code for the Simplebid™ software and associated cost book.   | FOS will not share the source code and COPA does not expect to have it   |
| 15             | IT Terms & Conditions Section 63        | See comment 2. FOS will provide services in accordance within industry standards, but it will not agree to make warranties with regard to the services. We’d also like insert the following language: “Notwithstanding any other term in this Contract, all services rendered by the Contractor will be governed by this standard of care.”  | This clause should stay as written.  |
| 16             | IT Terms & Conditions Section 64        | We request to delete all terms regarding Liquidated Damages.   | DGS accepts this request.  |
| 17             | IT Terms & Conditions Section 72        | See comment 4. We seek to incorporate a reference to the Simplebid™ Order Form and EULA into this section.   | The EULA and Amendment to the EULA have been revised and attached in Exhibits F and G.                                   |
| 18             | IT Terms & Conditions Section Exhibit B | See comment 4. We would seek to replace this Exhibit with the Simplebid™ Order Form and EULA.  | Exhibit B is stricken in its entirety and replaced with the EULA and Amendment to the EULA attached in Exhibits F and G. |

**Exhibit F**  
**for the Job Order Contracting Consultant Contract**



**Simplebid™ End User License Agreement**

Your use of, and access to, the Simplebid™ job order contracting software, including the Simplebid Unit Price Database (“Cost Book”) and/or other related products (collectively, the “Software”), and the features, functions, and services offered through the Software (collectively, the “Services”), is subject to Your prior acceptance of this End User License Agreement (“EULA”), as may be amended from time to time by Facility Optimization Solutions, LLC (“FOS” we,” or “us”).

Scope of License. Subject to the terms and conditions contained herein, FOS grants You a limited, revocable, non-exclusive, non-transferable license to use the Software subject to the terms of this EULA only for Your limited internal business purposes as specifically requested by the entity/agency running the job order contracting program that You are participating in (the “Entity/Agency”) to provide job order contract proposals and supporting documents exclusively to the Entity/Agency (the “Licensee”). If You and FOS have executed an Order Form for the Simplebid Software (“Order Form”), the License is also subject to the terms of the Order Form. This License is subject to the following restrictions, in addition to such other restrictions as may be contained in the Order Form or the Privacy Policy:

- a. You will not permit any person other than Yourself to access and use the Software and/or Services;
- b. You will not use the Software or Services for any purpose other than Your internal business purposes only and only for the Entity/Agency;
- c. You may not resell, sublicense, transfer, re-distribute, allow access to or otherwise provide or make available for any purpose any component of the Software to any person, firm or entity except as expressly set forth herein;
- d. You may not and may not permit or authorize any third party to, alter, reverse engineer, disassemble, decompile, circumvent or disable any code, feature or security or technologic measure that effectively controls access to, the Software, or otherwise engage in any conduct designed or intended to interfere with the operation of the Software;
- e. You shall not, and shall cause the Authorized Users not to, (i) use the Software and/or Services to store or transmit computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, routines, files, scripts, agents or programs, (ii) use the Software and/or Services to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the privacy or intellectual property rights of any third party, (iii) access or use the Software and/or Services for any benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive products or services, (iv) sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon, the Software and/or Services, (v) interfere with or disrupt the integrity or performance of the Software and/or Services or third-party data contained therein, (vi) attempt to gain unauthorized access to the Software and/or Services or any associated systems or networks or (vii) modify, make derivative works of, disassemble, decompile or reverse engineer the Software and/or Services or any component thereof.
- f. You are solely responsible for the use and security of Your and Your Authorized Users own computers, hardware, and services used to access the Software and/or Services.

**DISCLAIMER.** FOS is not responsible for use or misuse of the Software or Services by any party or harm or damages that may result from use or misuse of the Software or Services. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY OF THIS EULA, THE ORDER FORM, OR THE PRIVACY POLICY, THE SOFTWARE IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND AND EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, FOS HEREBY DISCLAIMS ALL WARRANTIES OF ANY TYPE, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND ANY COST BOOK DATA INCLUDED IN THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE, NONINFRINGEMENT, MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD





PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, FEATURES, PERFORMANCE LEVELS, SUPPORT RESOURCES, AND FREEDOM FROM COMPUTER VIRUS. TO THE EXTENT A WARRANTY MAY NOT BE DISCLAIMED AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM REQUIRED UNDER SUCH LAW. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY FOS AND/OR ITS AGENTS OR EMPLOYEES, SHALL CREATE A WARRANTY. FOS DOES NOT WARRANT THAT THE SOFTWARE WILL MEET ALL YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL SOFTWARE DEFECTS WILL BE CORRECTED.

**Ownership of Software.** The Software, including the Cost Book, contains copyrighted material, trademarks and other intellectual property that is owned or licensed by FOS. FOS retains all title, interest, ownership rights and intellectual property rights in and to the Software and/or Services and reserves all rights not expressly granted to You in this EULA. The Software is licensed to You, not sold.

**Updates.** FOS may, from time to time, develop new versions, patches, bug fixes, updates, upgrades and other modifications to improve the Software and/or Services ("Updates"). These may be automatically installed and/or released without providing any additional notice to, or consent from, You or Your Authorized Users. All Updates are subject to the terms of this EULA.

**Third Party Software.** Some components of the Software or Services (whether developed by FOS, our affiliates or third parties) (the "Third-Party Software") may be governed by separate licenses. Your license rights with respect to Third-Party Software are defined by the applicable Third-Party Software license, and nothing in this EULA will restrict, limit or otherwise affect any rights or obligations you may have, or conditions to which you may be subject under such Third-Party Software licenses. You agree to be bound by and subject to the terms and conditions of each applicable Third-Party Software license. If you do not agree to be bound by and subject to the terms and conditions of each applicable Third-Party Software license, You must terminate this EULA by uninstalling and destroying all copies of the Software that are in Your and Your Authorized Users possession or control. If our rights from a licensor of Third-Party Software are limited, suspended or terminated for any reason, Your rights will also be so limited, suspended or terminated.

**For U.S. Government End Users.** The Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Software is provided to U.S. Government End Users only as a commercial end item and with only those rights as are granted to all other customers pursuant to the terms and conditions herein.

**Export Restrictions.** The Software, Services and related technologies are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and regulations and acknowledge that you have the responsibility to obtain authorization to export, re-export, or import the Software and related technology, as may be required. You will indemnify and hold FOS harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney's fees) arising from or relating to any breach by You and/or Your Users in connection with this paragraph.

**Limitation of Liability.** FOS's liability under this EULA in connection with any claim arising out of or relating to the License, Software and/or Services any provided in connection with this EULA shall be limited to the lesser of the amount of Your actual direct damages or either (i) the amount of the License Fees paid to FOS under the applicable Order Form, if You have executed an Order Form, or (ii) \$500, if you have not executed an Order Form. Your right to monetary damages in such amount shall be exclusive of all other remedies which You may have at law or in equity against FOS, any affiliate or subsidiary of FOS, or any officer, director, shareholder, employee, consultant, agent, successor, or assign of FOS.





Account; Passwords. To access and use the Software and/or the Services, you must register an account with FOS (the "Account"). You shall only use the username issued to You by FOS in connection with the Account, except as authorized by this EULA. If You are provided with a temporary username and/or password, You must modify the temporary credentials and create a unique username and/or password. You shall not share the Your Account username or password with anyone except as authorized by this EULA. You are responsible for maintaining the confidentiality of Your Account username and password and You are fully responsible for all activities that occur in connection with same. In the event of any breach of security, including, without limitation, access to the Software and/or Services via Your Account by someone other than You, You agrees to immediately (a) change Your password, and (b) notify FOS of the security breach. You agree that the terms of this EULA will be binding upon and govern the relationship between You and FOS. You further agree to take any and all action necessary to ensure compliance with this EULA, and You shall indemnify FOS for any and all costs, damages, losses or expenses (including attorneys' fees) incurred in respect any use of the Software and/or Services via Your Account. FOS will not be liable for any loss or damage arising from your failure to comply with this paragraph. FOS reserves the right to terminate Your access to the Software and/or Services at any time for any reason or no reason.

Your Data; Suggestions.

- a. As between You and FOS, You own all right, title, and interest in and to the Your Data. Except as provided in this subparagraph, FOS obtains no rights under this EULA from you in or to the Your Data, including any related intellectual property rights. You grant FOS a license to display, perform, execute, distribute and modify the Your Data to enable You to operate the Software and/or Services and provide any applicable support. Further, You consent to FOS's (i) use of anonymous or de-identified Your Data for the purposes of marketing the Software and/or Services for benchmarking purposes; (ii) use of technical data and related information, including information about your browser, to facilitate the provision of software updates, product support, and other services to you (if any) related to the Software and/or Services, and (iii) disclosure of the Your Data to comply with any request of a governmental or regulatory body (including subpoenas or court orders). You agrees that these rights and licenses are royalty-free, worldwide and irrevocable (for so long as the Your Data is stored in the Software) and include a right of FOS to make the Your Data available to, and transfer such rights to, others with whom FOS has contractual relationships related to the provision of the Software, the Services and/or any support related to same.
- b. You further represent and warrant that (a) You own all right, title, and interest in and to the Your Data or have the rights and permissions necessary to use Your Data in connection with the Software and Services; and (b) You have all rights and permissions necessary to grant the rights contemplated by this EULA.
- c. If you provide any suggestions regarding the Software or the Services to FOS, we will own all right, title and interest in and to the suggestions, even if you have designated the suggestions as confidential. FOS will be entitled to use the suggestions without restriction. You hereby irrevocably assign to FOS all right, title and interest in and to the suggestions and agree to provide FOS any assistance FOS may require to document, perfect and maintain FOS's rights in the suggestions.

Waiver of Consequential Damages. In no event shall FOS or its affiliates be liable to You for any special, indirect, consequential or incidental damages arising out of, or as the result of the License, the Software and/or the Services provided to You, regardless of whether arising out of a contract claim, tort claim or otherwise and whether such damages are foreseeable.

Indemnification. You assume sole responsibility for its use of the License, the Software and/or the Services and shall defend, indemnify and hold FOS, its affiliates, and their directors, officers and employees



harmless from and against all liabilities, claims, and damages that arise in connection with or as a result of use of the Software and/or Services by You or Your Authorized Users.

Right to Audit. FOS reserves the right to monitor and audit Your and Your Authorized Users' use of the Software and/or Services.

Termination. This EULA shall continue in effect until terminated as set forth herein. This EULA may be terminated, and/or the License revoked or modified by FOS if the You breach any provision of this EULA, including, without limitation, if You fails to pay applicable fees when due and FOS submitted a proper invoice. FOS shall provide seven (7) days written notice to You of termination of this EULA or revocation of any License. FOS may also terminate this EULA immediately upon notice to You if (a) FOS's relationship with a third-party provider whose software, hosting or other technology FOS uses to provide the Software and/or Services expires, terminates or requires FOS to change the way FOS provides the Software and/or Services, or (b) You permit any individual to access or use Your Account username or password in violation of this EULA. Upon FOS's termination of this EULA due to Your breach, it is agreed that no refund of License Fees shall be due to You. Upon termination of the EULA, neither You nor Your Users will be authorized to use the Software and/or Services and the License shall be immediately cancelled. In the event of termination of the EULA, upon written request by You, copies of Your Data will be delivered to You within thirty (30) days thereof; provided, that You shall pay in advance all reasonable costs of transferring copies of the Your Data to You. No termination of this EULA shall release or affect any obligations or liabilities incurred by either party under this EULA prior to the effective date of such termination. The paragraphs of this EULA under the headings "Disclaimer," "Ownership of Software," "Limitation of Liability," "For U.S. Government End Users," "Export Restrictions," "Waiver of Consequential Damages," "Indemnification," and "Governing Law" shall survive termination of the License and this EULA.

Force Majeure. FOS shall have no liability to You for any damages whatsoever arising out of or as a result of the failure by FOS to provide the Software, Services and/or any support as a direct or indirect result of any use or circumstance beyond the reasonable control of FOS (including, without limitation, acts of God, acts of public enemy, war, accidents, fires, electrical or equipment failures, strikes, postal delays, labor difficulties, contractor difficulties, problems with telecommunications providers or database hosting entities, Internet disruption, explosions or governmental orders or regulations).

Governing Law. This EULA shall be construed according to, and the legal relations between the Parties shall be governed by, the laws of the State of New York, excluding its conflicts of law provisions. You and FOS agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Erie, to resolve any dispute or claim arising from this EULA.

Amendments. Changes to this EULA may be made by FOS by publishing revised versions of this EULA to the URL [www.simplebid.net](http://www.simplebid.net). All revisions to this EULA shall be deemed effective and binding upon You and Your Users immediately upon being published to the foregoing URL without advance notice or consent of You or Your Users.



**Exhibit G**  
**for the Job Order Contracting Consultant Contract**



**Amendment to End User License Agreement (EULA)**

This Amendment to End User License Agreement (“Amendment”) is by and between the Commonwealth of Pennsylvania (“COPA”) and Facility Optimization Solutions, LLC (“FOS” and collectively “Parties”) and is effective as of **[INSERT EFFECTIVE DATE]**.

WHEREAS, COPA and FOS are Parties to a **[INSERT NAME OF AGREEMENT / TERMS]** between the FOS and COPA dated **[INSERT DATE OF AGREEMENT]** (the “COPA Agreement”), under which FOS will provide certain services to support COPA’s job order contracting program;

WHEREAS, in conjunction with the COPA Agreement, COPA will require a license to FOS’s proprietary Simplebid™ job order contracting software, including the Simplebid Unit Price Database (collectively, the “Software”);

WHEREAS, use of the Software is subject to FOS’s Simplebid End User License Agreement (“EULA”), and

WHEREAS, the Parties desire to amend the EULA.

NOW THEREFORE, in consideration of the foregoing and the mutual provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. The introductory paragraph of the EULA is amended and restated to read as follows:

“Your use of, and access to, the Facility Optimization Solutions, LLC (“FOS” we,” or “us”) Simplebid™ job order contracting software, including the Simplebid Unit Price Database (“Cost Book”) and/or other related products (collectively, the “Software”), and the features, functions, and services offered through the Software (collectively, the “Services”), is subject to Your prior acceptance of this End User License Agreement (“EULA”).”

2. The section entitled “Export Restrictions” is amended and restated to read as follows:

“The Software, Service and related technologies are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and regulations and acknowledge that you have the responsibility to obtain authorization to export, re-export, or import the Software and related technology, as may be required.”

3. The section entitled “Limitation of Liability” is amended and restated to read as follows:

“FOS’s liability under this EULA shall be limited as provided in the COPA Agreement.

4. In the seventh sentence of the section entitled “Account; Passwords,” the following language is deleted:

“and You shall indemnify FOS for any and all costs, damages, losses or expenses incurred in respect of any use of the Software and/or Services via Your Account.”

5. The section entitled “Waiver of Consequential Damages” is amended in its entirety to read as follows:

“The Parties agree to Waive Consequential damages as set forth in the COPA Agreement.”

6. The section entitled “Indemnification” is amended and restated to read as follows:



"You assume sole responsibility for Your use of the License, the Software and/or the Services."

7. The second sentence of the section entitled "Termination" is amended and restated to read as follows:

"This EULA may be terminated, and/or the License revoked or modified by FOS if the You breach any provision of this EULA or the Order Form."

8. The sixth sentence of the section entitled "Termination" is amended and restated to read as follows:

"In the event of termination of the EULA, upon written request by You, copies of Your Data will be delivered to You, in digital file format, within thirty (30) days thereof."

9. The Section entitled "Governing Law" is amended and restated to read as follows:

"This EULA shall be construed according to, and the legal relations between the Parties shall be governed by, the laws of the Commonwealth of Pennsylvania."

10. The Section entitled "Amendments" is amended and restated to read as follows: "Changes to this EULA may be made only by the subsequent written agreement of FOS and You."

Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the EULA.

This Amendment, including any attachments or exhibits, is made a part of the EULA and incorporated therein as if the terms of this Amendment were fully set forth in the Amendment. To the extent any provision of this Amendment is inconsistent with any provision of the EULA, the provision of this Amendment controls. All of the other terms and conditions contained in the EULA shall remain valid and in full force and effect.

**The Commonwealth of Pennsylvania,  
Department of General Services**

**FACILITY OPTIMIZATION SOLUTIONS, LLC**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINTED NAME AND TITLE**

\_\_\_\_\_  
**PRINTED NAME AND TITLE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

**Exhibit H  
for the Job Order Contracting Consultant Contract**

**REQUEST FOR PROPOSALS FOR**

**Job Order Contracting Program Consultant**

**ISSUING OFFICE**



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES  
PUBLIC WORKS  
Arsenal Building  
1800 Herr Street  
Harrisburg, PA 17125**

**RFP NUMBER  
DGS A-2020-0001-JOC-Program Consultant - Rebid**

**DATE OF ISSUANCE**

**January 2021**

**REQUEST FOR PROPOSALS FOR**  
**Job Order Contracting Program Consultant**

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## CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

| Activity   | Date                           |
|--|--------------------------------|
| Deadline to submit Questions via email to Public Works at <a href="mailto:RA-publicworks@pa.gov">RA-publicworks@pa.gov</a> | February 5, 2021<br>at 5:00PM  |
| A pre-proposal conference will not be held   | Not Applicable                 |
| Commonwealth Deadline to Issue Addenda, before proposal submission deadlines   | February 11, 2021<br>at 5:00PM |
| Proposal Submission Deadline   | February 18, 2021<br>At 1:00PM |

### IMPORTANT PLEASE READ

**Due to COVID-19 restrictions if your company plans to submit a proposal on this RFP please send an email to [RA-publicworks@pa.gov](mailto:RA-publicworks@pa.gov) to schedule a drop-off time for hand delivered proposals or to obtain the proper mailing address for proposals being submitted by mail.**

**MANDATORY Vendor Registration:** All Proposers must have a Current and Active Vendor Number. Proposal Documents require Proposers to provide this number. Register at [www.pasupplierportal.state.pa.us](http://www.pasupplierportal.state.pa.us)

## PART I

### GENERAL INFORMATION

**I-1. Purpose.** This request for proposals (RFP) provides to those interested in submitting proposals for the subject procurement (“Proposers”) sufficient information to enable them to prepare and submit proposals for the **Department of General Service’s** consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for **Job Order Contracting Program** (“JOC Program”).

**I-2. Issuing Office.** The **Department of General Services** (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The Issuing Office is the sole point of contact in the Commonwealth for this RFP. Proposers are required to email [RA-publicworks@pa.gov](mailto:RA-publicworks@pa.gov) or call 717-787-7095 to request the RFP Contract Documents, which ensures you are included on the Plan Holders list. Proposers should not contact any Commonwealth employees or contractors with regard to this RFP. All questions or inquiries (which shall be written and not verbal) concerning this RFP shall be submitted as described in this RFP and shall also include the RFP Name and Contract Number.

**RFP Coordinator:**  
**Jenna Horting**  
**Department of General Services**  
**Public Works**  
**Arsenal Building, 1800 Herr Street**  
**Harrisburg, PA 17125**

Please refer all inquiries to the Issuing Officer via email at [RA-publicworks@pa.gov](mailto:RA-publicworks@pa.gov).

The RFP Coordinator will ensure that all questions are answered promptly and **that all addenda will be issued to Proposers who have requested Contract Documents**. Any entity that is not on the Commonwealth’s list of plan holders will not receive complete addenda and will be deemed non-responsive on the Proposal Submission Date.

**I-3. Scope.** This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Proposers must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

**I-4. Problem Statement.** The Commonwealth is seeking Proposals from qualified Contractor to create, develop, implement and administer a Job Order Contracting Program (“JOC Program”). This program is necessary to enhance the Commonwealth’s contracting process. Additional detail is provided in **Part IV-Work Statement** of this RFP.

**I-5. Type and Award of Contract.** It is proposed that if a contract is entered into as a result of this RFP, it will be a commissioned based contract where payment is determined by a percentage of the actual project costs procured under the JOC Program. The contract will contain the standard terms and conditions, a copy of which is attached to this RFP as an



Appendix. The Issuing Office, in its sole discretion, may undertake negotiations with Proposers whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible, and capable of performing service. The Effective Date of the contract is when all signatures required by law are affixed to the contract. No contract exists until all such signatures are affixed and the final date becomes the Effective Date.

**I-6. 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.

**I-7. Owner's Rights Reserved.** The Commonwealth reserves the right to cancel or withdraw this RFP in whole or in part any time prior to full execution of the contracts. DGS reserves the right to reject any and all proposals received as a result of this RFP. DGS may, in its discretion, waive any informality or technical deficiencies in proposals. DGS reserves the right to request additional or clarifying information, to schedule presentations, and to conduct interviews with any or all Proposers. In addition, DGS reserves the right to negotiate with the successful Proposer.

**I-8. Incurring Costs.** The Issuing Office is not liable for any costs the Proposer incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

**I-9. Pre-proposal Conference.** There will be no Pre-proposal conference for this RFP. If there are any questions, please forward them to the Issuing Officer in accordance with this RFP.

**I-10. Clarification to the RFP.** If a Proposer has any questions regarding this RFP, the Proposer must submit the questions by email to the RFP Coordinator named in **Part I, Section I-2** of the RFP. Request for Information (RFI) must include a reference to the specific RFP and Contract Number. Each RFI question must address a single issue and must provide a reference to the specification section or Appendix in question as applicable or state that there is no such reference. If the Proposer has questions, they must be submitted via email **no later than** the date indicated on the Calendar of Events. The Proposer shall not attempt to contact the RFP Coordinator by any other means. Questions will NOT be answered via telephone. The Commonwealth shall not be bound by any verbal information or by any written information that is not contained within the solicitation documented or issued by the Commonwealth through an addendum. Questions shall not constitute a formal protest of the specification or of the solicitation. The formal protest process is described in this RFP and in the Commonwealth Procurement Code. The RFP Coordinator will issue addendum setting forth questions and answers. The addendum will be sent to the Prime Contact e-mail address provided by all entities who obtained this RFP from the Commonwealth. Any addendum posted on the Commonwealth website may not be relied upon. The addendum will become part of the RFP. The Commonwealth reserves the option to also issue addendum which may be shipped hardcopy format.

**I-11. Amendments to the RFP.** If the RFP needs to be amended, the RFP Coordinator will issue addendum setting forth modifications to the RFP and questions and answers about the RFP. Notice of each addendum will be emailed to all Proposers who have requested the RFP and Contract Documents. The addendum will become part of the RFP. By submitting a proposal,

Proposer acknowledges and affirms that the provisions of all addendum have been included in the Proposal and that the Proposer understands its responsibility for all provisions of all addendum.

**A written Addendum issued by the Commonwealth is the only binding revision to this RFP and no other form of amendment, either written or oral, will be considered binding upon the Commonwealth. Proposers shall not rely on information other than written addendum issued by the Commonwealth. Proposers may only submit written questions as prescribed in this RFP.**

The proposers shall acknowledge receipt of the addendum via email response as required by the language of the addendum. The Commonwealth will not issue any addendum later than indicated in the RFP Calendar of Events unless the Commonwealth extends the Submission Deadline.

**I-12. Response Date Proposal Submission Deadline.** In order to be considered responsive, a proposal must be delivered to the RFP Coordinator on or before the time and date specified in the RFP Calendar of Events. For hand delivered proposals, you must send an email to [RA-publicworks@pa.gov](mailto:RA-publicworks@pa.gov) to schedule a drop-off time. For proposals submitted by mail, you must send an email to [RA-publicworks@pa.gov](mailto:RA-publicworks@pa.gov) to obtain the proper mailing address. The Issuing Office will **not** accept proposals via email or facsimile transmission. Proposers who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Proposers. The hour for submission of proposals shall remain the same. The Issuing Office will reject, unopened, any late proposals.

**The Proposer shall be solely responsible for assuring that the proposal arrives prior to the submission deadline. Proposals delivered after the Proposal Submission Deadline, regardless of the reason for lateness, will automatically be rejected and returned unopened to the Proposer.**

**I-13. Proposals.** To be considered by the Commonwealth, Proposers must meet the Mandatory Requirements of this RFP and should also submit a complete response to this RFP using the format provided in **Part II**. Proposer Proposals must be signed by an official authorized to bind the Proposer to its provisions. By submitting a proposal, the Proposer acknowledges that it has carefully reviewed this solicitation and agrees to comply with all applicable conditions and requirements. The contents of the proposal from the successful Proposer, which do not conflict with this RFP and/or its Appendices, will become contractual obligations if a contract is entered into by DGS. The proposal shall remain valid and binding for at least 90 (ninety) days from the Proposal submission Deadline, or until a contract has been fully executed.

Each Proposer submitting a proposal specifically waives any right to withdraw or modify it, except that the Proposer may withdraw its proposal by written notice received at the Issuing Office's address for proposal delivery prior to the exact hour and date specified for proposal receipt. A Proposer or its authorized representative may withdraw its proposal in person prior to the exact

hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. A Proposer may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements.

**I-14. Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Proposers to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.

**I-15. Discussions for Clarification.** Proposers that submit proposals may be required to make a written clarification of the proposal to the Issuing Office to ensure thorough mutual understanding and Proposer responsiveness to the solicitation requirements. The Issuing Office will handle any requests for clarification.

**I-16. Prime Contractor Responsibilities.** The contract will require the selected Proposer to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. The Issuing Office will consider the selected Proposer to be the sole point of contact with regard to contractual matters. During the procurement stage, the Proposer has an affirmative duty to carefully review the Contract Documents.

**I-17. Disclosure of Proposal Contents.**

- A. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Proposers' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Proposers should not label proposal submissions as confidential or proprietary or trade secret protected. Any Proposer who determines that it must divulge such information as part of its proposal must submit the signed written statement described in Subsection C below and 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 of Proposal Contents. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. 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 Proposer copyright designations contained on 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. Public records request for proposals are governed by and shall be handled in the following manner: After the award of a contract pursuant to this RFP, or all proposals are opened and rejected, 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. If financial capability information is submitted with this RFP such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

**I-18. Best and Final Offers.**

- A. While not required, the Issuing Office reserves the right to conduct discussions with Proposers for the purpose of obtaining “best and final offers.” To obtain best and final offers from Proposers, the Issuing Office may do one or more of the following, in any combination and order:
1. Schedule oral presentations;
  2. Request revised proposals; and
  3. Enter into pre-selection negotiations.
- B. The following Proposers will **not** be invited by the Issuing Office to submit a Best and Final Offer:
1. Those Proposers, which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
  2. Those Proposers, which the Issuing Office has determined, 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.
  3. Those Proposers whose score for their technical submittal of the proposal is less than 70% 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 Proposers which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.
- C. The Evaluation Criteria found in **Part III, Section III-4**, shall also be used to evaluate the Best and Final offers.
- D. Price reductions offered through any reverse online auction shall have no effect upon the Proposers Technical Submittal. Dollar commitments to Small Diverse Businesses and Veteran Business Enterprises can be reduced only in the same percentage as the percent reduction in the total price offered through any reverse online auction or negotiations.

**I-19. News Releases.** All news releases and media contacts regarding this JOC Program will be made only by the Commonwealth unless the Commonwealth directs otherwise in specific instances. Proposer(s) shall not initiate news releases of media contact without prior written permission of the Commonwealth. This paragraph does not apply to any advertisement solicitation interested subcontractors made by the Proposer during the preparation of the proposal.

**I-20. Restriction of Contact.** From the issue date of this RFP until the award of the Contract, there shall be no contact with Commonwealth personnel concerning this RFP, proposals and the evaluation process. The only person who may be contacted directly is the RFP Coordinator. This restriction ensures that all Proposers obtain the same accurate and binding information, with no advantageous or undue influence on any potential proposal scorers. Any violation of this condition is cause for the Commonwealth to reject the offending Proposers proposal. If the Commonwealth discovers that any violations have occurred, Commonwealth may reject any proposal or rescind its contract award pursuant to this RFP.

**I-21. Issuing Office Participation.** Proposers shall provide all services, supplies, facilities, information technology solutions and other support necessary to complete the identified work.

**I-22. Term of Contract.** The term of the contract will commence on the Effective Date and will end two years after the effective date. The Commonwealth shall have the option to renew the Contract for three-additional one (1) year renewals. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Proposer and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Proposer 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 Proposer for any service or work performed or expenses incurred before the Effective Date of the contract.

**I-23. Proposer's Representations and Authorizations.** By submitting its proposal, each Proposer understands, represents, and acknowledges that:

- A. All of the Proposer'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 Proposer has arrived at its JOC Commission Fee percentage and amounts in its proposal independently and without consultation, communication, or agreement with any other Proposer or potential Proposer.
- C. The Proposer has not disclosed its JOC Commission Fee percentage, the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is a Proposer or potential Proposer for this RFP, and the Proposer shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.

- D. The Proposer 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 Proposer 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 Proposer, the Proposer, 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 Proposer has disclosed in its proposal.
- G. To the best of the knowledge of the person signing the proposal for the Proposer and except as the Proposer has otherwise disclosed in its proposal, the Proposer 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 Proposer that is owed to the Commonwealth.
- H. The Proposer is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Proposer cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I. The Proposer 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 Proposer, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Proposer's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Proposer 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 Proposer shall not begin to perform.

**I-24. Notification of Selection.**

- A. Upon completion of the Evaluation Committee's review of all eligible proposals, DGS shall issue written notification of its selection for award or negotiation to the responsible Proposer whose proposal is determined to be the most advantageous to the Commonwealth in accordance with the evaluations factors, procedures, and criteria set forth in this RFP.

- B. **Contract Negotiations.** The Issuing Office will notify all Proposers in writing of the Proposer 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.
- C. **Award.** Proposers 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 Proposer.

**I-25. Debriefing of Non-Responsible and Unsuccessful Proposers.** DGS will notify in writing all Proposers deemed non-responsible or not selected for award of their opportunity for a debriefing and the timeline for this optional debriefing. **Any Proposer who wants to be debriefed must email a request to the RFP Coordinator within two (2) calendar days of the date the non-responsible Proposers receive their notice of rejection or the unsuccessful Proposers receive their notice of non-selection.** DGS will hold a debriefing conference for each unsuccessful Proposer submitting a request for such a conference **within five (5) calendar days of receipt of notice of a request for a debriefing but no later than seven (7) calendar days from the date of Notice of Selection.** The RFP Coordinator of the Proposal Evaluation Committee will hold the debriefing conference and will discuss only the strengths and weaknesses of the proposal of the Proposer being debriefed. The Proposer may request to be debriefed by phone. The RFP Coordinator will not take any notes during the debriefing. The timeframe for the debriefing of non-responsible and unsuccessful Proposers neither extends nor modifies in any way the deadlines for the RFP Protest Procedure. If a Proposer exercises its opportunity to be debriefed, this shall not constitute or toll the filing of a RFP protest.

**I-26. RFP Protest Procedure.** In addition to the summary provided herein, the Protest Procedure is available in the Procurement Code (62 Pa. C.S. § 1711.1)

- A. **Who may file** – Any Proposer or Prospective Proposer who is aggrieved in connection with the RFP or the award of the contract resulting from the RFP may file a protest.
  - 1. Prospective Proposer – is an entity that has not submitted a proposal in response to the RFP.
  - 2. Proposer – is an entity that has submitted a proposal in response to the RFP.

**B. Time Limits**

- 1. If a protest is filed by a Prospective Proposer, it may be filed, in writing or in e-mail, prior to the Proposal Submission Deadline by e-mail or regular mail.
  - a. **E-MAIL.** Prospective Proposers may file a protest, in e-mail, to the Department of General Services at [RA-publicworks@pa.gov](mailto:RA-publicworks@pa.gov), or

b. **Mail.** Prospective Proposer may file a protest, in writing, to the Department of General Services, Arsenal Building, 1800 Herr Street, Harrisburg, PA 17125.

2. If a protest is filed by a Proposer, it must be filed, in writing or in e-mail, within seven (7) days after the protesting Proposer knew or should have known of the facts giving rise to the protest except in no event may a protest be filed later than seven (7) days after the Notice of Selection is posted to the DGS website. Proposers must file protest by either:

a. **E-MAIL.** Proposers may file a protest, in e-mail, to the Department of General Services at [RA-publicworks@pa.gov](mailto:RA-publicworks@pa.gov), or

b. **Mail.** Proposer may file a protest, in writing, to the Department of General Services, Arsenal Building, 1800 Herr Street, Harrisburg, PA 17125.

3. Filed – Shall be defined as the date upon which the Protest Form is submitted via e-mail to [RA-publicworks@pa.gov](mailto:RA-publicworks@pa.gov) or, if a written protest is filed, the date upon which the Department receives the written protest.

4. If the Proposer fails to file/submit a bid protest or files/submits an untimely protest, then the Proposer shall be deemed to have waived the right to protest the solicitation or award of the contract in any forum. Untimely protest will be disregarded by the Department.

C. The Department may cancel the RFP or may reject all proposals at any time prior to the time a contract is executed by all parties when it is in the best interests of the Commonwealth. The Proposer may not submit a protest relating to cancellation of the solicitation or rejection of all bids.

D. A protest shall state all grounds upon which the protestant asserts that the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.

**I-27. Use of Electronic Versions of this RFP.** This RFP is being made available by electronic means. If a Proposer electronically accepts the RFP, the Proposer acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Proposer's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

**I-28. Information Technology Policies (ITPs).** This RFP is subject to the Information Technology Policies (ITP's) issued by the Office of Administration, Office for Information Technology (OA-OIT). ITP's may be found at <https://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 Proposer to read and be familiar with the ITPs. Notwithstanding the



foregoing, if the Proposer believes that any ITP is not applicable to this procurement, it must list all such ITPs in its technical submittal, 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 to the procurement. The Proposer'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.

**I-29. COSTARS PROGRAM.** 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:

| <b>Contractor Classification</b>           | <b>Required Administrative Fee</b> |
|--|------------------------------------|
| 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, 6<sup>th</sup> 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](http://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](http://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, 6<sup>th</sup> Floor

Harrisburg, PA 17101  
Telephone: 1-866-768-7827  
E-mail [GS-PACostars@pa.gov](mailto:GS-PACostars@pa.gov)

## PART II

### PROPOSAL REQUIREMENTS

The Proposal Submission (Technical, Small Diverse Business (SDB) and Veteran Business Enterprise (VBE) Participation Submittal and Cost) must be submitted in the format, including heading descriptions, outlined below. To be considered responsive, the Proposal Submission must respond to all mandatory requirements in the RFP.

Maintaining the confidentiality of the submittal information is critical. The Commonwealth will reject as non-responsive any submission that is not submitted and properly separated as described in this RFP. There will be no opportunity for a Proposer to resubmit the proposal after the Proposal Submission Date.

The Commonwealth may make such investigations as deemed necessary to determine the ability of the Proposer to perform the Work, and the Proposer shall furnish to the Commonwealth all such information and data for this purpose as requested by the Commonwealth. The Commonwealth reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Proposers fails to satisfy the Commonwealth that such Proposer is properly qualified to carry out the obligations of the agreement and the complete the Work specified. All cost data relating to this proposal and all Small Diverse Business (SDB) and Veteran Business Enterprise (VBE) data should be kept separate from and not included in the Technical Submittal. Each Proposal shall consist of the following **three** separately sealed submittals:

1. Technical Submittal
2. Small Diverse Business (SDB) Participation Submittal (which must include either the SDB Participation Submittal (SDB-2), the Good Faith Efforts Documentation to Support Waiver, or both) and Veteran Business Enterprise (VBE) Participation Submittal (which must include either the VBE Participation Submittal (VBE-2), the Good Faith Efforts Documentation to Support Waiver, or both)
3. Cost Submittal

This RFP is intended to provide interested Proposers with the basic information necessary to evaluate the scope of work for the JOC Program Consultant and requirements. The Technical Submission shall be a straightforward, concise presentation. Each Proposer shall also submit its Cost Submittal and a Small Diverse Business (SDB) and Veteran Business Enterprise (VBE) Participation Submittal which may include the SDB/VBE Good Faith Efforts Documentation to Support Wavier Request of the SDB/VBE Participation Goal. The Proposer should include information for all items requested in the RFP as completely and accurately as possible.

**II-1. Technical Submission Requirement.** To be responsible, the Proposer 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 a Proposer to be considered responsible for this RFP and therefore eligible for award or selected for negotiations, the Proposer's Technical Submission points from the Evaluation Committee, prior to using the pro-rata formula, must be greater than or equal to 70% of the available technical

points. If the Proposer does not achieve at least 70% of the points, they will be deemed non-responsible and rejected.

The Proposer shall submit four (4) electronic versions of its Technical Submission on four (4) Flash Drives in a PDF format, with each clearly labeled with the Proposer's name and "Technical Submittal" (PACKAGE #1). The Technical Submittal shall include the sections immediately following (i through viii) and should be clearly labeled with the proper headings. The RFP Coordinator strongly recommends Proposers provide concise responses that adhere to suggested number of pages and present the requested information in the order listed below.

Along with the four (4) electronic versions, the Proposer's Technical Submissions must include documents 1, 2 and 3 listed below. These **paper documents** are **MADATORY**. Failure to include these paper documents with the original submission will result in the Proposal being deemed non-responsive and rejected.

1. Signed Proposal Cover Page;
2. Signed notarized Non-Collusion Affidavit; and
3. Signed Iran Free Procurement Certification.

In order to receive maximum points during the evaluation period, it is strongly recommended the Proposer include the below information in the Technical Submittal.

Proposers who do not submit the following information will still be considered but will be evaluated accordingly.

1. Statement of the Problem
2. Management Summary
3. Work Plan
4. Prior Experience
5. Personnel
6. Training
7. Financial Capacity
8. Objections and Additions to the Standard Contract Terms and Conditions

Proposers shall not include cost information for this contract in the Technical Submittal. This separation ensures that the Evaluation Committee's evaluation of the technical information is not tainted by knowing any of the Proposer's cost information.

If cost information is revealed in the Technical Submittal, the proposal may be rejected as non-responsive. Any proposals rejected for this reason will not be permitted to be corrected and resubmitted.

The Submission shall include the following sections, which should be clearly labeled and segregated or tabbed for ease of reference:

- A. **Statement of the Problem.** (Suggested: 8 pages) State in succinct terms your understanding of the problem presented or the service required by this RFP. The Proposer shall provide:
1. an Executive Summary establishing the depth of Proposer's understating of the Commonwealth's intended scope of work and a detailed description of the how the proposed JOC Program will accomplish the agencies' need for effective and efficient design, construction and construction management; and
  2. a brief discussion of how Pennsylvania-specific requirements such as the Prevailing Wage Act, the Separations Act and the Pa. Labor & Industry/Uniform Construction Code requirements for submitting a project for plan review and approval impact the JOC Program; and
  3. information and insight that indicates the Proposers thorough knowledge of design and construction activities to be performed by the JOC construction contractors and their familiarity with Construction Specification Institute (CSI) format for developing specifications.
- B. **Management Summary.** Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided.
- C. **Work Plan.** Describe in narrative form your technical plan for accomplishing the work. Use the task descriptions in **Part IV** of this RFP as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.
- D. **Prior Experience** (Suggested:8 pages). Include experience in creating, developing, implementing and administering a JOC Program, including the ability to address the wide range of civil, telecomm, electrical, environmental, mechanical, structural, fire suppression, design, general construction and construction management. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted. In addition, provide a listing of current and completed projects over the last five (5) years that included developing and tailoring a JOC program for a project similar to size and scope of the Commonwealth's Projects.
- E. **Personnel.** (Suggested: 8 pages and one 11 X 17 management chart) Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. For key personnel (Program Manager, Estimator, Scheduler, Analysts, IT staff, Construction and Design specialists, and



Construction Management Specialists), include the employee's name and, through a resume or similar document, the Project personnel's education and experience.

1. The Program Manager should have a minimum of five (5) years of experience with JOC Systems to assist in the administration and project management of the JOC Program.
2. For the Estimator, Scheduler, Analysts, IT staff, Construction and Design specialists and Construction Management Specialist, the personnel must have a demonstrated, through a resume or similar document, an understanding of the JOC concept and at least two years' experience in developing and operating similar programs.

Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Provide a project specific organizational chart depicting the roles and responsibilities of key personnel as well as the limits of authority and lines of authority. Identify by name any subcontractors you intend to use and the services they will perform.

- F. **Training.** Indicate and describe the type of training to be provided to Agency and JOC Contractor personnel who are located throughout the Commonwealth. The scope of the training shall include training on the procedures associated in the administration of the JOC Program and in the utilization of the JOC System (as defined in **Part IV**). Include any assumptions made about the knowledge or experience of agency and JOC Contractor personnel to be trained, the number to be trained, duration of the program, place of training, curricula, training materials to be used, number and frequency of sessions, and number and level of instructors.
- G. **Financial Capability.** Describe your company's financial stability and economic capability to perform the contract requirements. Provide your company's financial statements (audited, if available) for the past three fiscal years. Financial statements must include the company's Balance Sheet and Income Statement or Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report, if available. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing hardcopies. The Commonwealth reserves the right to request additional information it deems necessary to evaluate a Proposer's financial capability.
- H. **Objections and Additions to IT Terms and Conditions.** The Proposer will identify which, if any, of the terms and conditions (contained in **Appendix A**) it would like to negotiate and what additional terms and conditions the Proposer would like to add to the IT Terms and Conditions. The Proposer's failure to make a submission under this paragraph 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. The Proposer shall not request changes to the other provisions of the RFP, nor shall the Proposer request to completely substitute its own terms and conditions for

**Appendix A.** All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Proposer's, or any other, online guides or online terms and conditions contained in any proposal. Proposer shall submit a red-lined copy of the documents specified in this sections identifying the items for negation and addition.

Regardless of any objections set out in its proposal, the Proposer must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in **Appendix A**.

The Proposer can also identify any objections and additions to **Appendix L** in this Section.

The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in **Appendix A or to other provisions of the RFP as specifically identified above.**

## **II-2. Small Diverse Business and Veteran Business Enterprise Participation Submittal.**

Failure to include the SDB Participation Submittal (which must include the SDB Participation Submittal (SDB-2), the Good Faith Efforts Documentation to Support Waiver Request, or both) and the VBE Participation Submittal (which must include the VBE Participation Submittal (VBE-2), the Good Faith Efforts Documentation to Support Waiver Request, or both) will result in rejection of the Proposal as non-responsive. The Proposer will not be given an opportunity to supply an SDB Participation Submittal or a VBE Participation Submittal after the Proposal Submission Date.

All Proposers are required to submit two (2) copies (paper or electronic) of the SDB Participation Submittal along with associated required documentation and two (2) copies (paper or electronic) of the VBE Participation Submittal along with associated required documentation. The submittals must be sealed together in their own envelope/package, separate from the remainder of the Proposal and must be provided on the SDB Participation and VBE Participation forms.

- A. **SDB and VBE Participation Goals.** The Issuing Office and Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO) have set an SDB Participation Goal at **10%** and a VBE Participation Goal at **3%** for this RFP. The SDB and VBE Participation Goals were calculated based upon the market availability of SDBs and VBEs for work scopes identified for this solicitation and possibly an assessment of past performance of similar work.
- B. **SDB Participation Submittal, Appendix E.** The SDB Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing SDB Participation Submittal and shall be submitted in accordance with Part 2 of this RFP.
- C. **VBE Participation Submittal, Appendix F.** The VBE Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing VBE Participation Submittal and shall be submitted in accordance with Part 2 of this RFP.

NOTE: Equal employment opportunity and contract compliance statements referring to company equal employment opportunity policies or past contract compliance practices do not constitute proof of SDB or VBE Status or entitle a Proposer to receive credit towards the SDB or VBE participation goals.

**D. Contract Requirements**

1. **SDB and VBE Participation Documents.** All documents completed and submitted by the selected Proposer in connection with its SDB Participation Submittal (including the SDB Participation Submittal and any Good Faith Efforts Documentation to Support Waiver Request of SDB Participation Goal) and its VBE Participation Submittal (including the VBE Participation Submittal and any Good Faith Efforts Documentation to Support Waiver Request of VBE Participation Goal) shall be considered a part of the Contract and will be expressly incorporated into the Contract.
2. **Subcontract Requirements.**
  - a. The selected Proposer and each SDB or VBE must enter into a final, definitive subcontract agreement signed by the Consultant and the SDB or VBE.
  - b. In addition to any requirements in the Contract Documents, the subcontract must contain:
    - i. Each SDB or VBE participation commitment which was credited by BDISBO and the total percentage of the SDB or VBE participation commitments made at the time of proposal submittal or contract negotiations, as applicable, become contractual obligations of the selected Proposer upon execution of its contract with the Commonwealth.
    - ii. For purposes of monitoring compliance with the selected Proposer's SDB or VBE participation commitments, the contract cost is the total amount paid to the selected Proposer on an annual basis of the contract term and all option terms.
    - iii. The selected offeror cannot alter its overall SDB or VBE commitment without written approval from the Issuing Officer and BDISBO.
    - iv. The overall percentage of SDB or VBE commitment must be maintained in the event the contract is assigned to another prime contractor.
    - v. If an SDB or VBE subcontract agreement fails to incorporate the Subcontract Requirements above or those in the Contract Documents, the Consultant must correct such deficiency or this failure may constitute grounds for default of the Consultant by the Department.
    - vi. The Consultant must submit to BDISBO a copy of every subcontract with an SDB or VBE, prior to the commencement of any work by the subcontractor, for BDISBO's compliance requirements.
3. **Utilization Reports.** The consultant must submit a SDB and VBE Utilization Report to BDISBO in the format required by BDISBO and within ten (10) business days at the end of each month of the contract term and any subsequent options or renewals. The SDB and VBE Utilization Report must list payments made to each SDB or VBE subcontractor and

any unpaid invoices over 30 calendar days old received from an SDB or VBE subcontractor, and the reason payment has not been made. This information will be used to track and confirm the actual dollar amount paid to SDB subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment(s). If there was no activity, the form must be completed by stating “No activity”.

**4. Noncompliance with SDB and/or VBE commitments.**

- a. Upon BDISBO notifying the Department that the Consultant did not comply with the SDB commitments or VBE commitments, the Department shall adhere to the Contract Documents, for remedies and corrective actions required. The Consultant is required to initiate the corrective actions within ten (10) business days and complete them within the time specified by the Department.
- b. If the Department determines that material noncompliance with SDB and VBE contract provisions exists and that the Consultant refuses or fails to take the corrective action required by the Department, the Department, in consultation with BDISBO, may impose any and all sanctions and remedies available under the contract as it deems appropriate. Such sanctions or remedies include, but are not limited to, withholding of payments; termination of the contract along with consequential damages; revocation of the Consultant’s SB, SDB, and/or Veteran Business Enterprise (VBE) status; a determination that the Proposer’s SDB or VBE participation submittal be deemed nonresponsible in future procurements; and/or any actions under the Commonwealth’s Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth.

**II-3. Cost Submittal.** The information requested in this **Part II, Section II-3** shall constitute the Cost Submittal. The Cost Submittal (**Appendix G**) shall be placed in a separate sealed envelope within the sealed proposal, separated from the technical submittal. The total proposed cost shall be entered as the JOC Fee Percentage in the Cost Submittal Worksheet. Proposers should **not** include any assumptions in their cost submittals. If the Proposer includes assumptions in its cost submittal, the Issuing Office may reject the proposal.

**II-4. Domestic Workforce Utilization Certification.** Complete and sign the Domestic Workforce Utilization Certification contained in **Appendix H** of this RFP. Proposers who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Technical Submittal.

**II-5. Iran Free Procurement Certification.** Complete and sign the Iran Free Procurement Certification contained in **Appendix I** of this RFP. Proposers must submit in hardcopy the signed Iran Free Procurement Certification Form in the same sealed envelope with the Technical Submittal.

**II-6. COSTARS Program Election to Participate.** The COSTARS program will not be available during the first two years of the Contract. The Contract may be opened to COSTARS

members beginning in the third contract year if mutually agreed to by both the Commonwealth and the selected Proposer.

Proposers electing to permit COSTARS members to participate in this Contract should complete and sign the COSTARS Program Election to Participate form contained in **Appendix J** of this RFP. If the Proposer is asserting that it is a Department of General Services Certified Small Business, also provide an active Department of General Services Small Business Certification. Submit the form and the certification, as applicable, in the same sealed envelope with the Technical Submittal only if the Proposer elects to participate in the program.

## PART III

### CRITERIA FOR SELECTION

#### COMPETITIVE SEALED PROPOSAL AWARD

If the Commonwealth awards a contract, the award will only be made to the responsive and responsible Proposer, whose proposal conforms to the requirements of this RFP and receives the highest overall Total Proposal Score by the Evaluation Committee in accordance with the evaluation factors, procedures and criteria set forth in this RFP. Receiving a contract with DGS as a result of this RFP does not guarantee any present or future work.

**III-1. Mandatory Responsiveness Requirements.** To be eligible for selection, a proposal must be:

1. Timely received from a Proposer;
2. Properly signed Proposal Cover Page;
3. Signed and notarized Non-Collusion Affidavit; and
4. Signed Iran Free Procurement Certificate.

**III-2. Technical Nonconforming Proposals.** The four (4) Mandatory Responsiveness Requirements set forth in **Section III-1** above (1-4) are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Proposer's proposal, (2) allow the Proposer to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Proposer's proposal.

**III-3. Proposal Evaluation Process.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the Small Diverse Business and Veteran Business Enterprise participation submittals and inform the Issuing Office if Proposer is responsive. Technical Submissions (and only the Technical Submission) from all responsive Proposers will be evaluated by the Evaluation Committee members. The members score each Technical Submission pursuant to the Scoring Matrix, which is attached to the RFP as **Appendix N**. To describe the responsiveness and scoring process briefly:

- A. A Responsiveness Review of the entire Proposal Submission shall be performed. The purpose of this review is to determine each proposal's compliance with the Mandatory Proposal Requirements.
- B. All Small Diverse Business and Veteran Business Enterprise Participation Submittals of all Proposals that meet the Mandatory Proposal Requirements will be reviewed for completeness in accordance with the Instructions for Completing the SDB Participation Submittal and Utilization Schedule and the Instructions for Completing the VBE Participation Submittal and Utilization Schedule. The purpose of this review is to

determine each proposal's compliance with the Instructions for Completing the SDB Participation Submittal and Utilization Schedule and the Instructions for Completing the VBE Participation Submittal and Utilization Schedule. Non-compliant Submittals will be rejected as non-responsive. The Commonwealth will not score the SDB and VBE Participation Submittals.

- C. After review for responsiveness, all Technical Submittals of any Proposals determined to be responsive will be forwarded to the RFP Coordinator and Evaluation Committee. All Proposals receiving less than 70% of the total available points for their Technical Submission, prior to using the pro-rata formula, will be deemed non-responsible and rejected. All Proposals receiving less than 70% of the total available points for the Technical Submission, prior to using the pro-rata formula, will be considered responsible and proceed to their Technical Score calculated and their Cost Submittal scored.

**III-4. Evaluation Criteria.** 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 50% of the total points. Each Evaluation Committee member will independently evaluate each proposal using the scoring matrix attached as an **Appendix N** to this RFP. Those Proposers whose total average points received from the Evaluation Committee total at least 70% of the total available points (i.e. 70% x 500 maximum points = 350 points) for the Technical Submission will be deemed qualified and proceed to the next step. The Evaluation Committee's scores for each qualified Technical proposal will be used in the below formula to calculate the Proposer's Technical Score. The proposal with the highest total base technical points will receive a score of 500. The score for the remaining proposals will be calculated using the formula presented below:

Technical Score =

$$500 - \frac{(500 \times (\text{highest Proposer's points} - \text{Proposer's points}))}{\text{Highest Proposer's Points}}$$

Only the qualified Technical proposals and their Technical Scores will be carried forward and will be combined with the Cost score to determine the final score.

- B. Cost: The Issuing Office has established the weight for the Cost criterion for this RFP as 50% of the total points. After the Technical Submittals are scored by the Evaluation Committee, the RFP Coordinator, together with a representative from the Office of Chief Counsel, will open the Cost Submittals of the Proposals whose Technical Submissions received at least 70% of the available points for the Technical Score. The proposal with the lowest possible Cost Submittal will get the highest Cost Submittal Score: 500 points. The scores for the remaining proposals will be calculated using the formula presented below, the lowest possible score is 0.

Cost Score =

$$500 - \frac{(500 \times (\$ \text{Proposer's Cost Submission} - \$ \text{Lowest Proposer's Cost Submission}))}{\$ \text{Lowest Proposer's Cost Submission}}$$

**III-5. Proposal Selection and Notification.** The RFP Coordinator will verify the amounts, percentages, and calculations of the Technical Submission and the Cost Submission Scores. The RFP Coordinator will then calculate each Proposal Total Score using the formula:

Total Proposal Score =

$$\text{Technical Score} + \text{Cost Score}$$

The event of a tie, the scores will be extended out to sufficient decimal places to eliminate the tie.

**III-6. 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 for this criterion 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 Proposers 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. See the following webpage for the Domestic Workforce Utilization Formula:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

Proposers who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Technical Submittal. The certification will be included as a contractual obligation when the contract is executed.

**III-7. Iran Free Procurement Certification and Disclosure.** Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, an offeror must: 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). All offerors must complete and return the Iran



Free Procurement Certification form, (**Appendix I Iran Free Procurement Certification Form**), which is attached hereto and made part of this RFP. The completed and signed Iran Free Procurement Certification form must be submitted as part of the Technical Submittal.

See the following web page for current Iran Free Procurement list:

<http://www.dgs.pa.gov/businesses/materials%20and%20services%20procurement/procurement-resources/pages/default.aspx#.WDNfJJgo6Ht>

### **III-8. Final Ranking and Award.**

- A. After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, and the final cost scores, and (when applicable) the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B. The Issuing Office will rank responsible Proposers according to the total overall score assigned to each, in descending order.
- C. The Issuing Office must select for contract negotiations the Proposer with the highest overall score; **PROVIDED, HOWEVER, THAT AN AWARD WILL NOT BE MADE TO A PROPOSER WHOSE PROPOSAL RECEIVED THE LOWEST TECHNICAL SCORE AND HAD THE LOWEST COST SCORE OF THE RESPONSIVE PROPOSALS RECEIVED FROM RESPONSIBLE PROPOSERS. IN THE EVENT SUCH A PROPOSAL ACHIEVES THE HIGHEST OVERALL SCORE, IT SHALL BE ELIMINATED FROM CONSIDERATION AND AWARD SHALL BE MADE TO THE PROPOSER WITH THE NEXT HIGHEST OVERALL SCORE.**
- D. 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.

**PART IV**  
**WORK STATEMENT**

**IV-1. Objectives.**

DGS is seeking proposals from qualified Proposers to create, develop, implement, and administer a JOC Program and to provide construction management services. The selected Proposer will provide an internet-based management information and support system (the JOC System) and specifications manual that will allow individual state agencies to efficiently engage multi-disciplined contractors to design and perform repairs, alterations and minor construction projects and enable agencies issue job orders based upon pre-priced items of work from an on-line task order catalog. The task order catalog and specifications shall be electronic and shall allow automated search and selection.

The main objective of the JOC Program is to enable numerous individual state agencies to rapidly engage design-build construction contractors to perform design, construction and construction-related services. The projects will range from a total project value of \$10,000 up to a current maximum project value of \$400,000.

In order to address the needs of the agencies, the DGS' JOC Program procedure shall incorporate, but is not limited to, the following steps to be taken by an agency:

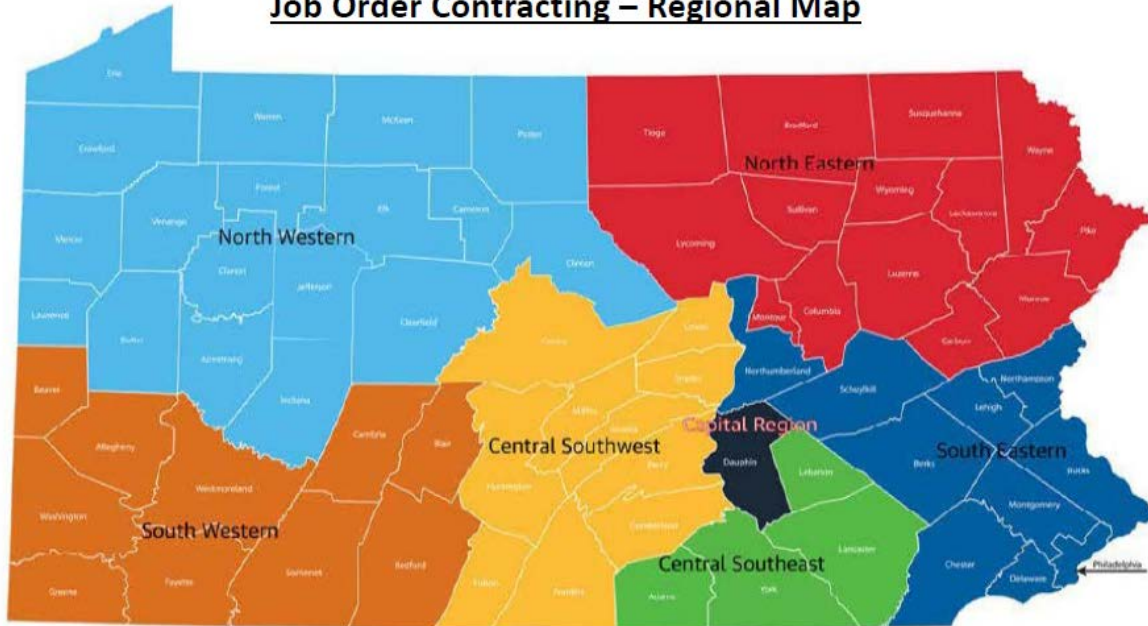
- Agency requests a Job Order to schedule a scoping meeting to create a scope/program for the project; and
- Agency reviews the completed scope/program to determine whether to proceed any further; and if agency decides to proceed;
- Agency issues a Job Order to design-build contractor for design portion of the construction project; and
- Agency reviews design; and
- Agency prepares Job Order for actual construction; and
- Agency issues Job Order to JOC construction contractor which is paid for through a purchase order within the Commonwealth's SAP system.

**IV-2. Nature and Scope.**

DGS serves as the procurement agency for vertical construction for numerous governmental agencies that own facilities located throughout the state. DGS has determined that Job Order Contracting ("JOC") provides the most efficient means of designing and completing repairs, alterations and minor construction for individual agency projects with a total maximum dollar value, currently established at \$400,000. For more information on agency spend, refer to **Appendix K – Program Spend Data for Last 3 Years**. Implementing a JOC program will enable Commonwealth agencies to identify, address and complete their projects with the

assistance of the selected Proposer. Regional JOC design-build construction contracts for General, HVAC, Plumbing, and Electrical have been awarded based on the region identified below:

### Job Order Contracting – Regional Map



**IV-3. Requirements.** By submitting a proposal and signing Appendix B – Proposal Cover Page, the Proposer acknowledges and accepts the following.

A. **Compliance.** The Selected Proposer shall:

1. Comply with the Information Technology Policies (ITPs) issued by the Office of Administration, Office for Information Technology (OA-OIT) ITPs as described in Part I-28.
2. Comply with the Hosting Requirements as outlined in **Appendix L – Non Commonwealth Hosted Applications Service.**
3. Comply with the Cloud Based Services Requirements as outlined in **Appendix M – Cloud Services Requirements.**
4. Comply with the IT Contract Terms and Conditions as outlined in **Appendix A – IT Terms and Conditions.**

B. **Emergency Preparedness.** To support continuity of operations during an emergency, including a pandemic, the Consultant shall maintain operations for an extended period of time. Consultant shall 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.

**IV-4. Tasks.** Proposers must describe in detail their comprehensive work plan for the tasks as outlined in **Part IV**. The Proposer's proposal must be written such that the Proposer describes its method of providing each service requested and is not merely restating the task.

A. **Program Development.** The selected Proposer shall work with the Department's Deputate for Public Works and Office of Chief Counsel staff to develop the JOC Program. Program Development includes reviewing and assessing the agencies' needs to determine the potential scope of the program and, in conjunction with the Department's staff, developing procedures that will be used to implement and administer the JOC Program.

B. **Document Preparation.** The selected Proposer shall provide a full and complete set of bid and contract JOC documents specifically customized for these agency projects. These documents shall include, at a minimum, a Commonwealth specific Task Order Catalog Technical Specifications and the contract terms and conditions unique to JOC.

1. **Unit Price Book.** The selected Proposer shall meet with appropriate Department personnel to determine the design and construction tasks to be contained in the JOC Unit Price Book. For purposes of this proposal, the selected Proposer shall assume the JOC Unit Price Book will ultimately contain no less than 250,000 individual design and/or construction tasks along with an associated unit price. If the selected Proposer believes this number is either inadequate or too extensive, the selected Proposer shall, as part of the proposal response, explain its estimated number of design and/or construction tasks and the basis for this number. Each task shall contain a task description, unit of measurement and a unit price. Each unit price should contain locally adjusted direct costs for materials, equipment and labor. The labor prices shall include the prevailing wages and benefits determined by the Pennsylvania Department of Labor & Industry pursuant to the Pennsylvania Prevailing Wage Act of August 15, 1961, P.L. 987, as amended. The JOC System shall contain each design and construction task along with the associated unit prices, thus ensuring an internet-based JOC Unit Price Book, and shall be supplemented, as reasonably needed, to include additional tasks required by the agencies.

The selected Proposer shall provide the complete JOC Unit Price Book described above within 30 calendar days after the effective date of the awarded contract.

2. **Technical Specifications.** The selected Proposer shall meet with appropriate Departmental personnel to familiarize themselves with the Department design and construction standards. The selected Proposer shall then develop a set of detailed specifications for each of the 250,000+ tasks.
3. **Terms and Conditions.** The selected Proposer shall meet with appropriate Departmental personnel to familiarize themselves with the Department's standard terms and conditions for design and construction projects. The selected Proposer will work with the Department's Office of Chief Counsel to review the

Department's terms and conditions for design-build construction contracts that apply to JOC projects.

- C. **Procurement Support.** The selected Proposer shall be capable of providing the Department with complete technical and marketing support during a solicitation phase of the JOC construction contractors. The selected Proposer shall provide qualified staff with extensive public sector procurement experience to provide this support. The selected Proposer will be required to organize and conduct pre-proposal meetings with prospective proposers as well as make presentations on behalf of the Department with various business and contracting organizations.

**The selected Proposer, or any firm determined by the Department to be related or affiliated with the selected Proposer, shall be prohibited from bidding or proposing on any of the construction contracts issued under the JOC Program.**

- D. **Job Order Project/Construction Management.** The selected Proposer shall be responsible for complying with the General Conditions for Design Build Contracts for JOC Job Orders (**Appendix O**) and the Administrative Procedures for the Job Order Contract (**Appendix P**), as they refer to the JOC Program Consultant and/or the Construction Management Services. In addition, the selected Proposer shall be responsible for the following duties on every Job Order:

1. Attend one or more site visits after a Job Order for the project is issued by an Agency with a JOC construction contractor.
  - a. Review/comment and recommend approval/disapproval of meeting minutes.
2. Assist Agency in ensuring the project scope identified is developed through Final Design.
3. Assist Agency in issuing the Job Order for the design portion of the construction project.
  - a. Review and recommend approval/disapproval of the design progress submission(s) if applicable to the Job Order.
  - b. Review and recommend approval/disapproval of all invoicing for the Job Order for the design portion of the project.
4. Assist Agency in the creation of the Job Order for construction.
  - a. Ensure the Job Order accurately reflects the Final Design.
  - b. Ensure the Job Order Cost is accurately reflected by the JOC unit Price book.
5. Perform construction management of the Job Orders including, but not limited to:
  - a. Administering the Initial Job Conference and all subsequent job meetings; and
  - b. Reviewing and processing all construction-related forms; and
  - c. Ensure work is being performed in accordance with the Job Order; and
  - d. Review all invoicing for the Job Order.

6. Assist in issuing Supplemental Job Orders.
7. Assist and ensure all Close-Out procedures have occurred prior to Final payment.
8. Review all as-built drawings for accuracy prior to submission to the Commonwealth.

E. **Information Management System.** The selected Proposer must provide the Department with access to a comprehensive internet-based management information and support system (JOC System) to enable numerous state agencies to efficiently engage multi-disciplined construction contractors to design and perform repairs, rehabilitation and minor construction projects. The JOC System must allow individual state agencies to issue job orders based upon pre-priced items of work from an on-line task order catalog and system specifications manual to be developed by selected Proposer. The task order catalog and specifications shall be electronic and shall allow automated search and selection. There shall be no limits upon the number of software licenses.

The JOC System must provide full and accurate construction project tracking (from inception to completion), such as development of cost proposals, preparation of independent estimates, generation of all project documentation, project scheduling, budgeting and cost control, and generating reports. The JOC System shall include but not limited to: a unique identifier per JOB, JOB # (as designated by the Commonwealth), Client Agency, Client Agency contacts, JOC Consultant contacts, JOC Contractor contacts (all contact info), JOC project title, project description, project estimated and actual costs (including contract point(s) and design), milestone dates (including start/finish dates for proposal, Design Submissions, Construction and Warranty Period), Contractor and Consultant Invoice tracking (calculated due amount based upon contract terms, actual invoice amounts, invoice received dates, invoice approval dates, balances). The JOC System must be updated daily with current Job Order information. The JOC system must provide electronic reporting features, which can be accessed by the Commonwealth. Reports shall be customizable for up to 24 Commonwealth entities. All reports must be downloadable in excel format. The selected Proposer shall prepare, implement, test and maintain the system software, including any software updates. The selected Proposer shall test/debug the software under actual field conditions prior to implementation. The JOC system shall comply with **Appendix L - Non Commonwealth Hosted Application Service and Appendix M – Cloud Services Requirements.**

Proposers must include a detailed description of their internet-based JOC system that will be made available to assist agencies in the issuance of Job Orders. Proposer must provide information indicating that the proposed JOC System is operational (beta systems will NOT be acceptable) in-place and fully functioning for at least one client who manages construction, repair and maintenance projects over a minimum 100-mile radius. Include the amount of time the JOC System has been in place, sample excerpts and screen shots from a functioning JOC System displaying Unit Price Books and Technical Specifications. Describe how the JOC System will allow numerous state agencies to address budgeting, estimating, scheduling, and reporting on job orders. Reporting capabilities shall allow DGS and agencies to monitor job order progress, monitor payments, and view open and closed

job orders in real-time. Proposers shall address in this description the ability to accommodate concurrent multiple users working for multiple state agencies in facilities located throughout the entire 67 counties of the Commonwealth.

The selected Proposer shall provide the information management system described above within 90 calendar days after the effective date of the contract.

- F. **Training.** The selected Proposer shall provide training to ensure that the JOC System and JOC Program function properly. As part of the proposal, the selected Proposer shall include its plans to develop specialized training courses that will train all agency personnel designated by each agency that will be utilizing and administering the JOC System and JOC Program. Training should include at least one seminar in Harrisburg and 3 others at the discretion of the Department. All aspects of the JOC System and JOC Program are to be covered in the training. All training is to be “Hands On”, including a comprehensive training/reference manual with sample job orders, flow charts and forms. The training courses may be on-line, but shall include practical exercises that will be based upon actual Departmental projects.

The selected Proposer shall include its plans to develop specialized training courses that will train all awarded JOC Contractors. Training should include at least 1 seminar per calendar year and additional training seminars if a new JOC Contractor would be awarded. All aspects of the JOC System and JOC Program are to be covered in the training. All training is to be “Hands On”, including a comprehensive training/reference manual with same job orders, flow charts and forms. The training course may be on-line, but shall include practical exercises.

The selected Proposer shall develop the training described above within 60 calendar days after the effective date of the contract and coordinate with the Department on scheduling of said training.

- G. **Program and Technical Support.** The selected Proposer shall provide extensive follow-on technical support for the JOC System and JOC Program for the life of the contract. Expectations include assisting each agency with program execution, troubleshooting, (real time customer service) implementation, updating, and continuous system monitoring. Customer service/technical support shall be available daily from 8:00 am – 5:00 pm, excluding weekends and holidays. The selected Proposer shall update, as often as reasonably required, any or all of the JOC documents, including the Technical Specifications and contract terms and conditions. The Unit Price Book shall be updated annually. The selected Proposer’s ability and commitment to providing follow-on technical support is considered a vital component to ensuring a successful program.

1. The selected Proposer’s shall assign staff to assist with implementing the Contract. Assigned staff must work on-site full time at the Department’s Public Works building at 18<sup>th</sup> & Herr Streets, Harrisburg, for the first 90 days of the Contract, unless other direction is provided by the Department

2. The selected Proposer shall assist the Department in the execution and administration of the JOC construction contracts and in the development of the job orders for each agency. The selected Proposer shall monitor the overall JOC Program and prepare any status reports required by the Department. At the direction of the Department, the selected Proposer shall prepare an evaluation report for the Department's Deputy Secretary for Public Works on all aspects of the JOC Program.

H. **Electronic Ordering.** The Commonwealth may require the selected to provide a secure public website for online ordering "punch-out" that interfaces with the Commonwealth's Supplier Relationship Management (SRM) system. The website shall reflect the Commonwealth's contract pricing and shall be developed and implemented in accordance with a mutually agreed upon implementation schedule. Proposer's must describe their experience, if any, in interfacing the task order system with SRM.

#### **IV-5. Reports and Project Control.**

- A. **Task Plan.** A work plan for each task that identifies the work elements of each task, the resources assigned to the task, and the time allotted to each element and the deliverable items to be produced. Where appropriate, a PERT or GANTT chart display should be used to show project, task, and time relationship. If more than one approach is apparent, describe why you chose this approach.
- B. **Status Report.** A periodic progress report covering activities, problems and recommendations. This report should be keyed to the work plan the Proposer developed in its proposal, as amended or approved by the Issuing Office.
- C. **Problem Identification Report.** An "as required" report, identifying problem areas. The report should describe the problem and its impact on the overall project and on each affected task. It should list possible courses of action with advantages and disadvantages of each, and include Proposer recommendations with supporting rationale.



## Appendix N - IT CONTRACT TERMS AND CONDITIONS

### 1. DEFINITIONS.

- (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) Commonwealth. The Commonwealth of Pennsylvania.
- (c) Contract. The integrated documents as defined in **Section 11, Order of Precedence**.
- (d) Contracting Officer. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- (e) Data. Any recorded information, regardless of the form, the media on which it is recorded or the method of recording.
- (f) Days. Calendar days, unless specifically indicated otherwise.
- (g) Developed Works. All of the fully or partially complete property, whether tangible or intangible prepared by the Contractor for ownership by the Commonwealth in fulfillment of the requirements of this Contract, including but not limited to: documents; sketches; drawings; designs; works; papers; files; reports; computer programs; documentation; data; records; software; samples; literary works and other works of authorship. Developed Works include all material necessary to exercise all attributes of ownership or of the license granted in **Section 46, Ownership of Developed Works**.
- (h) Documentation. All materials required to support and convey information about the Services or Supplies required by this Contract, including, but not limited to: written reports and analyses; diagrams maps, logical and physical designs; system designs; computer programs; flow charts; and disks and/or other machine-readable storage media.
- (i) Expiration Date. The last valid date of the Contract, as indicated in the Contract documents to which these IT Contract Terms and Conditions are attached.
- (j) Purchase Order. Written authorization for Contractor to proceed to furnish Supplies or Services.
- (k) Proposal. Contractor’s response to a Solicitation issued by the Issuing Agency, as accepted by the Commonwealth.

- (l) Services. All Contractor activity necessary to satisfy the Contract.
- (m) Software. A collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).
- (n) Solicitation. A document issued by the Commonwealth to procure Services or Supplies, e.g., Request for Proposal; Request for Quotation; Supplier Pricing Request; or Invitation for Bid, including all attachments and addenda thereto.
- (o) Supplies. All tangible and intangible property including, but not limited to, materials and equipment provided by the Contractor to satisfy the Contract.

## **2. TERM OF CONTRACT.**

- (a) Term. The term of the Contract shall commence on the Effective Date and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.
- (b) Effective Date. The Effective Date shall be one of the following:
  - (i) the date the Contract has been fully executed by the Contractor and all approvals required by Commonwealth contracting procedures have been obtained; or
  - (ii) the date stated in the Contract, whichever is later.

## **3. 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.

## **4. 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.

## 5. ELECTRONIC SIGNATURES.

- (a) The Contract and/or Purchase Orders 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) *Written signature not required.* No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
  - (ii) *Validity; admissibility.* The parties agree that no writing shall be required in order to make the Contract or Purchase Order legally binding, notwithstanding contrary requirements in any law or regulation. The parties hereby agree not to contest the validity or enforceability of the Contract executed electronically, 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 executed or 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.
- (c) Verification. 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.

## **6. PURCHASE ORDERS.**

- (a) Purchase Orders. The Commonwealth may issue Purchase Orders against the Contract or issue a Purchase Order as the Contract. These Purchase 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) Electronic transmission. 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.
- (c) Receipt. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of a Purchase Order.
- (d) Received next business day. Purchase Orders received by the Contractor after 4 p.m. will be considered received the following business day.
- (e) Commonwealth Purchasing Card. Purchase Orders under \$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. The Contractor agrees to accept payment through the use of a Commonwealth Purchasing card.

## **7. CONTRACT SCOPE.**

The Contractor agrees to furnish the requested Services and Supplies to the Commonwealth as such Services and Supplies are defined in this Contract.

## **8. ACCESS TO COMMONWEALTH FACILITIES.**

If the Contractor must perform work at a Commonwealth facility outside of the daily operational hours set forth by the Commonwealth, it must make arrangements with the Commonwealth to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access.

## **9. NON-EXCLUSIVE CONTRACT.**

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

## **10. INFORMATION TECHNOLOGY POLICIES.**

- (a) General. The Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (located at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Policy ACC001, Accessibility Policy. The Contractor shall ensure that Services and Supplies procured under the Contract comply with the applicable standards. In the event such standards change during the Contractor's performance, and the Commonwealth requests that the Contractor comply with the changed standard, then any incremental costs incurred by the Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.
- (b) Waiver. The Contractor may request a waiver from an Information Technology Policy (ITP) by providing detailed written justification as to why the ITP cannot be met. The Commonwealth may waive the ITP in whole, in part or conditionally, or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.

## **11. ORDER OF PRECEDENCE.**

If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence shall be:

- (a) The documents containing the parties' signatures;
- (b) The IT Contract Terms and Conditions;
- (c) The Proposal; and
- (d) The Solicitation.

## **12. CONTRACT INTEGRATION.**

- (a) Final contract. This Contract constitutes the final, complete, and exclusive Contract between the parties, containing all the terms and conditions agreed to by the parties.
- (b) Prior representations. All representations, understandings, promises, and agreements pertaining to the subject matter of this Contract made prior to or at the time this Contract is executed are superseded by this Contract.
- (c) Conditions precedent. There are no conditions precedent to the performance of this Contract except as expressly set forth herein.
- (d) Sole applicable terms. No contract terms or conditions are applicable to this Contract except as they are expressly set forth herein.

- (e) Other terms unenforceable. The Contractor may not require the Commonwealth or any user of the Services or Supplies acquired within the scope of this Contract to sign, click through, or in any other way agree to any terms associated with use of or interaction with those Services and/or Supplies, unless the Commonwealth has approved the terms in writing in advance under this Contract, and the terms are consistent with this Contract. Further, changes to terms may be accomplished only by processes set out in this Contract; no quotations, invoices, business forms or other documentation, or terms referred to therein, shall become part of this Contract merely by their submission to the Commonwealth or their ordinary use in meeting the requirements of this Contract. Any terms imposed upon the Commonwealth or a user in contravention of this subsection (e) must be removed at the direction of the Commonwealth and shall not be enforced or enforceable against the Commonwealth or the user.

### **13. PERIOD OF PERFORMANCE.**

The Contractor, for the term of this Contract, shall complete all Services and provide all Supplies as specified under the terms of this Contract. In no event shall the Commonwealth be responsible or liable to pay for any Services or Supplies provided by the Contractor prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such Services or Supplies.

### **14. INDEPENDENT PRIME CONTRACTOR.**

- (a) Independent 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.
- (b) Sole point of contact. The Contractor will be responsible for all Services and Supplies 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.

### **15. SUBCONTRACTS.**

The Contractor may subcontract any portion of the Services or Supplies 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 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 un-redacted copy of the subcontract agreement between the Contractor and the subcontractor. 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.

**16. 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 and/or its provision of Supplies 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.

**17. ENHANCED MINIMUM WAGE.**

- (a) Enhanced Minimum Wage. Contractor/Lessor agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- (b) Adjustment. Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- (c) Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:
  - (i) exempt from the minimum wage under the Minimum Wage Act of 1968;
  - (ii) covered by a collective bargaining agreement;
  - (iii) required to be paid a higher wage under another state or federal law governing the services, including the *Prevailing Wage Act* and Davis-Bacon Act; or
  - (iv) required to be paid a higher wage under any state or local policy or ordinance.

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

## **18. COMPENSATION.**

- (a) General. The Contractor shall be required to perform at the price(s) quoted in the Contract. All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and Services performed to the satisfaction of the Commonwealth.
- (b) Travel. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract. If not otherwise specified in the Contract, travel and related expenses shall be reimbursed in accordance with [Management Directive 230.10 Amended](#), *Commonwealth Travel Policy*, and [Manual 230.1](#), *Commonwealth Travel Procedures Manual*.

## **19. BILLING REQUIREMENTS.**

- (a) Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:
  - (i) Vendor name and “Remit to” address, including SAP Vendor number;
  - (ii) Bank routing information, if ACH;
  - (iii) SAP Purchase Order number;
  - (iv) Delivery Address, including name of Commonwealth agency;



- (v) Description of the supplies/services delivered in accordance with SAP Purchase Order (include Purchase Order line number if possible);
  - (vi) Quantity provided;
  - (vii) Unit price;
  - (viii) Price extension;
  - (ix) Total price; and
  - (x) Delivery date of supplies or services.
- (b) If an invoice does not contain the minimum information set forth in this section, and comply with the provisions located at <https://www.budget.pa.gov/Programs/Pages/E-Invoicing.aspx>, relating to the Commonwealth E-Invoicing Program, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

## **20. PAYMENT.**

- (a) Payment Date. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
- (i) the date on which payment is due under the terms of the Contract;
  - (ii) **thirty (30) days** after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or
  - (iii) the payment date specified on the invoice if later than the dates established by [paragraphs \(a\)\(i\) and \(a\)\(ii\)](#), above.
- (b) Delay; Interest. 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 **15 days** after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act of December 13, 1982, P.L. 1155, No. 266, 72 P. S. § 1507, (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ 2.31—2.40 (relating to interest penalties for late payments to qualified small business concerns).

- (c) 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.

## **21. ELECTRONIC PAYMENTS.**

- (a) The Commonwealth will make contract payments through the Automated Clearing House (ACH). Within **10 days** of award of the Contract, the Contractor must submit or must have already submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).
- (b) The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
- (c) 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.

## **22. ASSIGNABILITY.**

- (a) Subject to the terms and conditions of this section the Contract is binding upon the parties and their respective successors and assigns.
- (b) The Contractor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Commonwealth, which consent may be withheld at the sole and absolute discretion of the Commonwealth.
- (c) For the purposes of the Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, encumbrance, 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.
- (d) Any assignment consented to by the Commonwealth 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.
- (e) Notwithstanding the foregoing, the Contractor may, without the consent of the Commonwealth, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the

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

- (f) A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, is not considered to be an assignment. The Contractor shall give the Commonwealth written notice of any such change of name.

## **23. INSPECTION AND ACCEPTANCE.**

- (a) Developed Works and Services.
  - (i) *Acceptance.* Acceptance of any Developed Work or Service will occur in accordance with an acceptance plan (Acceptance Plan) submitted by the Contractor and approved by the Commonwealth. Upon approval of the Acceptance Plan by the Commonwealth, the Acceptance Plan becomes part of this Contract.
  - (ii) *Software Acceptance Test Plan.* For contracts where the development of Software, the configuration of Software or the modification of Software is being inspected and accepted, the Acceptance Plan must include a Software Acceptance Test Plan. The Software Acceptance Test Plan will provide for a final acceptance test, and may provide for interim acceptance tests. Each acceptance test will be designed to demonstrate that the Software conforms to the functional specifications, if any, and the requirements of this Contract. The Contractor shall notify the Commonwealth when the Software is completed and ready for acceptance testing. The Commonwealth will not unreasonably delay commencement of acceptance testing.
  - (iii) If software integration is required at the end of the project, as set out in the Solicitation, the Commonwealth's acceptance of the Software shall be final unless at the time of final acceptance, the Software does not meet the acceptance criteria set forth in the Contract.
  - (iv) If software integration is not required at the end of the project, as set out in the Solicitation, the Commonwealth's acceptance of the Software shall be complete and final.
  - (v) *Certification of Completion.* The Contractor shall certify, in writing, to the Commonwealth when an item in the Acceptance Plan is completed and ready for acceptance. Unless otherwise agreed to by the Commonwealth in the Acceptance Plan, the acceptance period shall be **10 business days** for interim items and **30 business days** for final items. Following receipt of the Contractor's certification of completion of an item, the Commonwealth shall, either:

- (1) Provide the Contractor with Commonwealth's written acceptance of the work product; or
  - (2) Identify to the Contractor, in writing, the failure of the work product to comply with the specifications, listing all such errors and omissions with reasonable detail.
- (vi) *Deemed Acceptance.* If the Commonwealth fails to notify the Contractor in writing of any failures in the work product within the applicable acceptance period, the work product shall be deemed accepted.
- (vii) *Correction upon Rejection.* Upon the Contractor's receipt of the Commonwealth's written notice of rejection, which must identify the reasons for the failure of the work product to comply with the specifications, the Contractor shall have **15 business days**, or such other time as the Commonwealth and the Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected item, certifying to the Commonwealth, in writing, that the failures have been corrected, and that the items have been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted items and certification, the Commonwealth shall have **30 business days** to test the corrected items to confirm that they are in compliance with the specifications. If the corrected items are in compliance with the specifications, then the Commonwealth shall provide the Contractor with its acceptance of the items in the completed milestone.
- (viii) *Options upon Continued Failure.* If, in the opinion of the Commonwealth, the corrected items still contain material failures, the Commonwealth may either:
- (1) Repeat the procedure set forth above; or
  - (2) Proceed with its rights under **Section 28, Termination**, except that the cure period set forth in **Subsection 28(c)** may be exercised in the Commonwealth's sole discretion.
- (b) Supplies.
- (i) *Inspection prior to Acceptance.* No Supplies received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the Supplies.
  - (ii) *Defective Supplies.* Any Supplies discovered to be defective or that fail to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Supplies or the noncompliance

with the specifications were not reasonably ascertainable upon the initial inspection.

- (1) The Contractor shall remove rejected item(s) from the premises without expense to the Commonwealth within **15 days** after notification.
- (2) 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.
- (3) 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 may procure, in such manner as it determines, supplies similar or identical to the those that Contractor failed, neglected or refused to replace, 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.

#### **24. DEFAULT.**

The Commonwealth may, subject to the provisions of **Section 25, Notice of Delays**, and **Section 66, Force Majeure**, 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 **Section 28, Termination**) the whole or any part of this Contract for any of the following reasons:

- (i) Failure to begin Services within the time specified in the Contract or as otherwise specified;
- (ii) Failure to perform the Services with sufficient labor, equipment, or material to insure the completion of the specified Services in accordance with the Contract terms;
- (iii) Unsatisfactory performance of the Services;
- (iv) Failure to meet requirements within the time periods(s) specified in the Contract;
- (v) Multiple failures over time of a single service level agreement or a pattern of failure over time of multiple service level agreements;

- (vi) Failure to provide a Supply or Service that conforms with the specifications referenced in the Contract;
- (vii) Failure or refusal to remove material, or remove, replace or correct any Supply rejected as defective or noncompliant;
- (viii) Discontinuance of Services without approval;
- (ix) Failure to resume a Service, which has been discontinued, within a reasonable time after notice to do so;
- (x) Insolvency;
- (xi) Assignment made for the benefit of creditors;
- (xii) 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 subcontractors for materials furnished, labor supplied or performed, for equipment rentals or for utility services rendered;
- (xiii) Failure to protect, repair or make good any damage or injury to property;
- (xiv) Breach of any provision of this Contract;
- (xv) Any breach by Contractor of the security standards or procedures of this Contract;
- (xvi) Failure to comply with representations made in the Contractor's Proposal;  
or
- (xvii) Failure to comply with applicable industry standards, customs and practice.

## **25. NOTICE OF DELAYS.**

Whenever the Contractor encounters any difficulty that delays or threatens to delay the timely performance of this Contract (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to the Commonwealth stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Commonwealth of any rights or remedies to which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with [Section 27, Changes](#).

## **26. CONDUCT OF SERVICES.**

- (a) Following the Effective Date of the Contract, Contractor shall proceed diligently with all Services and shall perform such Services with qualified personnel, in accordance with the completion criteria set forth in the Contract.
- (b) In determining whether the Contractor has performed with due diligence under the Contract, it is agreed and understood that the Commonwealth may measure the amount and quality of the Contractor's effort against the representations made in the Contractor's Proposal. The Contractor's Services hereunder shall be monitored by the Commonwealth and the Commonwealth's designated representatives. If the Commonwealth reasonably determines that the Contractor has not performed with due diligence, the Commonwealth and the Contractor will attempt to reach agreement with respect to such matter. Failure of the Commonwealth or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of **Section 30, Contract Controversies**.

## **27. CHANGES.**

- (a) At any time during the performance of the Contract, the Commonwealth or the Contractor may request a change to the Contract. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If the Commonwealth is the requestor of the change, the Contractor will inform the Commonwealth of any charges for investigating the change request prior to incurring such charges. If the Commonwealth and the Contractor agree on the results of the investigation and any necessary changes to the Contract, the parties must complete and execute a change order to modify the Contract and implement the change. The change order will be evidenced by a writing in accordance with the Commonwealth's change order procedures. No work may begin on the change order until the Contractor has received the executed change order. If the parties are not able to agree upon the results of the investigation or the necessary changes to the Contract, a Commonwealth-initiated change request will be implemented at Commonwealth's option and the Contractor shall perform the Services; and either party may elect to have the matter treated as a dispute between the parties under **Section 30, Contract Controversies**. During the pendency of any such dispute, Commonwealth shall pay to Contractor any undisputed amounts.
- (b) Changes outside the scope of this Contract shall be accomplished through the Commonwealth's procurement procedures, and may result in an amended Contract or a new contract. No payment will be made for services outside of the scope of the Contract for which no amendment has been executed.

## **28. TERMINATION.**

- (a) For Convenience.

- (i) The Commonwealth may terminate the Contract, or a Purchase Order issued against the Contract, in whole or in part, without cause by giving Contractor **30 days'** prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be 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:

- (1) all Services performed consistent with the terms of the Contract prior to the effective date of termination;
- (2) 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 30, Contract Controversies](#), of this Contract.

- (ii) The Contractor shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such Services performed during the **30-day** notice period, if such Services are requested by the Commonwealth, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under this Contract.
  - (iii) The above shall not be deemed to limit the Commonwealth's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.
- (b) Non-Appropriation. Any payment obligation or portion thereof of the Commonwealth created by this Contract is conditioned upon the availability and appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance or full



performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract in whole or in part. The Contractor shall be reimbursed in the same manner as that described in [subsection \(a\)](#) to the extent that appropriated funds are available.

- (c) **Default.** The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within **30 days**, or if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.
- (i) Subject to [Section 38, Limitation of Liability](#), in the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection (c), the Commonwealth may procure services similar to those so terminated, and the Contractor, 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 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, 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 (c) 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 for default, then the Contract shall be deemed to have been terminated for convenience under [subsection \(a\)](#).
- (v) If this Contract is terminated as provided by this subsection (c), the Commonwealth may, in addition to any other rights provided in this subsection (c), and subject law and to other applicable provisions of this Contract, require the Contractor to deliver to the Commonwealth in the

manner and to the extent directed by the Contracting Officer, such Software, Data, Developed Works, Documentation and other materials as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated.

- (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 **Section 30, Contract Controversies**, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **29. BACKGROUND CHECKS.**

- (a) The Contractor, at its expense, must 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 IT 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/Request-a-Criminal-History-Record.aspx>. The background check must be conducted prior to initial access and on an annual basis thereafter.
- (b) Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that an employee of the Contractor or an employee of a subcontractor of the Contractor 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 cure 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 or require background checks over and above that described herein.

### 30. CONTRACT CONTROVERSIES.

- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Contract or a purchase order, the Contractor, within **six (6) months** after the cause of action accrues, must 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 **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Contractor or the Contracting Officer requests mediation, and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- (c) Within **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 or Purchase Order 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 or Purchase Order.

### 31. CONFIDENTIALITY, PRIVACY AND COMPLIANCE.

- (a) General. 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. Unless the context otherwise clearly indicates the need for confidentiality, information is deemed confidential only when the party claiming confidentiality designates the information as "confidential" in such a way as to give notice to the other party (for

example, notice may be communicated by describing the information, and the specifications around its use or disclosure, in the Solicitation or in the Proposal). Neither party may assert that information owned by the other party is such party's confidential information. Notwithstanding the foregoing, all Data provided by, or collected, processed, or created on behalf of the Commonwealth is Confidential Information unless otherwise indicated in writing.

- (b) Copying; Disclosure; Termination. The parties agree that 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 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 or any license granted hereunder, the receiving party will return to the disclosing party, or certify as to the destruction of, all confidential information in the receiving party's possession, other than one copy (where permitted by law or regulation), which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions. A material breach of these requirements may result in termination for default pursuant to **Subsection 28(c)**, in addition to other remedies available to the non-breaching party.
- (c) 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;
  - (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.

- (d) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
- (i) Prepare and submit an un-redacted version of the appropriate document;
  - (ii) Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret. The Contractor shall use a redaction program that ensures the information is permanently and irreversibly redacted; and
  - (iii) Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:
    - (1) the attached material contains confidential or proprietary information or trade secrets;
    - (2) the Contractor is submitting the material in both redacted and un-redacted format, if possible, in accordance with 65 P.S. § 67.707(b); and
    - (3) the Contractor is requesting that the material be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
- (e) Disclosure of Recipient or Beneficiary Information Prohibited. The Contractor 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 the Contract for any purpose not connected with the Contractor's responsibilities, except with consent pursuant to applicable law or regulations. All material associated with direct disclosures of this kind (including the disclosed information) shall be provided to the Commonwealth prior to the direct disclosure.
- (f) Compliance with Laws. Contractor will comply with all applicable laws or regulations related to the use and disclosure of information, including information that constitutes Protected Health Information (PHI) as defined by the *Health Insurance Portability and Accountability Act* (HIPAA). Further, by signing this Contract, the Contractor agrees to the terms of the Business Associate Agreement, which is incorporated into this Contract as **Exhibit A**, or as otherwise negotiated by the Contractor and the purchasing agency. It is understood that **Exhibit A, Commonwealth of Pennsylvania Business Associate Agreement**, is only applicable if and to the extent indicated in the Contract.
- (g) Additional Provisions. Additional privacy and confidentiality requirements may be specified in the Contract.

- (h) Restrictions on Use. All Data and all 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 shall be used only for the work of this Contract. No Data, intellectual property, Documentation or Developed Works may be used, disclosed, or otherwise opened for access by or to the Contractor or any third party unless directly related to and necessary under the Contract.

### **32. PCI SECURITY COMPLIANCE.**

- (a) General. By providing the Services under this Contract, the Contractor may create, receive, or have access to credit card records or record systems containing cardholder data including credit card numbers (collectively the “Cardholder Data”). Contractor shall comply with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements for Cardholder Data that are prescribed by the payment brands (including, but not limited to, Visa, MasterCard, American Express, and Discover), as they may be amended from time to time. The Contractor acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment brands, for purposes of this Contract or as required by applicable law or regulations.
- (b) Compliance with Standards. The Contractor shall conform to and comply with the PCI DSS standards as defined by The PCI Security Standards Council at: [https://www.pcisecuritystandards.org/security\\_standards/index.php](https://www.pcisecuritystandards.org/security_standards/index.php). The Contractor shall monitor these PCI DSS standards and will promptly notify the Commonwealth if its practices should not conform to such standards. The Contractor shall provide a letter of certification to attest to meeting this requirement within **seven (7) days** of the Contractor’s receipt of the annual PCI DSS compliance report.

### **33. DATA BREACH OR LOSS.**

- (a) The 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*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 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:
  - (i) 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.

- (ii) The Contractor shall provide timely notice to all individuals that may require notice under any applicable 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.
  - (iii) The Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.
- (c) 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 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.

#### **34. INSURANCE.**

- (a) General. Unless otherwise indicated in the Solicitation, the Contractor shall maintain at its expense and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:
- (i) Workers' Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Workers' Compensation Act*, Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.
  - (ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than **\$500,000** per person and **\$2,000,000** per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured

against the insurance coverages in regard to the Services performed for or Supplies provided to the Commonwealth.

- (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate.
  - (iv) Professional Liability/Errors and Omissions Insurance in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
  - (v) Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under Company's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of **\$3,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
  - (vi) Completed Operations Insurance in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
  - (vii) Comprehensive crime insurance in an amount of not less than **\$5,000,000** per claim.
- (b) Certificate of Insurance. Prior to commencing Services under the Contract, and annually thereafter, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been given to the Commonwealth. Such cancellation or change shall not relieve the Contractor of its continuing obligation to maintain insurance coverage in accordance with this section.
- (c) Insurance coverage length. The Contractor agrees to maintain such insurance for the latter of the life of the Contract, or the life of any Purchase Orders issued under the Contract.

### **35. CONTRACTOR RESPONSIBILITY PROGRAM.**



- (a) 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.
- (b) 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 subcontractors, nor any suppliers 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.

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

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

**36. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS.**

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.

**37. 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. 23-7400001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

**38. LIMITATION OF LIABILITY.**

- (a) General. The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of **\$250,000** or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:
- (i) for bodily injury;
  - (ii) for death;
  - (iii) for intentional injury;

- (iv) for damage to real property or tangible personal property for which the Contractor is legally liable;
  - (v) under **Section 42, Patent, Copyright, Trademark and Trade Secret Protection**;
  - (vi) under **Section 33, Data Breach or Loss**; or
  - (vii) under **Section 41, Virus, Malicious, Mischievous or Destructive Programming**.
- (b) The Contractor will not be liable for consequential or incidental damages, except for damages as set forth in **paragraphs (a)(i)—(vii)** above, or as otherwise specified in the Contract.

**39. COMMONWEALTH HELD HARMLESS.**

- (a) The Contractor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- (b) Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

**40. SOVEREIGN IMMUNITY.**

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

**41. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING.**

- (a) The Contractor shall be liable for any damages incurred by the Commonwealth 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. The Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.

- (b) 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 results from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).
- (c) 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.
- (d) The Contractor shall be responsible for reviewing Commonwealth software security standards and complying with those standards.
- (e) 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 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.
- (f) 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.
- (g) The Commonwealth will not 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. PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET PROTECTION.**

- (a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, trademarks or trade dress, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG, however, in its sole discretion and under the terms it deems appropriate, may 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 that prevents the Commonwealth from continuing to use the Developed Works as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth 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, at its expense, will 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 dress, 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, trademark or trade dress, 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:

- (i) substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs; or
  - (ii) obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.
- (e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- (f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
- (i) any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
  - (ii) any license fee less an amount for the period of usage of any software; and
  - (iii) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (g) 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.
- (h) 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.

#### **43. CONTRACT CONSTRUCTION.**

The provisions of this Contract shall be construed in accordance with the provisions of all applicable laws and regulations of the Commonwealth. However, by executing this Contract, the Contractor agrees that it has and will continue to abide by the intellectual property laws and regulations of the United States of America.

#### **44. USE OF CONTRACTOR AND THIRD PARTY PROPERTY.**

- (a) Definitions.
  - (i) "Contractor Property" refers to Contractor-owned tangible and intangible property.
  - (ii) "Third Party" refers to a party that licenses its property to Contractor for use under this Contract.
  - (iii) "Third Party Property" refers to property licensed by the Contractor for use in its work under this Contract.
- (b) Contractor Property shall remain the sole and exclusive property of the Contractor. Third Party Property shall remain the sole and exclusive property of the Third Party. The Commonwealth acquires rights to the Contractor Property and Third Party Property as set forth in this Contract.
  - (i) Where the Contractor Property or Third Party Property is integrated into the Supplies or Services which are not Developed Works), or the Contractor Property is otherwise necessary for the Commonwealth to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor hereby grants to the Commonwealth a non-exclusive, fully-paid up, worldwide license to use the Contractor Property as necessary to meet the requirements of the Contract, including the rights to reproduce, distribute, publicly perform, display and create derivative works of the Contractor Property. These rights are granted for a duration and to an extent necessary to meet the requirements under this Contract. If the Contractor requires a separate license agreement, such license terms

shall include the aforementioned rights, be acceptable to the Commonwealth and include the applicable provisions set forth in these terms at [Exhibit B, Software/Services License Requirements Agreement Template](#).

- (ii) If Third Party Property is integrated into the Supplies or Services which are not Developed Works, or the Third Party Property is otherwise necessary for the Commonwealth to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor shall gain the written approval of the Commonwealth prior to the use of the Third Party Property or the integration of the Third Party Property into the Supplies or Services. Third Party Property approved by the Commonwealth is hereby licensed to the Commonwealth as necessary to meet the Contract requirements.
  - (iii) If the Third Party requires a separate license agreement, the license terms shall be acceptable to the Commonwealth and include the applicable provisions set forth in these terms at [Exhibit B, Software/Services License Requirements Agreement Template](#).
  - (iv) If the use or integration of the Third Party Property is not approved in writing under this section, the Third Party Property shall be deemed to be licensed under [paragraph \(b\)\(i\)](#) above.
  - (v) If the Contract expires or is terminated for default pursuant to [subsection 28\(c\)](#) before the Contract requirements are complete, all rights are granted for a duration and for purposes necessary to facilitate Commonwealth's or a Commonwealth-approved vendor's completion of the Supplies, Services or Developed Works under this Contract. The Contractor, in the form used by Contractor in connection with the Supplies, Services, or Developed Works, shall deliver to Commonwealth the object code version of such Contractor Property, the Third Party Property and associated licenses immediately prior to such expiration or termination to allow the Commonwealth to complete such work.
  - (vi) Where third party users are reasonably anticipated by the Contract, all users are granted the right to access and use Contractor Property for the purposes of and within the scope indicated in the Contract.
- (c) The Commonwealth will limit its agents and contractors' use and disclosure of the Contractor Property as necessary to perform work on behalf of the Commonwealth.
  - (d) The parties agree that the Commonwealth, by acknowledging the Contractor Property, does not agree to any terms and conditions of the Contractor Property agreements that are inconsistent with or supplemental to this Contract.



- (e) Reports. When a report is provided under this Contract, but was not developed specifically for the Commonwealth under this Contract, the ownership of the report will remain with the Contractor; provided, however, that the Commonwealth has the right to use, copy and distribute the report within the executive agencies of the Commonwealth.

#### **45. USE OF COMMONWEALTH PROPERTY.**

“Commonwealth Property” refers to Commonwealth-owned Software, Data and property (including intellectual property) and third party owned Software and property (including intellectual property) licensed to the Commonwealth.

- (a) Confidentiality of Commonwealth Property. All Commonwealth 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 shall be considered confidential information under **Section 31, Confidentiality, Privacy, and Compliance.**
- (b) License grant and restrictions. During the term of this Contract, Commonwealth grants to Contractor and its subcontractors for the limited purpose of providing the Services covered under this Contract, a limited, nonexclusive, nontransferable, royalty-free right (subject to the terms of any third party agreement to which the Commonwealth is a party) to access, use, reproduce, and modify Commonwealth Property in accordance with the terms of the Contract. The Commonwealth’s license to Contractor is limited by the terms of this Contract.
  - (i) The Contractor hereby assigns to the Commonwealth its rights, if any, in any derivative works resulting from Contractor’s modification of the Commonwealth Intellectual Property. Contractor agrees to execute any documents required to evidence this assignment and to waive any moral rights and rights of attribution provided for in Section 106A of Title 17 of the United States Code, the *Copyright Act of 1976*, as amended.
  - (ii) Neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Intellectual Property. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this section.
- (c) Reservation of rights. All rights not expressly granted here to Contractor are reserved by the Commonwealth.
- (d) Termination of Commonwealth license grant.

- (i) *Rights Cease.* Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, all rights granted to Contractor under this section shall immediately cease.
  - (ii) *Return Commonwealth Property.* Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Intellectual Property (including any related source code then in Contractor's possession or under its control) in the form in use as of the Effective Date of such expiration or termination (except that Commonwealth Data shall be turned over in a form acceptable to the Commonwealth).
  - (iii) *List of utilized Commonwealth Property/Destruction.* Within **15 days** after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Intellectual Property in use as of the date of such expiration or termination. Concurrently therewith, Contractor shall destroy or erase all other copies of any of the Commonwealth Software then in Contractor's possession or under its control unless otherwise instructed by Commonwealth, in writing; provided, however, that Contractor may retain one archival copy of such Commonwealth Software, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.
- (e) Effect of license grant termination. Consistent with the provisions of this section, Contractor shall refrain from manufacturing, copying, marketing, distributing or using any Commonwealth Software or any other work which incorporates the Commonwealth Software.
- (f) Commonwealth Property Protection.
- (i) Contractor acknowledges Commonwealth's exclusive right, title and interest, including without limitation copyright and trademark rights, in and to Commonwealth Data, Commonwealth Software and the Developed Works developed under the provisions of this Contract, and Contractor shall not, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title, and interest, and shall not use or disclose the Commonwealth Data, Commonwealth Software or the Developed Works without Commonwealth's written consent, which consent may be withheld by the Commonwealth for any reason.
  - (ii) Contractor shall not, in any manner, represent that Contractor has any ownership interest in the Commonwealth Data, Commonwealth Software or the Developed Works.

#### **46. OWNERSHIP OF DEVELOPED WORKS.**

Unless otherwise specified in the Contract's Statement of Work, ownership of all Developed Works shall be in accordance with the provisions set forth in this section.

(a) Rules for usage for Developed Works.

(i) *Property of Contractor.* If Developed Works modify, improve, contain, or enhance application software programs or other materials generally licensed by the Contractor, then such Developed Works shall be the property of the Contractor, and Contractor hereby grants Commonwealth an irrevocable, nonexclusive, worldwide, fully paid-up license (to include source code and relevant documentation) in perpetuity to use, modify, execute, reproduce, display, perform, prepare derivative works from and distribute, within the Commonwealth, such Developed Works.

(1) For purposes of distribution under the license grant created by this section, Commonwealth includes any government agency, department, instrumentality, division, unit or other office that is part of the Commonwealth of Pennsylvania, together with the State System of Higher Education (including any of its universities), any county, borough, commonwealth, city, municipality, town, township special purpose district, or other similar type of governmental instrumentality located within the geographical boundaries of the Commonwealth of Pennsylvania.

(2) If federal funds are used in creation of the Developed Works, the Commonwealth also includes any other state government as well as the federal government.

(ii) *Property of Commonwealth/licensor.* If the Developed Works modify, improve or enhance application software or other materials not licensed to the Commonwealth by the Contractor, then such modifications, improvements and enhancements shall be the property of the Commonwealth or its licensor.

(b) Copyright Ownership.

(i) *Works made for hire; general.* Except as indicated in [paragraph \(a\)\(i\)](#), above, Developed Works developed as part of the scope of work for the Project, including Developed Works developed by subcontractors, are the sole and exclusive property of the Commonwealth and shall be considered "works made for hire" under the *Copyright Act of 1976*, as amended, 17 United States Code.

(ii) *Assignment.* In the event that the Developed Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, Contractor agrees to assign and, upon their

authorship or creation, expressly and automatically assigns, all copyright interests, proprietary rights, trade secrets, and other right, title, and interest in and to such Developed Works to Commonwealth. Contractor further agrees that it will have its subcontractors assign, and upon their authorship or creation, expressly and automatically assigns all copyright interest, proprietary rights, trade secrets, and other right, title, and interest in and to the Developed Works to the Commonwealth.

- (iii) *Rights to Commonwealth.* Commonwealth shall have all rights accorded an owner of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Developed Works in multiple copies, the right to distribute copies by sales or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the Developed Works and the right to display the Developed Works.
  - (iv) *Subcontracts.* The Contractor further agrees that it will include the requirements of this section in any subcontractor or other agreement with third parties who in any way participate in the creation or development of Developed Works.
  - (v) *Completion or termination of Contract.* Upon completion or termination of this Contract, Developed Works, or completed portions thereof, shall immediately be delivered by Contractor to the Commonwealth.
  - (vi) *Warranty of noninfringement.* Contractor represents and warrants that the Developed Works are original and do not infringe any copyright, patent, trademark, or other intellectual property right of any third party and are in conformance with the intellectual property laws and regulations of the United States.
- (c) Patent ownership. Contractor and its subcontractors shall retain ownership to patentable items, patents, processes, inventions or discoveries (collectively, the Patentable Items) made by the Contractor during the performance of this Contract. Notwithstanding the foregoing, the Commonwealth shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. Commonwealth may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. Commonwealth understands and agrees that any third party disclosure will not confer any license to such Patentable Items.
- (d) Federal government interests. Certain funding under this Contract may be provided by the federal government. Accordingly, the rights to Developed Works or Patentable Items of Contractors or subcontractors hereunder will be further subject

to government rights as set forth in 37 C.F.R. [Part 401](#), as amended, and other applicable law or regulations.

- (e) Usage rights. Except as otherwise covered by this section either Party, in the ordinary course of conducting business, may use any ideas, concepts, know-how, methodologies, processes, components, technologies, algorithms, designs, modules or techniques relating to the Services.
- (f) Contractor's copyright notice obligations. Contractor will affix the following Copyright Notice to the Developed Works developed under this section and all accompanying documentation: "*Copyright © [year] by the Commonwealth of Pennsylvania. All Rights Reserved.*" This notice shall appear on all versions of the Developed Works delivered under this Contract and any associated documentation. It shall also be programmed into any and all Developed Works delivered hereunder so that it appears at the beginning of all visual displays of such Developed Works.

#### **47. SOURCE CODE AND ESCROW ITEMS OBLIGATIONS.**

- (a) Source code. Simultaneously with delivery of the Developed Works to Commonwealth, Contractor shall deliver a true, accurate and complete copy of all source codes relating to the Developed Works.
- (b) Escrow. To the extent that Developed Works and/or any perpetually-licensed software include application software or other materials generally licensed by the Contractor, Contractor agrees to place in escrow with an escrow agent copies of the most current version of the source code for the applicable software that is included as a part of the Services, including all updates, improvements, and enhancements thereof from time to time developed by Contractor.
- (c) Escrow agreement. An escrow agreement must be executed by the parties, with terms acceptable to the Commonwealth, prior to deposit of any source code into escrow.
- (d) Obtaining source code. Contractor agrees that upon the occurrence of any event or circumstance which demonstrates with reasonable certainty the inability or unwillingness of Contractor to fulfill its obligations to Commonwealth under this Contract, Commonwealth shall be able to obtain the source code of the then-current source codes related to Developed Works and/or any Contractor Property placed in escrow under [subsection \(b\)](#), above, from the escrow agent.

#### **48. LOCATION, STATUS AND DISPOSITION OF DATA.**

Unless the Solicitation specifies otherwise:

- (i) All Data must be stored within the United States;

- (ii) The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor's or its subcontractors' possession;
- (iii) All Data shall be provided to the Commonwealth upon request, in a form acceptable to the Commonwealth and at no cost;
- (iv) Any Data shall be destroyed by the Contractor at the Commonwealth's request; and
- (v) Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy and accessibility requirements of this Contract.

**49. PUBLICATION RIGHTS AND/OR COPYRIGHTS.**

- (a) Except as otherwise provided in [Section 46, Ownership of Developed Works](#), the Contractor shall not publish any of the results of the work without the written permission of the Commonwealth. The publication shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the Commonwealth of Pennsylvania." The Contractor shall not include in the documentation any copyrighted matter, unless the Contractor provides the Commonwealth with written permission of the copyright owner.
- (b) Except as otherwise provided in the Contract, the Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

**50. CHANGE OF OWNERSHIP OR INSOLVENCY.**

In the event that the Contractor should change ownership for any reason whatsoever, the Commonwealth shall have the exclusive option of continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract, or continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs, or immediately terminating this Contract. Nothing in this section limits the Commonwealth's exercise of any rights that the Commonwealth may have under [Section 28, Termination](#).

**51. OFFICIALS NOT TO BENEFIT.**

No official or employee of the Commonwealth and no member of its General Assembly who exercises any functions or responsibilities under this Contract shall participate in any decision relating to this Contract which affects their personal interest or the interest of any corporation, partnership, or association in which they are, directly or indirectly, interested;

nor shall any such official or employee of the Commonwealth or member of its General Assembly have any interest, direct or indirect, in this Contract or the proceeds thereof.

**52. COMPLIANCE WITH LAWS.**

- (a) The Contractor shall comply with all federal, state and local laws, regulations and policies applicable to its Services or Supplies, including, but not limited to, all statutes, regulations and rules that are in effect as of the Effective Date of the Contract and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation.
- (b) If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the Services or Supplies provided under this Contract, the Parties shall modify this Contract, via **Section 27, Changes**, to the extent reasonably necessary to:
  - (i) Ensure that such Services or Supplies will be in full compliance with such laws, regulations and policies; and
  - (ii) Modify the rates applicable to such Services or Supplies, unless otherwise indicated in the Solicitation.

**53. THE AMERICANS WITH DISABILITIES ACT.**

During the term of this Contract, the Contractor agrees as follows:

- (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 no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing 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 the 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 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 \(a\)](#).

**54. EXAMINATION OF RECORDS.**

- (a) The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under this Contract to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.
- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in [subsection \(c\)](#) below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by applicable laws or regulations, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in [Section 31, Confidentiality, Privacy and Compliance](#).
- (c) The Contractor shall preserve and make available its records for a period of **three (3) years** from the date of final payment under this Contract.
  - (i) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of **three (3) years** from the date of any resulting final settlement.
  - (ii) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.
- (d) Except for documentary evidence retained pursuant to [paragraph \(c\)\(ii\)](#) above, the Contractor may in fulfillment of its obligation to retain its records as required by this section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of **two (2) years** following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth with the concurrence of its auditors.
- (e) The provisions of this section shall be applicable to and included in each subcontract hereunder.

## **55. SINGLE AUDIT ACT OF 1984.**

In compliance with the *Single Audit Act of 1984*, as amended, the Contractor agrees to the following:

- (a) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the



Comptroller General of the United States and specified in the most current version of *Government Auditing Standards* (Yellow Book).

- (b) The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, as amended, 31 U.S.C. § 7501, *et seq.*, and all rules and regulations promulgated pursuant to the Act.
- (c) The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
- (d) The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984*, as amended.

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

- (a) Contractor understands that its level of access may allow or require it to view or access highly sensitive and confidential Commonwealth and third party data. This data is subject to various state and federal laws, regulations and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of the Supplies or Services, 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. This sign-off document, a sample of which is attached as **Exhibit C, Sample Sign-off Document**, 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) The 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 deployment of the Supplies or Services, the Contractor is and shall remain compliant with all applicable state and federal laws, regulations and policies 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.
- (c) This section does not require a Commonwealth agency to exhaustively list the laws, regulations or policies 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 applicable laws, regulations and policies.

- (d) The requirements of this section 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 29, 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, 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 to execute, as necessary. 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. A sample sign-off document is attached to these Terms as **Exhibit C, Sample Sign-off Document**.

## **58. ADDITIONAL FEDERAL PROVISIONS.**

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

## **59. ENVIRONMENTAL PROTECTION.**

In carrying out this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including the *Clean Streams Law*, Act of June 22, 1937 (P.L. 1987, No. 394), as amended, 35 P.S. §§ 691.1—691.801; the *Solid Waste Management Act*, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. §§ 6018.101—68.1003; and the *Dam Safety and Encroachment Act*, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. §§ 693.1—693.27.

## **60. 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.

## **61. CONTRACTOR INTEGRITY PROVISIONS.**

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

- (a) Definitions. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:
  - (i) “*Affiliate*” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the

voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

- (ii) “*Consent*” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
  - (iii) “*Contractor*” means the individual or entity, that has entered into this contract with the Commonwealth.
  - (iv) “*Contractor Related Parties*” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
  - (v) “*Financial Interest*” means either:
    - (1) Ownership of more than a five percent interest in any business; or
    - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - (vi) “*Gratuity*” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18*, the 4 Pa. Code § [7.153\(b\)](#), shall apply.
  - (vii) “*Non-bid Basis*” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- (b) In furtherance of this policy, Contractor agrees to the following:
- (i) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
  - (ii) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor

employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

- (iii) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- (iv) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- (v) Contractor certifies to the best of its knowledge and belief that within the last **five (5) years** Contractor or Contractor Related Parties have not:
  - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - (3) had any business license or professional license suspended or revoked;
  - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
  - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification

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

- (vi) Contractor shall comply with the requirements of the *Lobbying Disclosure Act* (65 Pa. C.S. § 13A01, et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the *Pennsylvania Election Code* (25 P.S. § 3260a).
- (vii) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- (viii) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- (ix) Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach

of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this subsection in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

- (x) For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

## **62. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS.**

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

## **63. WARRANTIES.**

Except as otherwise set forth in the Contract, the Contractor warrants that the Services, Supplies and Developed Works will conform in all material respects to the functional specifications for the Services, Supplies and Developed Works and/or the requirements of the Contract. The warranty period for the Services, Supplies and Developed Works shall be **90 days** from final acceptance. If third-party Services, Supplies or Developed Works are subject to a warranty that exceeds **90 days** from final acceptance, the longer warranty



period shall apply. The Contractor shall correct any non-conformity within the warranty period specified herein.

- (a) Disruption. The Contractor hereby represents and warrants to the Commonwealth that the Contractor will not cause, or take any action that, directly or indirectly, may cause a disruption of the Commonwealth's operations.
- (b) Nonconformity. In the event of any nonconformity with the foregoing warranties, the Commonwealth will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the Commonwealth, shall within **10 days'** notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the Commonwealth, until such time as the deliverable conforms, in all material respects, to the Service requirements and/or the functional specifications of the Developed Works set forth in this Contract. The Contractor shall have no obligation with respect to nonconformities arising out of:
  - (i) Modifications to Developed Works made by the Commonwealth;
  - (ii) Use of the Developed Works not in accordance with the documentation or specifications applicable thereto;
  - (iii) Failure by the Commonwealth to implement any corrections or enhancements made available by the Contractor;
  - (iv) Combination of the Developed Works with any items not supplied or approved by the Contractor; or
  - (v) Failure of any software licensed under a separate license agreement to conform to its specifications or documentation.
- (c) Industry standards. The Contractor hereby represents and warrants to the Commonwealth that the Services shall be performed in accordance with industry standards using the utmost care and skill.
- (d) Right to perform. The Contractor hereby represents and warrants to the Commonwealth that the Contractor has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Developed Works under this Contract.
- (e) Sole warranties. 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.

#### **64. LIQUIDATED DAMAGES.**

- (a) By accepting this Contract, the Contractor agrees to the delivery and acceptance requirements of this Contract. If a due date is not met, the delay will interfere with the Commonwealth's program. In the event of any such delay, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. The Commonwealth and the Contractor therefore agree that in the event of any such delay, the amount of damage shall be the amount set forth in this section, unless otherwise indicated in the Contract, and agree that the Contractor shall pay such amount as liquidated damages, not as a penalty. Such liquidated damages are in lieu of all other damages arising from such delay.
- (b) The amount of liquidated damages shall be as set out in the Solicitation. If not amount is set out in the Solicitation, the amount of liquidated damages for failure to meet a due date shall be three-tenths of a percent (.3%) of the price of the deliverable for each calendar day following the scheduled completion date. If the price of the deliverable associated with the missed due date is not identified, liquidated damages shall apply to the total value of the Contract. Liquidated damages shall be assessed each calendar day until the date on which the Contractor meets the requirements for the deliverable associated with the due date, up to a maximum of **30 days**. If indicated in the Contract, the Contractor may recoup all or some of the amount of liquidated damages assessed if the Contractor meets the final project completion date set out in the Contract.
- (c) If, at the end of the **30-day** period specified in [subsection \(b\)](#) above, the Contractor still has not met the requirements for the deliverable associated with the due date, then the Commonwealth, at no additional expense and at its option, may either:
  - (i) Immediately terminate the Contract in accordance with [Subsection 28\(c\)](#) and with no opportunity to cure; or
  - (ii) Order the Contractor to continue with no decrease in effort until the work is completed in accordance with the Contract and accepted by the Commonwealth or until the Commonwealth terminates the Contract. If the Contract is continued, any liquidated damages will also continue until the work is completed.
- (d) At the end of a calendar month, or at such other time(s) as identified in the Contract, liquidated damages shall be paid by the Contractor and collected by the Commonwealth by:
  - (i) Deducting the amount from the invoices submitted under this Contract or any other contract Contractor has with the Commonwealth;
  - (ii) Collecting the amount through the performance security, if any; or
  - (iii) Billing the Contractor as a separate item.

**65. SERVICE LEVELS.**

- (a) The Contractor shall comply with the procedures and requirements of the Service Level Agreements, if any, which are made part of this Contract.
- (b) Where there are expressly defined Service Levels, Contractor shall measure and report its performance against these standards on at least a monthly basis, except as may otherwise be agreed between the parties. Regardless of the presence or absence of expressly defined Service Levels, any failure to adequately or timely perform a Service may result in consequences under this Contract, up to and including Contract termination.
- (c) The Commonwealth's acceptance of any financial credit incurred by the Contractor in favor of the Commonwealth for a Service Level default ("Service Level Credit") shall not bar or impair Commonwealth's rights and remedies in respect of the failure or root cause as set forth elsewhere in this Contract, including without limitation other claims for liquidated damages, injunctive relief and termination rights; provided however, Service Level Credits paid would be credited against any such claims for damages.

**66. FORCE MAJEURE.**

- (a) 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.
- (b) The Contractor shall notify the Commonwealth orally within **five (5) days** and in writing within **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, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

- (c) 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.

**67. PUBLICITY/ADVERTISEMENT.**

The Contractor shall not issue news releases, internet postings, advertisements, endorsements, or any other public communication without prior written approval of the Commonwealth, and then only in coordination with the Commonwealth. This includes the use of any trademark or logo.

**68. TERMINATION ASSISTANCE.**

- (a) Upon the Commonwealth's request, Contractor shall provide termination assistance services (Termination Assistance Services) directly to the Commonwealth, or to any vendor designated by the Commonwealth. The Commonwealth may request termination assistance from the Contractor upon full or partial termination of the Contract and/or upon the expiration of the Contract term, including any renewal periods. Contractor shall take all necessary and appropriate actions to accomplish a complete, timely and seamless transition of any Services from Contractor to the Commonwealth, or to any vendor designated by the Commonwealth, without material interruption of or material adverse impact on the Services. Contractor shall cooperate with the Commonwealth and any new contractor and otherwise promptly take all steps required or reasonably requested to assist the Commonwealth in effecting a complete and timely transition of any Services.
- (b) Such Termination Assistance Services shall first be rendered using resources included within the fees for the Services, provided that the use of such resources shall not adversely impact the level of service provided to the Commonwealth; then by resources already included within the fees for the Services, to the extent that the Commonwealth permits the level of service to be relaxed; and finally, using additional resources at costs determined by the Parties via [Section 27, Changes](#).

**69. NOTICE.**

Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address such party may designate by notice given pursuant to this section.

**70. [RIGHT-TO-KNOW LAW](#).**

- (a) The Pennsylvania *Right-to-Know Law*, 65 P.S. §§ 67.101—3104, *as amended*, (“RTKL”) applies to this Contract. For the purpose of this section, the term “the Commonwealth” shall refer to the contracting Commonwealth organization.
- (b) If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL that is related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- (c) Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
  - (i) Provide the Commonwealth, within **10 days** after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - (ii) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within **seven (7) days** of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within **five (5) business days** of receipt of written notification of the Commonwealth’s determination.
- (f) If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.

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

#### **71. GOVERNING LAW.**

This Contract 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 30, Contract Controversies](#), Commonwealth and Contractor agree that 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. Any legal action relating to this Contract must be brought in Dauphin County, Pennsylvania, and the parties agree that jurisdiction and venue in such courts is appropriate.

#### **72. CONTROLLING TERMS AND CONDITIONS.**

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's website, quotations, invoices, business forms, click-through agreements, 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.

#### **73. SMALL DIVERSE BUSINESS/SMALL BUSINESS COMMITMENT.**

The Contractor shall meet and maintain the commitments to small diverse businesses in the Small Diverse Business and Small Business ("SDB/SB") portion of its Proposal. Any proposed change to a SDB/SB commitment must be submitted to the DGS Bureau of

Diversity, Inclusion and Small Business Opportunities (“BDISBO”), which will make a recommendation as to a course of action to the Commonwealth Contracting Officer. Contractor shall complete the Prime Contractor’s Quarterly Utilization Report and submit it to the Commonwealth Contracting Officer and BDISBO within **10 business days** at the end of each calendar quarter that the Contract is in effect.

**74. POST-CONSUMER RECYCLED CONTENT; RECYCLED CONTENT ENFORCEMENT.**

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 by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

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.

**75. SURVIVAL.**

Sections [11](#), [30](#), [31](#), [33](#), [37](#), [38](#), [39](#), [41](#), [42](#), [45](#), [46](#), [47](#), [48](#), [49](#), [52](#), [54](#), [55](#), [56](#), [63](#), [67](#), [69](#), [70](#), [71](#) and [75](#) and any right or obligation of the parties in this Contract which, by its express terms or nature and context is intended to survive termination or expiration of this Contract, will survive any such termination or expiration shall survive the expiration or termination of the Contract.

## EXHIBIT A

### COMMONWEALTH OF PENNSYLVANIA BUSINESS ASSOCIATE AGREEMENT

#### Health Insurance Portability and Accountability Act (HIPAA) Compliance

WHEREAS, the [name of program and/or Department] (Covered Entity) and the Contractor (Business Associate), intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191 (HIPAA), the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the *American Recovery and Reinvestment Act of 2009* (ARRA), as amended, Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, as amended, 42 C.F.R. §§ 431.301—431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), 35 P.S. § 7607, 50 Pa. C.S. § 7111, 71 P.S. § 1690.108(c), 62 P.S. § 404, 55 Pa. Code Chapter 105, 55 Pa. Code Chapter 5100, the Pennsylvania *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance; and

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be handled, used or disclosed only in accordance with this Business Associate Agreement (BAA), the Underlying Agreement and the standards established by HIPAA, the HITECH Act and related regulations, 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) “**Business Associate Agreement**” or “**BAA**” shall mean this Agreement.
- (c) “**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.
- (d) “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, Pub. L. No. 104-191.



- (e) **“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).
- (f) **“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.
- (g) **“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.
- (h) **“Security Rule”** shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- (i) **“Underlying Agreement”** shall mean Contract/Purchase Order # \_\_\_\_\_.
- (j) **“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. **Changes in Law.**

Business Associate agrees that it will comply with any changes in the HIPAA Rules by the compliance date established by any such changes and will provide the Covered Entity with written certification of such compliance.

## 3. **Stated Purposes for Which Business Associate May Use or Disclose PHI.**

Except as otherwise limited in this BAA, Business Associate shall be permitted to use or disclose PHI provided by or obtained by or obtained on behalf of Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity which are specified in [Appendix A](#) to this BAA, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity. Business Associate agrees to make uses, disclosures and requests for PHI consistent with Covered Entity’s minimum policies and procedures.

## 4. **Additional Purposes for Which Business Associate May Use or Disclose Information.**

Business Associate shall not use or disclose PHI provided by, or created or obtained on behalf of, Covered Entity for any other purposes except as required by law. Business Associate shall not use PHI to de-identify the information in accordance with 45 CFR § [164.514](#) (a)—(c) without the Covered Entity’s express written authorization(s). Business

Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

## 5. Business Associate Obligations.

- (a) **Limits on Use and Further Disclosure Established by Business Associate Agreement and Law.** Business Associate hereby agrees that the PHI provided by, or created or obtained on behalf of, Covered Entity shall not be further used or disclosed other than as permitted or required by BAA or as required by law.
- (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 BAA that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity as required by [Subpart C](#) of 45 CFR Part 164. Appropriate safeguards shall include but are not limited to implementing:
  - (i) administrative safeguards required by 45 CFR § [164.308](#);
  - (ii) physical safeguards as required by 45 CFR § [164.310](#);
  - (iii) technical safeguards as required by 45 CFR § [164.312](#); and
  - (iv) policies and procedures and document requirements as required by 45 CFR § [164.316](#).
- (c) **Training and Guidance.** Business Associate shall provide annual training to relevant contractors, Subcontractors, employees, agents and representatives on how to prevent the improper use or disclosure of PHI. Business Associate shall also comply with annual guidance on the most effective and appropriate technical safeguards issued by the Secretary of Health and Human Services.
- (d) **Reports of Improper Use or Disclosure or Breach.** Business Associate hereby agrees that it shall notify the Covered Entity's Project Officer and the Covered Entity's Legal Office within **two (2) days** of discovery of any use or disclosure of PHI not provided for or allowed by this BAA, including breaches of unsecured PHI as required by 45 CFR § [164.410](#). Such notification shall be written and shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the improper use or disclosure or Breach. Business Associate shall furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 CFR § [164.404\(c\)](#) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. An improper use or disclosure or Breach shall be treated as discovered by the Business Associate on the **first day**

on which it is known to the Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate to have occurred.

- (e) Business Associate agrees that if any of its employees, agents, contractors, subcontractors or representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information, Business Associate shall ensure that such employees, agents, contractors, subcontractors and representatives shall receive training on Business Associate's procedure for compliance with the HIPAA Rules. Business Associate Agrees that if any of its employees, agents, contractors, subcontractors or representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information in a manner not provided for in this BAA, Business Associate shall ensure that such employees, agents, contractors, subcontractors and representatives are sanctioned or prevented from accessing any PHI Business Associate receives from, or creates or receives on behalf of Covered Entity. Use or disclosure of PHI in a manner contrary to the terms of this BAA shall constitute a material breach of the Underlying Agreement.
- (f) **Contractors, Subcontractors, Agents and Representatives.** In accordance with 45 CFR § 164.502(e)(1)(ii) and 45 CFR § 164.308(b)(2), if applicable, ensure that any contractors, subcontractors, agents and representatives that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. The existence of any contractors, subcontractors, agents and representatives shall not change the obligations of Business Associate to the Covered Entity under this BAA.
- (g) **Reports of Security Incidents.** Business Associate hereby agrees that it shall notify, in writing, the Department's Project Officer within **two (2) days** of discovery of any Security Incident at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available.
- (h) **Right of Access to PHI.** Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within **10 business days** of receiving a written request from the Covered Entity or an authorized individual in accordance with the HIPAA Rules. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its contractors, subcontractors, agents or representatives, access to PHI, Business Associate shall notify Covered Entity of same within **five (5) business days**. Business Associate shall further conform with and meet all of the requirements of 45 CFR § 164.524.

- (i) **Amendment and Incorporation of Amendments.** Within **five (5) business days** of receiving a request from Covered Entity or from the individual for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available to the Covered Entity and incorporate the amendment to enable Covered Entity to comply with 45 CFR § 164.526. If any individual requests an amendment from Business Associate or its contractors, subcontractors, agents or representatives, Business Associate shall notify Covered Entity of same within **five (5) business days**.
- (j) **Provide Accounting of Disclosures.** Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 CFR § 164.528. 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, the purpose of the disclosure, and shall include disclosures made on or after the date which is **six (6) years** prior to the request. Business Associate shall make such record available to the individual or the Covered Entity within **10 business days** of a request for an accounting of disclosures and in accordance with 45 CFR § 164.528.
- (k) **Access to Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, created or received by Business Associate on behalf of the Covered Entity, available to the Covered Entity and the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules.
- (l) **Return or Destruction of PHI.** At termination of this BAA, 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 BAA. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this BAA 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.
- (m) **Maintenance of PHI.** Notwithstanding [subsection 5\(l\)](#) of this BAA, Business Associate and its contractors, subcontractors, agents and representatives shall retain all PHI throughout the term of the Underlying Agreement and shall continue to maintain the information required under [subsection 5\(j\)](#) of this BAA for a period of **six (6) years** after termination of the Underlying Agreement, unless Covered Entity and Business Associate agree otherwise.
- (n) **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 BAA or the HIPAA Rules. 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 BAA or the Privacy Rule.

- (o) **Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any contractor, Subcontractor, employee, agent and representative who violates this BAA or the HIPAA Rules.
- (p) **Application of Civil and Criminal Penalties.** All Civil and Criminal Penalties under the HIPAA Rules shall apply to Business Associate's violation of any provision contained in the HIPAA Rules.
- (q) **Breach Notification.** Business Associate shall comply with the Breach notification requirements of 45 CFR [Part 164](#). In the event of a Breach requiring indemnification in accordance with [subsection 5\(v\)](#), below, Covered Entity may elect to directly comply with Breach notification requirements or require Business Associate to comply with all Breach notifications requirements of 45 CFR [Part 164](#) on behalf of Covered Entity. If Covered Entity requires Business Associate to comply with Breach notification requirements, Business Associate shall provide Covered Entity with a detailed weekly, written report, starting one week following discovery of the Breach. The report shall include, at a minimum, Business Associate's progress regarding Breach notification and mitigation of the Breach. If Covered Entity elects to directly meet the requirements of 45 CFR [Part 164](#), Business Associate shall be financially responsible to Covered Entity for all resulting costs and fees incurred by Covered Entity, including, but not limited to, labor, materials, or supplies. Covered Entity may at its sole option:
  - (i) Offset amounts otherwise due and payable to Business Associate under the Underlying Agreement; or
  - (ii) Seek reimbursement of or direct payment to a third party of Covered Entity's costs and fees incurred under this subsection.

Business Associate shall make payment to Covered Entity (or a third party as applicable) within **30 days** from the date of Covered Entity's written notice to Business Associate.

- (r) **Grounds for Breach.** Any non-compliance by Business Associate with this BAA or the HIPAA Rules will automatically be considered to be a breach of the Underlying Agreement.
- (s) **Termination by Commonwealth.** Business Associate authorizes termination of this BAA or Underlying Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion that the Business Associate has violated a material term of this BAA.

- (t) **Failure to Perform Obligations.** In the event Business Associate including its contractors, Subcontractors, agents and representatives fails, to perform its obligations under this BAA, 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 BAA and applicable law.
- (u) **Privacy Practices.** The Covered Entity will provide, and Business Associate shall immediately begin using and/or distributing to clients, any applicable form, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date of this BAA, or as otherwise designated by the Program or Covered Entity. The Covered Entity retains the right to change the applicable privacy practices, documents and forms. The Business Associate shall implement changes as soon as practicable, but not later than **45 days** from the date of notice of the change.
- (v) **Indemnification.** Business Associate shall indemnify, defend and hold harmless Covered Entity from and all claims and actions, whether in law or equity, resulting from Business Associate's Breach or other violation of the HIPAA Rules (this includes but is not limited to Breach and violations by Business Associate's contractors, subcontractors, employees, agents and representatives). Additionally, Business Associate shall reimburse Covered Entity for any civil monetary penalties imposed on Covered Entity as a result of a Breach or violation cognizable under this [subsection 5\(v\)](#).

## 6. **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 45 CFR § [164.520](#) ([Appendix A](#) to this BAA), as well as changes to such notice.
- (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 of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR § [164.522](#) to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

## 7. **Survival.**

The requirements, rights and obligations created by this BAA shall survive the termination of the Underlying Agreement.

**Appendix A to Exhibit A,  
Commonwealth of Pennsylvania Business Associate Agreement**

**Permitted Purposes for the Creation, Receipt, Maintenance, Transmission, Use and/or  
Disclosure of Protected Health Information**

1. Purpose of Disclosure of PHI to Business Associate: To allow \_\_\_\_\_ to meet the requirements of the Underlying Agreement.
  
2. Information to be disclosed to Business Associate: \_\_\_\_\_.
  
3. Use Shall Effectuate Purpose of Underlying Agreement: \_\_\_\_\_ may use and disclose PHI to the extent contemplated by the Underlying Agreement, and as permitted by law with Commonwealth approval.



## EXHIBIT B

PA Supplier ID Number: \_\_\_\_\_

**SOFTWARE/SERVICES LICENSE REQUIREMENTS AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF PENNSYLVANIA,  
ACTING BY AND THROUGH THE GOVERNOR’S OFFICE OF ADMINISTRATION  
AND**

**\_\_\_\_\_**

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This Software/Services License Requirements Agreement (“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.

### 1. **Order of Precedence.**

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

### 2. **Enterprise Language.**

- (a) The parties agree that more than one agency of the Commonwealth (“Commonwealth Agency”) may license products subject to this Agreement, provided that the procurement of any Licensed Products by any Commonwealth Agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each Commonwealth Agency seeking to use the Licensed Products.
- (b) The parties agree that, if the licensee is a “Commonwealth Agency” as defined by Section 103 of the *Commonwealth Procurement Code*, 62 Pa. C. S. § 103, the terms and conditions of this Agreement apply to the procurement of Licensed Products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase order or other procurement document without further need for execution.

*Exhibit B, Software/Services License Requirements Agreement*

Page 1 of 2

### **3. List of Licensed Products.**

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

### **4. Choice of Law/Venue.**

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

### **5. Indemnification/Immunity.**

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

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

- (a) The Licensor shall, at its expense, defend, indemnify and hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, trademarks or trade dress, or for a misappropriation of a United States trade secret arising out of performance of this Agreement ("Claim"), including all Licensed Products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall

mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines and penalties finally awarded by a court of competent jurisdiction, governmental/administrative body or any settlements reached pursuant to a Claim and (b) reimburse the Commonwealth for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The Commonwealth agrees to give the Licensor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P. S. §§ 732-101—732-506, the Office of Attorney General ("OAG") has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG, however, in its sole discretion, and under the terms the OAG deems appropriate, may delegate its right of defense of a Claim. If the OAG delegates the defense to the Licensor, the Commonwealth will cooperate with all reasonable requests of the Licensor made in the defense of and/or settlement of a Claim. The Licensor shall not, without the Commonwealth's consent, enter into any settlement agreement which (a) states or implies that the Commonwealth has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the Commonwealth to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the Commonwealth to make a payment which the Licensor is not obligated by this Agreement to pay on behalf of the Commonwealth. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Licensor that, in the event it requests that the Commonwealth provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the Commonwealth for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the Commonwealth for such support. If the OAG does not delegate to the Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this section ceases. The Licensor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the suit.

- (b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all Licensed Products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties.
- (c) If the defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the Commonwealth or agreed to by Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.

- (d) If, in the Licensor's opinion, the Licensed Products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, trademark or trade dress, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
  - (i) substitute functional equivalents for the alleged infringing Licensed Products; or
  - (ii) 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:
  - (i) procure the right to continue use of such infringing products;
  - (ii) replace them with non-infringing items; or
  - (iii) 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 subsection (e) above, the Licensor agrees to, upon return of the Licensed Products, refund to the Commonwealth:
  - (i) the license fee paid for the infringing Licensed Products, less the amount for the period of usage of any software; and
  - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.
- (g) The obligations of the Licensor under this section continue without time limit and survive the termination of this Agreement.
- (h) Notwithstanding the above, the Licensor shall have no obligation under this section for:
  - (i) modification of any Licensed Products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;
  - (ii) any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare any Licensed Products;

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

**7. Virus, Malicious, Mischievous or Destructive Programming.**

- (a) The Licensor warrants that the Licensed Products as delivered by the Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the Licensed Products (each a "Virus"). However, the Licensed Products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by the Licensor for temporary use are time-sensitive.
- (b) The Licensor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from the Licensor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Licensor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and security updates (such as operating systems security patches, etc.).
- (c) In the event of destruction or modification of any Licensed Products, the Licensor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages.

## 8. **Limitation of Liability.**

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

## 9. **Payment.**

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

## 10. **Termination.**

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

## 11. Background Checks.

- (a) Upon prior written request by the Commonwealth, the Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to the Commonwealth's IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <https://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.
- (b) Before the Commonwealth will permit an employee access to the Commonwealth's facilities, the Licensor must provide written confirmation to the office designated by the applicable Commonwealth Agency that the background check has been conducted. If, at any time, it is discovered that an employee has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, the Licensor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems, unless the Commonwealth Agency consents, in writing, prior to the access being provided. The Commonwealth Agency may withhold its consent at its sole discretion. Failure of the Licensor to comply with the terms of this subsection may result in the default of the Licensor under its Agreement with the Commonwealth.
- (c) The Commonwealth specifically reserves the right to conduct background checks over and above that described herein.
- (d) Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the applicable Commonwealth Agency and the Department of General Services set forth in Enclosure 3 of [Commonwealth Management Directive 625.10 Amended](#), *Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings*. The requirements, policy and procedures include a processing fee payable by the Licensor for contracted personnel photo identification or access badges.

## 12. Confidentiality.

- (a) Definition. "Confidential Information:"

- (i) For the Commonwealth. All data and other information of or in the possession of the Commonwealth or any Commonwealth Agency or any private individual, organization or public agency, in each case to the extent such information and documentation is not permitted to be disclosed to third parties under local, Commonwealth or federal laws and regulations or pursuant to any policy adopted by the Commonwealth or pursuant to the terms of any third-party agreement to which Commonwealth is a party.
  - (ii) For the Licensor. All information identified in writing by the Licensor as confidential or proprietary to the Licensor or its subcontractors.
- (b) Confidential Information. All Confidential Information of or relating to a party shall be held in confidence by the other party to the same extent and in at least the same manner as such party protects its own confidential or proprietary information. Neither party shall disclose, publish, release, transfer or otherwise make available any Confidential Information of the other party in any form to, or for the use or benefit of, any person or entity without the other party's consent. Subject to the other provisions of this Agreement, each party shall, however, be permitted to disclose relevant aspects of the other party's Confidential Information to its officers, agents, subcontractors and personnel and to the officers, agents, subcontractors and personnel of its corporate affiliates or subsidiaries to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement; provided, however, that such party shall take all reasonable measures to ensure that Confidential Information of the other party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, subcontractors and personnel and that such party shall be responsible for any unauthorized disclosure of the Confidential Information of the other party by such officers, agents, subcontractors or personnel; and further provided, that if the disclosure is by the Commonwealth to another contractor or sub-contractor, such disclosure is subject to a suitable non-disclosure agreement imposing equally or more stringent requirements for data privacy and security. Except to the extent provided otherwise by any applicable law, the obligations of this subsection (b) shall not apply with respect to information which:
  - (i) is developed by the other party without violating the disclosing party's proprietary rights,
  - (ii) is or becomes publicly known (other than through unauthorized disclosure),
  - (iii) is disclosed by the owner of such information to a Third Party free of any obligation of confidentiality,
  - (iv) is already known by such party without an obligation of confidentiality other than pursuant to this Agreement or any confidentiality contract entered into before the Effective Date of the Agreement between the Commonwealth and the Licensor, or



- (v) is rightfully received by the disclosing party free of any obligation of confidentiality.
- (c) Obligations. Each party shall:
  - (i) Notify the other party promptly of any known unauthorized possession, use or knowledge of the other party's Confidential Information by any person or entity.
  - (ii) Promptly furnish to the other party full details known by such party relating to the unauthorized possession, use or knowledge thereof and shall use reasonable efforts to assist the other party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge of the other party's Confidential Information.
  - (iii) Use reasonable efforts to cooperate with the other party in any litigation and investigation against third parties deemed necessary by the other party to protect its proprietary rights.
  - (iv) Promptly use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of the other party's Confidential Information.
- (d) Cost of compliance; required disclosure. Each party shall bear the cost it incurs as a result of compliance with this section. The obligations in this section shall not restrict any disclosure by either party pursuant to any applicable law or pursuant to the order of any court or other legal process or government agency of competent jurisdiction (provided that the disclosing party shall give prompt notice to the non-disclosing party of such disclosure or order in a timeframe to allow the non-disclosing party to resist the disclosure or order).
- (e) Submitting Confidential Information to the Commonwealth. The Licensor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
  - (i) Prepare an un-redacted version of the appropriate document;
  - (ii) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret;
  - (iii) Prepare a signed written statement that states:
    - (1) the attached document contains confidential or proprietary information or trade secrets;

- (2) the Licensor is submitting the document in both redacted and un-redacted format in accordance with Section 707(b) of the *Right-to-Know Law*, 65 P.S. § 67.707(b); and
- (3) the Licensor is requesting that the document be considered exempt under Section 708(b)(11) of the *Right-to-Know Law*, 65 P.S. § 67.708(b)(11) from public records requests; and
- (iv) Submit the **two (2)** documents with the signed written statement to the Commonwealth.
- (f) Confidential Information at termination. Upon expiration or termination of this Agreement, or a purchase order or other procurement document for Licensed Products governed by the terms of this Agreement, and at any other time at the written request of a party, the other party must promptly return to such party all of such party's Confidential Information and Data (and all copies of this information) that is in the other party's possession or control, in whatever form. With regard to the Commonwealth's Confidential Information and/or Data, the Licensor shall comply with the requirements of subsection (e).
- (g) Not confidential. Additionally, neither the Agreement nor any pricing information related to the Agreement, nor purchase orders issued pursuant to the Agreement, will be deemed confidential.

### **13. Sensitive Information**

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

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

- (a) The Licensor understands that its level of access may allow it to view or access highly sensitive and confidential Commonwealth and third party data. This data is subject to various state and federal laws and policies that vary from Commonwealth Agency to Commonwealth Agency, and from program to program within a Commonwealth Agency. If applicable, prior to the issuance of a purchase order or other procurement document for a Licensed Product or the deployment of a Licensed Product on any Commonwealth Agency's facilities, the Licensor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth Agency, including but not limited to, as necessary, Business Associate Agreements as required by the *Health Insurance Portability and Accountability Act* (HIPAA), as amended, a sample of which is attached hereto as [Attachment 3](#). This sign-off document (a sample of which is attached hereto as [Attachment 4](#)), will include a description of the nature of the data which may be implicated based on the nature of the Licensor's access, and will incorporate the HIPAA Business Associate Agreement if it is applicable.
- (b) The Licensor hereby certifies and warrants that, after being informed by the Commonwealth Agency of the nature of the data which may be implicated and prior to the installation of the Licensed Products), the Licensor is and shall remain compliant with all applicable state and federal law and policy regarding the data's protection, and with the requirements memorialized in every completed and signed Sign-Off document. Every sign-off document completed by 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 does not require a Commonwealth Agency to exhaustively list the law to which implicated data is subject; the Commonwealth Agency is obligated only to list the nature of the data implicated by the Licensor's access, to refer the Licensor to its privacy and security policies, and to specify requirements that are not otherwise inherent in compliance with law and policy.
- (d) The requirements of this section are in addition to and not in lieu of other requirements of this Agreement and its Attachments and Exhibits having to do with data privacy and security, including but not limited to the requirement that the Licensor comply with [Attachment 2](#), *Requirements for Non-Commonwealth Hosting Applications/Services*, and all applicable Commonwealth Information Technology Policies (ITPs), which can be found at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- (e) The Licensor shall conduct additional background checks, in addition to those required in [Section 11](#) 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.

**15. Publicity/Advertisement.**

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

**16. Portability.**

The parties agree that a Commonwealth Agency may move a Licensed Product from machine to machine, whether physical or virtual, and to other locations, where those machines and locations are internal to the Commonwealth or to a Commonwealth contractor, as long as such relocation and the use being made of the Licensed Product comports with the license grant and restrictions. Notwithstanding the foregoing, a Commonwealth Agency may move the machine or appliance provided by the Licensor upon which the Licensed Product is installed.

**17. Taxes-Federal, State and Local Taxes-Federal, State and Local.**

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

**18. Commonwealth Audit Responsibilities.**

- (a) The Commonwealth will maintain, and promptly provide to the Licensor upon its request, accurate records regarding use of the Licensed Product by or for the

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

- (b) The Commonwealth will perform a self-audit upon the request of the Licensor, which request may not occur more often than annually, and report any change in user count (hereinafter "True up number"). The Commonwealth shall notify the Licensor of the True up number no later than **45 calendar days** after the request that the Commonwealth perform a self-audit. If the user count has increased, the Commonwealth will make an additional purchase of the Licensed Products through a reseller contract or another procurement document, which is equivalent to the additional users. This section sets out the sole license audit right under this Agreement.

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

The Pennsylvania *Right-to-Know Law*, Act of February 14, 2008, P.L. 6, No. 3, 65 P.S. §§ 67.101—3104 ("RTKL"), applies to this Agreement.

**20. *Third Party Software.***

If the Licensed Product utilizes or includes third party software and other copyrighted material and is subject, therefore, to additional licensing terms, acknowledgements or disclaimers compliance with this Agreement constitutes compliance with those third-party terms. The parties agree that the Commonwealth, by acknowledging third party software, does not agree to any terms and conditions of the third party software agreements that are inconsistent with or supplemental to this Agreement.

**21. *Attorneys' Fees.***

The Commonwealth will not pay attorneys' fees incurred by or paid by the Licensor.

**22. *Controversies.***

- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Agreement or a purchase order, the Licensor, within **six (6) months** after the claim accrues, must file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Licensor asserts a controversy exists. If the Licensor fails to file a claim or files an untimely claim, the Licensor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office

of General Counsel Dispute Resolution Program, <https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.

- (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send a written determination to the Licensor. If the contracting officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Licensor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Licensor shall proceed diligently with the performance of the Agreement or purchase order in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Licensor pursuant to the terms of the Agreement, purchase order or other procurement document.

### **23. Insurance.**

- (a) The Licensor shall maintain at its expense, and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:
  - (i) Workers' Compensation Insurance for all of the employees engaged in performing Services in accordance with the *Workers' Compensation Act*, Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.
  - (ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death (including bodily injury), sickness or disease, accidental death and damage to and property of others, including loss of use resulting from any property damage which may arise from the Licensor's operations under this Agreement, whether such operation be by the Licensor, its agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an

amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for or supplies provided to the Commonwealth.

- (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.
  - (iv) Technology Products Liability/Professional Liability/Errors & Omissions Insurance in the aggregate amount of not less than \$2,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
  - (v) Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.
  - (vi) Information Security and Privacy Liability Insurance including Privacy Notification Costs (including coverage for Technology Professional Liability if not covered under the Licensor's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (b) Certificate of Insurance. Prior to providing Licensed Products under this Agreement, and annually thereafter, the Licensor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been received by the Commonwealth. Such cancellation or change shall not relieve the Licensor of its continuing obligation to maintain insurance coverage in accordance with this section.
- (c) Insurance coverage length. The Licensor agrees to maintain such insurance for the life of any applicable purchase order issued pursuant to the Agreement.

## **24. Federal Requirements.**

*Exhibit B, Software/Services License Requirements Agreement*

Page **15** of **16**

If applicable, in addition to the requirements set forth in [Section 14](#) of this Agreement, the Licensor must receive and sign off on particular federal requirements that a Commonwealth agency may be required to include when utilizing federal funds to procure the Licensed Products. This sign-off document, in addition to any applicable requirements of [Section 14](#) of this Agreement, will include a description of the required federal provisions, along with the applicable forms necessary for the Licensor execute, as necessary. The sign-off document, along with attachments, must be attached to the purchase order.

**25. Signatures.**

The fully executed Agreement may not contain ink signatures by the Commonwealth. In that event, the Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.

**26. Travel.**

The Licensor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Agreement or Statement of Work. If not otherwise specified in the Agreement or Statement of Work, travel and related expenses shall be reimbursed in accordance with [Management Directive 230.10 Amended](#), *Commonwealth Travel Policy*, and [Manual 230.1](#), *Commonwealth Travel Procedures Manual*.

**27. Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes and integrates all prior discussions, agreements and understandings pertaining thereto. No modification of this Agreement will be effective unless in writing and signed by both Parties. Other terms and conditions or additional terms and conditions included or referenced in the Licensor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Licensor and not binding on the Commonwealth.

**28. Notice.**

Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.), with confirmed receipt, or by certified or registered United States



mail, postage prepaid, return receipt requested, sent to the address such party may designate by notice given pursuant to this section.

**29. Survival.**

The termination or expiration of this Agreement will not affect any provisions of this Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, indemnification and privacy.

**30. Waiver.**

Failure to enforce any provision will not constitute a waiver.

**31. Severability.**

If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

**32. Nonexclusive Remedy.**

Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

**33. Integration.**

This Agreement, including all Exhibits, Attachments and referenced documents, and any Purchase Orders referencing this Agreement, constitutes the entire agreement between the parties. No agent, representative, employee or officer of the Commonwealth or of the Licensor has authority to make any statement, agreement, or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment executed by the parties.

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

**Witness:**

**Licensor:**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*If a corporation, the Chairman, President, Vice-President, Senior Vice-President, Executive Vice-President, Assistant Vice-President, Chief Executive Officer 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**

**GOVERNOR’S OFFICE OF ADMINISTRATION**

\_\_\_\_\_  
See Section 25  
Agency Head or Designee

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
See Section 25  
Office of Chief Counsel

\_\_\_\_\_  
See Section 25  
Office of General Counsel

\_\_\_\_\_  
See Section 25  
Office of Attorney General

**APPROVED:**

\_\_\_\_\_  
See Section 25  
Office of the Budget, Office of Comptroller Operations

*Exhibit B, Software/Services License Requirements Agreement*

## ATTACHMENT 1

### LIST OF LICENSED PRODUCTS

With the consent of the Commonwealth, the 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):

## ATTACHMENT 2

### Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this [Attachment 2](#) is to define requirements for technology solutions procured by the Commonwealth that are not hosted within Commonwealth infrastructure.

#### A. Hosting Requirements.

1. The Licensor or its subcontractor shall supply all hosting equipment (hardware and software) required for the cloud services and performance of the software and services set forth in the Quote and Statement of Work.
2. The Licensor shall provide secure access to applicable levels of users via the internet.
3. The Licensor shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth and server capacity.
4. The Licensor or its subcontractors shall maintain all hosting equipment (hardware and software) and replace as necessary to maintain compliance with the Service Level Agreements.
5. The Licensor shall monitor, prevent and deter unauthorized system access. Any and all known attempts must be reported to the Commonwealth within **two (2) business days**. In the event of any impermissible disclosure unauthorized loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure of such Confidential Information. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the Licensor shall comply with state and federal data breach notification statutes and regulations, and shall report security incidents to the Commonwealth within **one (1) hour** of when the Licensor has reasonable confirmation of such unauthorized access, use, release, or disclosure of data.
6. The Licensor or the Licensor's subcontractor shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, and within at least **three (3) business days'** notice, to review the hosted system's data center locations and security architecture.
7. The Licensor's employees or subcontractors, who are directly responsible for day-to-day monitoring and maintenance of the hosted system, shall have industry standard certifications applicable to the environment and system architecture used.
8. The Licensor or the Licensor's subcontractor shall locate servers in a climate-controlled environment. The Licensor or the Licensor's contractor shall house all servers and equipment in an operational environment that meets industry standards

including climate control, fire and security hazard detection, electrical needs, and physical security.

9. The Licensor shall examine applicable system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. The Licensor shall completely test and apply patches for all third-party software products in the server environment before release.
11. The Licensor shall comply with [Attachment 2-B](#), SOC Reporting Requirements.

**B. Security Requirements.**

1. The Licensor shall conduct a third-party independent security/vulnerability assessment at its own expense on an annual basis.
2. The Licensor shall comply with the Commonwealth's directions/resolutions to remediate the results of the security/vulnerability assessment to align with the standards of the Commonwealth.
3. The Licensor shall use industry best practices to protect access to the system with a firewall and firewall rules to prevent access by non-authorized users and block all improper and unauthorized access attempts.
4. The Licensor shall use industry best practices to provide applicable system intrusion detection and prevention in order to detect intrusions in a timely manner.
5. The Licensor shall use industry best practices to provide applicable malware and virus protection on all servers and network components.
6. The Licensor shall limit access to Commonwealth-specific systems and services and provide access only to those staff that must have access to provide services proposed.
7. The Licensor shall provide the Services, using security technologies and techniques in accordance with industry best practices and the Commonwealth's ITPs set forth in [Attachment 2-A](#), including those relating to the prevention and detection of intrusions, and any other inappropriate use or access of systems and networks.

**C. Data Storage.**

1. The Licensor shall store all Commonwealth data in the United States.
2. The Licensor shall use industry best practices to update and patch all applicable systems and third-party software security configurations to reduce security risk. The Licensor shall protect their operational systems with applicable anti-virus, host

intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.

3. The Licensor shall be solely responsible for applicable data storage required.
4. The Licensor shall take all commercially viable and applicable measures to protect the data including, but not limited to, the backup of the servers on a daily basis in accordance with industry best practices and encryption techniques.
5. The Licensor agrees to have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, to protect that data particularly in instances where such critical or sensitive data may be stored on a Licensor-controlled or a Licensor-owned electronic device.
6. The Licensor shall utilize a secured backup solution to prevent loss of data, back up all data every day and store backup media. Stored backup media must be kept in an all-hazards protective storage safe at the worksite and when taken offsite. All back up data and media shall be encrypted.

**D. Adherence to Policy.**

1. The Licensor's support and problem resolution solution shall provide a means to classify problems as to criticality and impact and with appropriate resolution procedures and escalation process for classification of each problem.
2. The Licensor shall abide by the applicable Commonwealth's Information Technology Policies (ITPs), a list of the most relevant being attached hereto as [Attachment 2-A](#).
3. The Licensor shall comply with all pertinent federal and state privacy regulations.

**E. Closeout.**

When the purchase order's or other procurement document's term expires or terminates, and a new purchase order or other procurement document has not been issued by a Commonwealth Agency to the Commonwealth Software Reseller within **sixty (60) days** of expiration or termination, or at any other time at the written request of the Commonwealth, the Licensor must promptly return to the Commonwealth all Commonwealth's data (and all copies of this information) that is in the Licensor's possession or control. The Commonwealth's data shall be returned in a format agreed to by the Commonwealth.

## ATTACHMENT 2-A

### Information Technology Policies (ITPs) for Outsourced/Licensor(s)-hosted Solutions

| ITP Number-Name   | Policy Link   |
|---|---|
| ITP_ACC001-Accessibility Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf</a>     |
| ITP_APP030-Active Directory Architecture  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_app030.pdf">https://www.oa.pa.gov/Policies/Documents/itp_app030.pdf</a>     |
| ITP_BUS007-Enterprise Service Catalog   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf</a>     |
| ITP_BUS010-Business Process Management Policy                                   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf</a>     |
| ITP_BUS011-Commonwealth Cloud Computing Services Requirements                   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus011.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus011.pdf</a>     |
| ITP_BUS012-Artificial Intelligence General Policy                               | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf</a>     |
| ITP_INF000-Enterprise Data and Information Management Policy                    | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf</a>     |
| ITP_INF001-Database Management Systems  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf</a>     |
| ITP_INF006-Commonwealth County Code Standard                                    | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf</a>     |
| ITP_INF009-e-Discovery Technology Standard                                      | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf</a>     |
| ITP_INF010-Business Intelligence Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf</a>     |
| ITP_INF011-Reporting Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf</a>     |
| ITP_INF012-Dashboard Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf">https://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf</a>     |
| ITP_INFRM001-The Life Cycle of Records: General Policy Statement                | <a href="https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf</a> |
| ITP_INFRM004-Management of Web Records  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf</a> |
| ITP_INFRM005-System Design Review of Electronic Systems                         | <a href="https://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf">https://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf</a> |
| ITP_INFRM006-Electronic Document Management Systems                             | <a href="https://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf</a> |
| ITP_INT_B_1-Electronic Commerce Formats and Standards                           | <a href="https://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf">https://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf</a>   |
| ITP_INT_B_2-Electronic Commerce Interface Guidelines                            | <a href="https://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf">https://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf</a>   |
| ITP_INT006-Business Engine Rules  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_int006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_int006.pdf</a>     |
| ITP_NET004-Internet Protocol Address Standards                                  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_net004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_net004.pdf</a>     |
| ITP_NET005-Commonwealth External and Internal Domain Name Services (DNS)        | <a href="https://www.oa.pa.gov/Policies/Documents/itp_net005.pdf">https://www.oa.pa.gov/Policies/Documents/itp_net005.pdf</a>     |
| ITP_PRV001-Commonwealth of Pennsylvania Electronic Information Privacy Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf</a>     |
| ITP_SEC000-Information Security Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf</a>     |
| ITP_SEC002-Internet Accessible Proxy Servers and Services                       | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf</a>     |
| ITP_SEC003-Enterprise Security Auditing and Monitoring                          | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf</a>     |
| ITP_SEC004-Enterprise Web Application Firewall                                  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf</a>     |
| ITP_SEC006-Commonwealth of Pennsylvania Electronic Signature Policy             | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf</a>     |
| ITP_SEC007-Minimum Standards for IDs, Passwords and Multi-Factor Authentication | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf</a>     |
| ITP_SEC008-Enterprise E-mail Encryption   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf</a>     |

*Exhibit B, Attachment 2-A, Information Technology Policies (ITPs) for  
Outsourced/Licensor(s)-hosted Solutions*

| ITP Number-Name   | Policy Link   |
|---|---|
| ITP_SEC009-Minimum Contractor Background Checks Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf</a> |
| ITP_SEC010-Virtual Private Network Standards  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf</a> |
| ITP_SEC011-Enterprise Policy and Software Standards for Agency Firewalls  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf</a> |
| ITP_SEC013-Identity Protection and Access Management (IPAM) Architectural Standard and Identity Management Services | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec013.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec013.pdf</a> |
| ITP_SEC015-Data Cleansing   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf</a> |
| ITP_SEC017-Copa Policy for Credit Card Use for e-Government   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf</a> |
| ITP_SEC019-Policy and Procedures for Protecting Commonwealth Electronic Data  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf</a> |
| ITP_SEC020-Encryption Standards for Data at Rest  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec020.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec020.pdf</a> |
| ITP_SEC021-Security Information and Event Management Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf</a> |
| ITP_SEC023-Information Technology Security Assessment and Testing Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf</a> |
| ITP_SEC024-IT Security Incident Reporting Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf</a> |
| ITP_SEC025-Proper Use and Disclosure of Personally Identifiable Information (PII)                                   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf</a> |
| ITP_SEC029-Physical Security Policy for IT Resources  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf</a> |
| ITP_SEC031-Encryption Standards for Data in Transit   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf</a> |
| ITP_SEC032-Enterprise Data Loss Prevention (DLP) Compliance Standards   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf</a> |
| ITP_SEC034-Enterprise Firewall Rule Set   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf</a> |
| ITP_SEC037-Identity Proofing of Online Users  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec037.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec037.pdf</a> |
| ITP_SEC038-Commonwealth Data Center Privileged User IAM Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf</a> |
| ITP_SFT000-Software Development Life Cycle (SDLC) Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf</a> |
| ITP_SFT001-Software Licensing   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf</a> |
| ITP_SFT002-Commonwealth of PA Website Standards   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf</a> |
| ITP_SFT003-Geospatial Enterprise Service Architecture   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf</a> |
| ITP_SFT004-Geospatial Information Systems (GIS)   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf</a> |
| ITP_SFT005-Managed File Transfer (MFT)  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf</a> |
| ITP_SFT007-Office Productivity Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf</a> |
| ITP_SFT008-Enterprise Resource Planning (ERP) Management  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf</a> |
| ITP_SFT009-Application Development  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf</a> |
| ITP_SYM003-Off-Site Storage for Commonwealth Agencies   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf</a> |
| ITP_SYM004-Policy for Establishing Alternate Processing Sites for Commonwealth Agencies                             | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf</a> |
| ITP_SYM006-Commonwealth IT Resources Patching Policy  | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf</a> |
| ITP_SYM008-Server Virtualization Policy   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf</a> |
| ITP_SYM010-Enterprise Services Maintenance Scheduling   | <a href="https://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf">https://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf</a> |

*Exhibit B, Attachment 2-A, Information Technology Policies (ITPs) for Outsourced/Licensor(s)-hosted Solutions*



## ATTACHMENT 2-B

### SOC Reporting Requirements

- (a) Subject to this section and unless otherwise agreed to in writing by the Commonwealth, the Contractor shall, and shall require its subcontractors to, engage, on an annual basis, an independent auditing firm to conduct each the following:
- (i) A SOC 1 Type II report with respect to controls used by the Contractor relevant to internal and external procedures and systems that process Commonwealth financial transactions;
  - (ii) A SOC 2 Type II report with respect to controls used by the Contractor relevant to internal and external procedures and systems that access or contain Commonwealth Data; and
  - (iii) A SOC for Cybersecurity report with respect to controls used by the Contractor setting forth the description and effectiveness of the Contractor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

Pennsylvania's fiscal year begins July 1 and ends on June 30. Audits shall be submitted annually no later than July 31 of the current year. All reports shall reflect the conduct of the Contractor during the **12 months** of the Commonwealth's previous fiscal year, unless otherwise agreed to in writing by the Commonwealth.

- (b) SOC 2 Type II report reports shall address the following:
- (i) Security of Information and Systems;
  - (ii) Availability of Information and Systems;
  - (iii) Processing Integrity;
  - (iv) Confidentiality;
  - (v) Privacy; and
  - (vi) If applicable, compliance with the laws, regulations standards or policies designed to protect the information identified in [ITP-SEC019](#) or other information identified as protected or Confidential by this Contract or under law.
- (c) At the request of the Commonwealth, the Contractor shall complete additional SOC for Cybersecurity audits in the event:

- (i) repeated non-conformities are identified in any SOC report required by subsection (a); or
- (ii) if the Contractor's business model changes (such as a merger, acquisition, or change sub-contractors, etc.);

The Contractor shall provide to the Commonwealth a report of the SOC for Cybersecurity audit findings within **60 days** of its completion.

- (d) The Commonwealth may specify other or additional standards, certifications or audits it requires under any Purchase Orders or within an ITP.
- (e) The Contractor shall adhere to SSAE 18 audit standards. The Contractor acknowledges that the SSAE guidance may be updated during the Term of this Contract, and the Contractor shall comply with such updates which shall be reflected in the next annual report.
- (f) In the event an audit reveals any non-conformity to SSAE standards, the Contractor shall provide the Commonwealth, within **45 calendar days** of the issuance of the SOC report, a documented corrective action plan that addresses each non-conformity. The corrective action plan shall provide, in detail:
  - (i) clear responsibilities of the personnel designated to resolve the non-conformity;
  - (ii) the remedial action to be taken by the Contractor or its subcontractor(s);
  - (iii) the dates when each remedial action is to be implemented; and
  - (iv) a summary of potential risks or impacts to the Commonwealth that are associated with the non-conformity(ies).
- (g) The Commonwealth may in its sole discretion agree, in writing, to accept alternative and equivalent reports or certifications in lieu of a SOC report.

### ATTACHMENT 3

**COMMONWEALTH OF PENNSYLVANIA**  
**SAMPLE BUSINESS ASSOCIATE AGREEMENT**  
*(Business Associate Agreements as provided by Agencies may differ)*

**WHEREAS**, the \_\_\_\_\_ (Covered Entity) and \_\_\_\_\_ (Business Associate) intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191 (HIPAA), the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the *American Recovery and Reinvestment Act of 2009* (ARRA), as amended, Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, as amended, 42 C.F.R. §§ 431.301—431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), 35 P.S. § 7607, 50 Pa. C.S. § 7111, 71 P.S. § 1690.108(c), 62 P.S. § 404, 55 Pa. Code Chapter 105, 55 Pa. Code Chapter 5100, the Pennsylvania *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance; and

**WHEREAS**, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be handled, used or disclosed only in accordance with this Agreement, and the standards established by HIPAA, the HITECH Act and related regulations, 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.
- (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. Changes in Law.**

Business Associate agrees that it will comply with any changes in the HIPAA Rules by the compliance date established by any such changes and will provide the Covered Entity with written certification of such compliance.

**3. 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:

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**NO OTHER DISCLOSURES OF PHI OR OTHER INFORMATION ARE PERMITTED.**

**4. 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.
- (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 other form and format as agreed to by Business Associate and the individual. If the request is for information maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, Business Associate must provide Covered Entity with access to the PHI in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the Business Associate and Covered Entity. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity within **five (5) business days**. Business Associate shall further conform with all of the requirements of 45 C.F.R. § [164.524](#) and other applicable laws, including the HITECH Act, as amended, related regulations and agency guidance. Business Associate shall indemnify Covered Entity for costs/damages associated with Business Associate's failure to respond within the time frames set forth in this subsection [3\(f\)](#).
- (g) **Amendment and Incorporation of Amendments.** Within **five (5) business days** of receiving a written request from Covered Entity for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available and incorporate the amendment to enable Covered Entity to comply with 45 C.F.R. § [164.526](#), applicable federal and state law, including the HITECH Act, as amended and related regulations, the Privacy Rule, the Security Rule and agency guidance. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity within **five (5) business days**.
- (h) **Provide Accounting of Disclosures.** Business Associate shall maintain a record of all disclosures of PHI made by Business Associate which are not excepted from disclosure accounting requirements under HIPAA, HITECH and related regulations, the Privacy Rule or the Security Rule (all as amended) in accordance with 45 C.F.R. § [164.528](#) and other applicable laws and agency guidance, including the HITECH Act and related regulations. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, and the purpose of the disclosure. Business Associate shall make such record available to the Covered Entity within **five (5) business days** of a written request for an accounting of disclosures. Business Associate shall indemnify Covered Entity for costs/damages associated with Business Associate's failure to respond within the time frames set forth in this subsection [3\(h\)](#).
- (i) **Requests for Restriction.** Business Associate shall comply with requests for restrictions on disclosures of PHI about an individual if the disclosure is to a health

plan for purposes of carrying out payment or health care operations (and is not for treatment purposes), and the PHI pertains solely to a health care item or service for which the service involved was paid in full out-of-pocket. For other requests for restriction, Business associate shall otherwise comply with the Privacy Rule, as amended, and other applicable statutory and regulatory requirements and agency guidance.

- (j) **Access to Books and Records.** Business Associate shall make its internal practices, books and records relating to the use or disclosure of PHI received from, or created or received, by Business Associate on behalf of the Covered Entity, available to the Secretary of Health and Human Services or designee for purposes of determining compliance with applicable laws and agency guidance.
- (k) **Return or Destruction of PHI.** At termination of this Agreement, Business Associate hereby agrees to return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Agreement. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Agreement to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.
- (l) **Maintenance of PHI.** Notwithstanding subsection 3(k) of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under the various documentation requirements of this Agreement (such as those in subsection 3(h)) for a period of **six (6) years** after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise.
- (m) **Mitigation Procedures.** Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Agreement or the Privacy Rule, as amended. Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement or applicable laws and agency guidance.
- (n) **Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement, applicable laws or agency guidance.
- (o) **Grounds for Breach.** Non-compliance by Business Associate with this Agreement or the Privacy or Security Rules, as amended, is a breach of the Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-

compliance. Commonwealth may elect to terminate Business Associate's contract for such breach.

- (p) **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion, that the Business Associate has violated a material term of this Agreement.
- (q) **Failure to Perform Obligations.** In the event Business Associate fails to perform its obligations under this Agreement, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Agreement and applicable laws and agency guidance.
- (r) **Privacy Practices.** Covered Entity will provide Business Associate with all applicable forms, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date designated by the Program or Covered Entity. Covered Entity may change applicable privacy practices, documents and forms. The Business Associate shall make reasonable endeavors to implement changes as soon as practicable, but not later than **45 days** from the date of notice of the change. Business Associate shall otherwise comply with all applicable laws and agency guidance pertaining to notices of privacy practices, including the requirements set forth in 45 C.F.R. § [164.520](#).

## 5. 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.

**6. MISCELLANEOUS.**

- (a) **Regulatory References.** A reference in this Addendum to a section in HIPAA, HITECH and related regulations, the Privacy Rule or the Security Rule refers to the most current version of the section in effect or as amended.
- (b) **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time in order to ensure compliance with the requirements of the HIPAA, HITECH and related regulations, the Privacy Rule, the Security Rule and any other applicable law, all as amended.
- (c) **Conflicts.** In the event that any terms of this Agreement are inconsistent with the terms of the Agreement, then the terms of this Agreement shall control.

**ATTACHMENT 4**

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

**[Licensor \_\_\_\_\_] Agency-level Deployment**

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

1. Scope of Deployment (need not be entire agency):
  
1. Nature of Data implicated or potentially implicated:
  
2. Agency Policies to which Licensor. is subject (incorporated by reference):
  
3. Background checks (describe if necessary):
  
4. Additional requirements (describe with specificity):
  
5. Is Licensor a Business Associate (yes or no)?

If yes, the attached Business Associates Agreement, as completed by the Agency, is applicable and is hereby incorporated into this Sign-Off Document by reference.

**Agency Contact Person Signature and Date:** \_\_\_\_\_

**[Licensor \_\_\_\_\_]**  
**Authorized Signatory and Date:** \_\_\_\_\_

**EXHIBIT C**

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

This document becomes, upon its execution by the signatories named below, a legally valid, binding part of Agreement No. \_\_\_\_\_ between the Commonwealth and \_\_\_\_\_ (Contractor), 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 Contractor is subject (incorporated by reference):
  
4. Background checks (describe if necessary):
  
5. Additional requirements (describe with specificity):
  
6. Is Contractor 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:** \_\_\_\_\_

**[Contractor \_\_\_\_\_]**  
**Authorized Signatory and Date:** \_\_\_\_\_

**APPENDIX B - PROPOSAL COVER PAGE**  
**COMMONWEALTH OF PENNSYLVANIA**  
**Department of General Services**  
RFP# DGS A-2020-0001-JOC Program Consultant - Rebid

**Enclosed in three separately sealed submittals is the proposal of the Offeror identified below for the above-referenced RFP:**

| <b>Offeror Information:</b>     |  |
|---------------------------------|--|
| Proposer Name                   |  |
| Offeror Mailing Address         |  |
| Offeror Website                 |  |
| Offeror Contact Person          |  |
| Contact Person's Phone Number   |  |
| Contact Person's E-Mail Address |  |
| Offeror Federal ID Number       |  |
| Offeror SAP/SRM Vendor Number   |  |

| <b>Submittals Enclosed and Separately Sealed:</b>  |
|--|
| Technical Submittal (must include Signed Proposal Cover Page, Signed notarized Non-Collusion Affidavit, Signed Iran Free Procurement Certification, Completed Cloud Services Requirements and any Objections and Exceptions as outlined in Part II Section II-1 Paragraph H) |
| Small Diverse Business and Veteran Business Enterprise Participation Submittal   |
| Cost Submittal   |

| <b>By submitting your proposal and signing below you acknowledge and accept the following:</b> |
|--|
| Non-Commonwealth Hosting Requirements  |
| IT Contract Terms and Conditions   |
| Information Technology Policies (ITPs)   |

|  |
|--|
| Signature of an official authorized to bind the Offeror to the provisions contained in the Offeror's proposal: |
| Signature:   |
| Printed Name:  |
| Title:   |

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE OFFEROR'S PROPOSAL MAY RESULT IN THE REJECTION OF THE OFFEROR'S PROPOSAL**

# **APPENDIX C**

## **Non-Collusion Affidavit**

### **INSTRUCTIONS FOR NONCOLLUSION AFFIDAVIT**

1. This Noncollusion Affidavit is material to any contract awarded pursuant to this proposal. According to §4507 of the Commonwealth Procurement Code, 62 Pa.C.S. §4507, governmental agencies may require Noncollusion Affidavits to be submitted with proposals.
2. This Noncollusion Affidavit must be executed by the member, officer, or employee of the Proposer who makes the final decision on prices and the amount quoted in the proposal.
3. Bid rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of proposals are unlawful and may be subject to criminal prosecution. The person who signs the affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Proposer with responsibilities for the preparation, approval or submission of the proposal.
4. In the case of a proposal submitted by a joint venture, each party to the venture must be identified in the proposal documents and an affidavit must be submitted separately on behalf of each party to the joint venture.
5. The term “complementary proposal” as used in the affidavit has the meaning commonly associated with that term in the proposal process, and includes the knowing submission of proposals higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any other form of proposal submitted for the purpose of giving a false appearance of competition.
6. Failure to submit a Noncollusion affidavit with the Proposal in compliance with these instructions may result in disqualification of the proposal.

**NONCOLLUSION AFFIDAVIT**

DGS Project Number: \_\_\_\_\_

State of \_\_\_\_\_:

County of \_\_\_\_\_: s.s.

I state that I am the \_\_\_\_\_ (Title) of \_\_\_\_\_ (Name of Firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the prices(s) and the amount of this proposal.

I state that:

1. The price(s) and amount of this proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, proposer, or potential proposer.
2. Neither the price(s) nor the amount of this proposal, and neither the approximate price(s) nor approximate amount of this proposal, have been disclosed to any other firm or person who is a proposer or potential proposer, and they will not be disclosed before the proposal submission date.
3. No attempt has been made or will be made to induce any firm or person to refrain from proposing 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.
4. The proposal of my firm is made 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.
5. \_\_\_\_\_ (Name of Firm) its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last three 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 proposing and/or bidding on any public contract, except as follows:  
\_\_\_\_\_

I state that \_\_\_\_\_ (Name of Firm) understands and acknowledges that the above representations are material and important, and will be relied upon by the Department of General Services in awarding the contract(s) for which this proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Department of General Services of the true facts relating to the submission of this proposal.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signatory's Printed Name)

\_\_\_\_\_  
(Signatory's Title)

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires  
\_\_\_\_\_

## Appendix D

### **Trade Secret/Confidential Proprietary Information Notice**

Instructions:

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

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

**Name of submitting party:**

**Contact information for submitting party:**

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

**Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g. response to bid #12345, application for grant XYZ being offered by the Department of Health, documents required to be submitted under law ABC)**

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

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

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

| <u>Page Number</u> | <u>Description</u> | <u>Explanation</u> |
|--------------------|--------------------|--------------------|
|--------------------|--------------------|--------------------|



## **Acknowledgment**

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

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

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

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

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

Signature

Title

Date

**SDB-1**  
**INSTRUCTIONS FOR COMPLETING THE SMALL DIVERSE BUSINESS (SDB)**  
**PARTICIPATION SUBMITTAL**

*PLEASE READ BEFORE COMPLETING THESE DOCUMENTS*  
*Proposers do not need to return SDB-1 with their SDB Participation Submittal*

The following instructions include details for completing the SDB Participation Submittal (SDB-2) which Proposers must submit in order to be considered responsive.

**A Proposer's failure to agree to meet the SDB participation goal in full or their failure to receive an approved Good Faith Efforts waiver for any unmet portion of the SDB participation goal will result in the rejection of the Proposal as nonresponsive.**

- I. **SDB Participation Goal**: The SDB participation goal is set forth in the **SDB and VBE Participation Summary Sheet**. The Proposer is encouraged to use a diverse group of consultants from the SDB classifications to meet the SDB participation goal.
  
- II. **SDB Eligibility**:
  1. **Finding SDB firms**: The directory of **DGS-verified** SDB firms can be accessed from the DGS Supplier Search directory at: <http://www.dgs.internet.state.pa.us/suppliersearch>.
  2. **Only SDBs verified by DGS** and as defined herein may be counted for purposes of achieving the SDB participation goal. In order to be counted for purposes of achieving the SDB participation goal, the SDB firm, including an SDB prime, must be DGS-verified for the consulting services that it is committed to perform.
    - a. **SDB Proposers**. A SDB Proposer whose SDB verification is pending or incomplete as of the proposal due date and time may not satisfy the SDB participation goal through its own performance. A self-certified SB that does not have its SDB verification as of the proposal due date and time cannot satisfy the SDB participation goal through its own performance.
    - b. **SDB consultants**. To receive credit toward meeting the SDB participation goal, the SDB consultant must be a DGS-verified SDB as of the execution of the consultant agreement. A self-certified SB consultant that does not have its SDB verification as of the execution of the consultant agreement cannot be used to satisfy the SDB participation goal. Upon request, the selected Proposer must identify and submit all SDB consultant(s) being used to receive credit toward the SDB participation goal. The individual commitments will be incorporated into the final Contract.
  3. **SDB Requirements**: To be considered an SDB, a firm must be a **DGS-verified** small minority business enterprise (MBE); woman business enterprise (WBE); LGBT business enterprise (LGBTBE); Disability-owned business enterprise (DOBE); Service-Disabled

**SDB-1**  
**INSTRUCTIONS FOR COMPLETING THE SMALL DIVERSE BUSINESS (SDB)**  
**PARTICIPATION SUBMITTAL**

Veteran-Owned Small Business Enterprise (SDVBE); or otherwise deemed disadvantaged by the Uniform Certification Program.

Additional information on the DGS verification process can be found at:

<https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Pages/default.aspx>

4. Dually verified firms. If a DGS-verified SDB is dually verified as a VBE, the firm may receive credit towards both the SDB participation goal and the VBE participation goal as set forth on the SDB and VBE Participation Summary Sheet.

*Example: The SDB participation goal is 10% and the VBE participation goal is 5%. A consultant is DGS-verified as both an SDB and a VBE and will perform 10% of the contract work. The Proposer can satisfy both the SDB participation goal and the VBE participation goal through that consultant's performance of 10% of the contract work., unless otherwise agreed to by the parties in writing and approved by the Bureau of Diversity, Inclusion, and Small Business Opportunities (BDISBO) and Public Works. However, an SDB firm verified as both a WBE and MBE may not be double counted toward satisfying the SDB participation goal.*

5. Participation by SDB firms as proposer or consultants. A Proposer that qualifies as an SDB and submits an proposal is not prohibited from being included as a consultant in separate applications submitted by other proposers. An SDB may be included as a consultant with as many proposers as it chooses in separate proposals.

6. Questions about SDB verification. Questions regarding the SDB program, including questions about the self-certification and verification processes can be directed to:

Department of General Services

Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)

Room 611, North Office Building

Harrisburg, PA 17125

Phone: (717) 783-3119

Fax: (717) 787-7052

Email: [RA-BDISBOVerification@pa.gov](mailto:RA-BDISBOVerification@pa.gov)

Website: [www.dgs.pa.gov](http://www.dgs.pa.gov)

### III. Guidelines Regarding SDB Proposers Self-Performance.

1. An SDB firm submitting an proposal may receive credit towards the SDB Participation goal established for the procurement through their own self-performance.

*Example: A solicitation has a 15% SDB participation goal. A SDB Proposer self-performing contract work valued at only 10% of contract costs (if permitted by the solicitation documents) must still satisfy the remaining 5% SDB*

**SDB-1**  
**INSTRUCTIONS FOR COMPLETING THE SMALL DIVERSE BUSINESS (SDB)**  
**PARTICIPATION SUBMITTAL**

*participation goal through its use of consultants or must request a Good Faith Efforts Waiver for the unmet SDB participation goal. Failure to satisfy the remaining 5% SDB participation goal or failure to obtain a Good Faith Efforts waiver for the unmet portion of the SDB participation goal will result in rejection of that SDB prime's proposal as non-responsive.*

2. For a SDB Proposer to receive credit for self-performance, the SDB Proposer must be a **DGS-verified** SDB as of the solicitation due date and time.

IV. **Calculating SDB participation during compliance.** BDISBO will credit the selected proposer for 100% of the total dollar amounts actually paid to an SDB consultant for providing a services toward satisfying the selected proposer's SDB participation commitment. In addition, the SDB consultant, through its own employees, must perform at least 50% of the amount of the subcontract..

V. **Document Submittal Errors.**

1. **Fatal errors.** The following errors will result in rejection of a proposal as non-responsive:
  - a. Failure to submit a completed **SDB Participation Submittal (SDB-2)** indicating whether Proposed intends to meet the SDB Participation Goal, is requesting a partial waiver from the SDB Participation Goal, or is requesting a full waiver from the SDB Participation Goal;
  - b. Failure to submit a **Good Faith Efforts waiver request** when not fully meeting the SDB participation goal.
2. **Potentially curable errors.** Public Works and BDISBO may provide proposers the opportunity to provide clarifications or to correct errors not listed as fatal errors above. If the additionally submitted information does not adequately address or clarify the submittal, the proposal may be rejected. **Proposers are not permitted to make material changes during clarifications and corrections in order to meet the SDB Participation Goal.**

**SDB-2**  
**SDB PARTICIPATION SUBMITTAL**

**CHECK ONE, AND ONLY ONE, BOX. FAILURE TO COMPLY WILL RESULT IN REJECTION OF YOUR PROPOSAL.**

*Click on bold titles to navigate to that specific page.*

**I agree to meet the SDB participation goal in full.** I agree that \_\_\_\_\_% of the work will be performed by SDBs.

**I am requesting a partial waiver of the SDB participation goal. I agree that \_\_\_\_\_% of the work will be performed by SDBs.**

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the SDB Participation Goal**, I am unable to achieve the remaining portion of the SDB participation goal for this solicitation and am requesting a partial waiver of that portion of the SDB participation goal.

I have completed and am submitting with my proposal a **Good Faith Efforts Waiver Request** for that portion of the SDB participation goal that I do not intend to meet, which is required in order to be considered for award.

**I am requesting a full waiver of the SDB participation goal**

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the SDB Participation Goal**, I am unable to achieve any part of the SDB participation goal for this solicitation and am requesting a full waiver of the SDB participation goal.

I have completed and am submitting with my proposal a **Good Faith Efforts Waiver Request** for the complete SDB participation goal, which is required in order to be considered for award.

**SDB-3  
RESERVED**

**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

*Proposers do not need to return SDB-4 with their SDB Participation Submittal*

In order for its proposal to be responsive, the Proposer must either (1) meet the SDB participation goal, or (2) when it does not meet the SDB participation goal, submit a Good Faith Efforts waiver request as set forth in Section IV below and the **Good Faith Efforts Documentation to Support Waiver Request (SDB-5)** of SDB Participation Goal.

**I. Definitions**

**Proposer** – for purposes of this Good Faith Efforts Documentation to Support Waiver Request, the term “Proposer” includes any entity responding to this solicitation for the consulting services.

**Good Faith Efforts** - The “Good Faith Efforts” requirement means that when requesting a waiver, the Proposer must demonstrate that it took all necessary and reasonable steps to achieve the SDB participation goal. Those steps are considered necessary and reasonable when their scope, intensity, and relevance could reasonably be expected to obtain sufficient SDB participation, even if those steps were not fully successful. The Department of General Services’ Bureaus of Public Works (PW) and Diversity, Inclusion and Small Business Opportunities (BDISBO) will determine whether or not the Proposer requesting a Good Faith Efforts waiver made adequate Good Faith Efforts by considering the quality, quantity, and intensity of the Proposer’s efforts. Mere *pro forma* efforts are not Good Faith Efforts to meet the SDB participation requirements. The determination concerning the sufficiency of the Proposer’s Good Faith Efforts is subjective; meeting quantitative formulas is not required.

**Anticipated Scopes of Work** – all of the items of work the Proposer identified as possible items of work for performance by SDBs and should include all reasonably identifiable subcontractable work opportunities.

**Identified SDBs**– all of the SDBs the Proposer identified as available to perform the Identified Items of Work and should include all DGS-verified SDBs that are reasonably identifiable.

**SDB** – “SDB” refers to Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Disability-Owned Business Enterprises (DOBE), LGBT-Owned Business Enterprises (LGBTBE), and Service-Disabled Veteran-Owned Small Business (SDVBE) verified by BDISBO.

**SDB participation goal** – “SDB participation goal” refers to the SDB participation goal set for a procurement for MBE, WBE, LGBTBE, DOBE, and SDVBE utilization.

**II. Types of Actions PW and BDISBO will Consider**

The following are types of actions PW and BDISBO will consider as part of the Proposer’s Good Faith Efforts when the Proposer is unable to meet, in full, the SDB participation goal. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

**A. Identify Program Items as Anticipated Scopes of Work for SDBs**

1. Anticipated Scopes of Work
  - (a) Proposers should reasonably identify sufficient anticipated scopes of work to be performed by SDBs. These anticipated scopes of work should include SDB subcontracting opportunities.
  - (b) Where appropriate, proposers should break out anticipated scopes of work into economically feasible units to facilitate SDB participation, rather than perform these work items with their own forces. **The ability or desire of a Proposer to perform the work of an agreement with its own organization does not relieve the Proposer of the responsibility to make Good Faith Efforts to meet the SDB participation goal.**

**B. Identify SDBs to Solicit**

1. Identified SDBs
  - (a) Proposers must reasonably identify SDBs that are available to perform the Anticipated Scopes of Work.

Any SDBs identified as available by the Proposer should be certified to perform the Anticipated Scopes of Work (i.e., assigned the UNSPSC codes within the DGS Supplier Search that are applicable to the Scope of Work they will be performing).

**C. Solicit SDBs**

1. Proposers must solicit a reasonable number of identified SDBs for all Anticipated Scopes of Work by providing written notice. The Proposer must:
  - (a) provide the written solicitation to all identified SDBs at least 10 calendar days prior to proposal due date to allow sufficient time for the identified SDB to respond;
  - (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the BDISBO Directory, unless the Proposer has a valid basis for using different contact information; and
  - (c) provide adequate information about the Anticipated Scopes of Work to assist identified SDBs in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
2. “All” identified SDBs include any SDB Firms the Proposer identifies as potentially available to perform the Anticipated Scopes of Work, but it does not include identified SDBs who are no longer self-certified to perform the work as of the date the Proposer provides written solicitations.
3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the project. If an interested SDB cannot access the information provided by electronic means, the Proposer must make the information available in a manner that is accessible to the interested SDB.



**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

4. Proposers must follow up on initial written solicitations by contacting identified SDBs to determine their interest in the Anticipated Scopes of Work. The follow up contact may be made:
  - (a) by telephone using the contact information in BDISBO's Directory, unless the Proposer has a valid basis for using different contact information; or
  - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up set forth in C.4, use all other reasonable and available means to solicit the interest of identified SDBs certified to perform the anticipated scopes of work.

**D. Effort to Solicit SDBs**

1. Proposers must make good faith efforts to solicit interested SDBs.
2. Evidence of good faith solicitation includes but is not limited to the following:
  - (a) the names, addresses, and telephone numbers of SDBs that were considered as potentially available to perform the Anticipated Scopes of Work;
  - (b) a description of the information provided regarding the plans and specifications for the Anticipated Scopes of Work and the means used to provide that information;
  - (c) efforts to divide Anticipated Scopes of Work into small tasks or quantities;
  - (d) efforts to identify the interest and availability of SDBs to perform the Anticipated Scopes of Work; and
  - (e) efforts to investigate the capability of SDBs to perform the Anticipated Scopes of Work.
3. Additional costs incurred in finding and using SDBs are not sufficient justification for the Proposer's failure to meet the SDB participation goal, as long as such costs are reasonable.
4. The Proposer may not use its price for self-performing work as a basis for rejecting an SDB.
5. The Proposer shall not reject an SDB as unqualified without sound justification based on a thorough investigation of the firm's capabilities. For each SDB that is

**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

rejected as unqualified the Proposer must provide a written detailed statement outlining the justification for this conclusion.

- (a) The factors to take into consideration when assessing the capabilities of an SDB include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous agreements, and ability to meet reasonable agreement requirements.
- (b) The SDB's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of SDBs in the efforts to meet the SDB participation goal.

**E. Assisting Interested SDBs**

When appropriate under the circumstances, PW and BDISBO will consider whether the Proposer made reasonable efforts to assist interested SDBs in obtaining:

- 1. The insurance required by PW or the Proposer; and
- 2. Necessary equipment, supplies, materials, or related assistance or services.

**III. Other Considerations**

In making a determination of Good Faith Efforts, the procuring agency and BDISBO may consider general market availability and availability of certified SDBs in the area in which the work is to be performed; offers or costs substantiating significant variances between SDB and non-SDB costs of participation and their impact on the overall cost of the agreement to the Commonwealth; and any other relevant factors.

The procuring agency and BDISBO may consider whether the Proposer decided to self-perform potentially subcontractable work with its own forces. The procuring agency and BDISBO also may consider the performance of other Proposers in meeting the SDB participation goal. For example, when an Proposer fails to meet the SDB participation goal, but others meet it, this raises the question of whether, with additional reasonable efforts, the Proposer could have met the SDB participation goal. If the Proposer fails to meet the SDB participation goal but meets or exceeds the average SDB participation obtained by other Proposers, this, when viewed in conjunction with other factors, could be evidence of the Proposer having made Good Faith Efforts.

**IV. Documenting Good Faith Efforts**

At a minimum, the Proposer seeking a Good Faith Efforts waiver of the SDB participation goal or a portion thereof must provide written documentation of its Good Faith Efforts along with its proposal, which may include the following:

**A. Anticipated Scopes of Work (complete SDB 5, Part 1 – Identified Items of Work Proposer Made Available to SDBs)**

A detailed statement of the efforts made to select anticipated scopes of work proposed to be performed by SDBs in order to increase the likelihood of achieving the SDB participation goal.

SDB-4.4

**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL  
DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

**B. Outreach and Solicitation**

1. A detailed statement of the efforts made to contact SDBs including:
  - (a) the names, addresses, and telephone numbers of the SDBs who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) (**complete SDB 5, Part 2 – Identified SDB Firms and Records of Solicitations. Include letters, fax cover sheets, e-mails, etc. documenting solicitations**); and
  - (b) a description of the information provided to SDBs regarding the anticipated scopes of work to be performed and the means used to provide that information.
2. The record of the Proposer's compliance with the outreach efforts set forth in **SDB 5, Part 3 - Outreach Efforts Compliance Statement**.

**C. Rejected SDBs (complete SDB 5, Part 4 - Additional Information Regarding Rejected SDBs)**

1. For each SDB that the Proposer concludes is not acceptable or qualified, a detailed statement of the reasons for the Proposer's conclusion, including the steps taken to verify the capabilities of the SDB and non-SDB firms who perform similar work.

**D. Unavailable SDBs (complete SDB 5, Part 5 – SDB Consultant Unavailability Certificate)**

1. **For each SDB that the Offeror contacted but found to be unavailable, submit an SDB Consultant Unavailability Certificate** or other form of communication signed by the SDB, an email from the SDB indicating the SDB is unavailable, or a statement from the Proposer that the SDB refused to sign the SDB Consultant Unavailability Certificate or failed to respond.

**E. Other Documentation**

1. Submit any other documentation requested by BDISBO or PW to ascertain the Proposer's Good Faith Efforts.
2. Submit any other documentation the Proposer believes will help BDISBO or PW ascertain its Good Faith Efforts.

**SDB-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF SDB PARTICIPATION GOAL**

|                                    |  |
|------------------------------------|--|
| <b>Project Description:</b>        |  |
| <b>Commonwealth Agency Name:</b>   |  |
| <b>DGS Project #:</b>              |  |
| <b>Proposal Due Date and Time:</b> |  |

|                                  |  |
|----------------------------------|--|
| <b>Proposer's Company Name:</b>  |  |
| Proposer's Contact Name:         |  |
| Proposer's Contact Email:        |  |
| Proposer's Contact Phone Number: |  |

**Part 1 – Anticipated Scopes of Work Proposer Made Available to SDBs**

Identify the anticipated scopes of work that the Proposer made available to SDB consultants. This includes, where appropriate, those items the Proposer identified and subdivided into economically feasible units to facilitate the SDB participation. It is the Proposer’s responsibility to demonstrate that the total percentage of the anticipated scopes of work identified for SDB participation met or exceeded the SDB participation goal set for the procurement.

| Anticipated Scopes of Work | Does Proposer normally self-perform this work?              | Was this work made available to SDB Firms? If not, explain why. |
|----------------------------|---|---|
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |

Attach additional sheets if necessary.

**SDB-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF SDB PARTICIPATION GOAL**

**Part 2 – Identified SDBs and Record of Solicitations**

Identify the SDBs solicited to demonstrate interest to perform the Anticipated Scopes of Work made available for SDB participation. Include the name of the SDB solicited, anticipated scopes of work for which the Proposer solicited interest, date and manner of initial and follow-up, whether the SDB provided a response, and whether the SDB will be used toward meeting the SDB participation goal.

Note: Copies of all written solicitations and documentation of follow-up calls to SDBs must be attached to this form. For each identified SDB listed below that the Proposer is not using to meet the SDB participation goal, Proposer should submit a SDB Consultant Unavailability Certificate signed by the SDB or a statement from the Proposer that the SDB refused to sign the SDB Consultant Unavailability Certificate.

| Name of Identified SDB and Classification   | Describe Anticipated Scope of Work Solicited | Initial Solicitation Date & Method   | Follow-up Solicitation Date & Method   | Details for Follow-up Calls                                    | SDB interested in Anticipated Scope of Work?                | Will SDB be Used?   | Reason SDB Rejected  |
|---|--|--|--|--|---|---|--|
| SDB Name:<br><br><input type="checkbox"/> MBE<br><input type="checkbox"/> WBE<br><input type="checkbox"/> LGBTBE<br><input type="checkbox"/> DOBE<br><input type="checkbox"/> SDVBE |  | Date:<br><br><input type="checkbox"/> mail<br><input type="checkbox"/> email<br><input type="checkbox"/> fax | Date:<br><br><input type="checkbox"/> mail<br><input type="checkbox"/> email<br><input type="checkbox"/> fax | Date and Time of Call:<br><br>Spoke with:<br><br>Left Message: | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> Used other SDB<br><input type="checkbox"/> Used non-SDB<br><input type="checkbox"/> Self performing |
| SDB Name:<br><br><input type="checkbox"/> MBE<br><input type="checkbox"/> WBE<br><input type="checkbox"/> LGBTBE<br><input type="checkbox"/> DOBE<br><input type="checkbox"/> SDVBE |  | Date:<br><br><input type="checkbox"/> mail<br><input type="checkbox"/> email<br><input type="checkbox"/> fax | Date:<br><br><input type="checkbox"/> mail<br><input type="checkbox"/> email<br><input type="checkbox"/> fax | Date and Time of Call:<br><br>Spoke with:<br><br>Left Message: | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> Used other SDB<br><input type="checkbox"/> Used non-SDB<br><input type="checkbox"/> Self performing |

Attach additional sheets as necessary.

**SDB-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**SDB PARTICIPATION GOAL**

**Part 3 – SDB Outreach Compliance Statement**

- 1. List the Anticipated Scopes of Work (consulting opportunities) for the solicitation along with specific work categories:**

- 2. Attach to this form copies of written solicitations (with Proposer’s instructions) used to solicit Identified SDBs for these anticipated scopes of work.**

- 3. Proposer made the following attempts to personally contact the identified SDBs:**

**SDB-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF SDB PARTICIPATION GOAL**

**Part 4 – Additional Information Regarding Rejected SDBs**

This form must be completed if Part 2 indicates that an SDB was rejected because the Proposer will use a non-SDB or will self-perform the Anticipated Scopes of Work. List the Anticipated Scopes of Work, indicate whether the work will be performed by a non-SDB or will be self-performed, and if applicable, state the name of the non-SDB firm.

| <b>Describe Anticipated Scope of Work not being performed by SDBs</b> | <b>Self-performing or using non-SDB (provide name of non-SDB if applicable)</b>             | <b>Reason why SDB was not used for anticipated scope of work along with brief explanation</b>             |
|---|---|---|
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-SDB<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-SDB<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-SDB<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-SDB<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-SDB<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |

Attach additional sheets as necessary.

**SDB-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**SDB PARTICIPATION GOAL**

**Part 5 – SDB Consultant Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of SDB)

located at \_\_\_\_\_  
(Number) (Street)

\_\_\_\_\_ was offered an opportunity to provide  
(City) (State) (Zip)

\_\_\_\_\_ on DGS Project No. \_\_\_\_\_  
(anticipated scope of work)

by \_\_\_\_\_  
(Name of Proposer's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (SDB), is unavailable for the anticipated scope of work

for this project for the following reason(s):

\_\_\_\_\_  
(Signature of SDB's Representative) (Title) (Date)

\_\_\_\_\_  
(DGS SDB Verification #) (Telephone #)

\*\*\*\*\*

3. If the SDB does not complete this form, the Proposer must complete the following:

To the best of my knowledge and belief, the above-listed SDB is either unavailable for the anticipated scope of work for this project or did not provide a response.

\_\_\_\_\_  
(Signature of Proposer) (Title) (Date)



**VBE-1**  
**INSTRUCTIONS FOR COMPLETING THE VETERAN BUSINESS ENTERPRISE**  
**(VBE) PARTICIPATION SUBMITTAL**

*PLEASE READ BEFORE COMPLETING THESE DOCUMENTS*  
*Proposers do not need to return VBE-1 with their VBE Participation Submittal*

The following instructions include details for completing the VBE Participation Submittal (VBE-2) which Proposers must submit in order to be considered responsive.

**A Proposer's failure to agree to meet the VBE participation goal in full or their failure to receive an approved Good Faith Efforts waiver for any unmet portion of the VBE participation goal will result in the rejection of the Proposal as nonresponsive.**

- I. **VBE Participation Goal**: The VBE participation goal is set forth in the **SDB and VBE Participation Summary Sheet**. The Proposer is encouraged to use a diverse group of consultants from the VBE classification to meet the VBE participation goal.
  
- II. **VBE Eligibility**:
  1. **Finding VBE firms**: The directory of **DGS-verified** VBE firms can be accessed from the DGS Supplier Search directory at: <http://www.dgs.internet.state.pa.us/suppliersearch>.
  
  2. **Only VBEs verified by DGS** and as defined herein may be counted for purposes of achieving the VBE participation goal. In order to be counted for purposes of achieving the VBE participation goal, the VBE firm, including an VBE prime, must be DGS-verified for the consulting services that it is committed to perform.
    - a. **VBE Proposers**. A VBE proposer whose VBE verification is pending or incomplete as of the proposal due date and time may not satisfy the VBE participation goal through its own performance. A self-certified SB that does not have its VBE verification as of the proposal due date and time cannot satisfy the VBE participation goal through its own performance.
  
    - b. **VBE consultants**. To receive credit toward meeting the VBE participation goal, the VBE consultant must be a DGS-verified VBE as of the execution of the consultant agreement. A self-certified SB consultant that does not have its VBE verification as of the execution of the consultant agreement cannot be used to satisfy the VBE participation goal. Upon request, the selected Proposer must identify and submit all VBE consultant(s) being used to receive credit toward the VBE participation goal. The individual commitments will be incorporated into the final Contract.
  
  3. **VBE Requirements**: To be considered an VBE, a firm must be a **DGS-verified** Veteran-Owned Small Business Enterprise or Service-Disabled Veteran-Owned Small Business Enterprise.

Additional information on the DGS verification process can be found at:  
<https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Pages/default.aspx>

**VBE-1**  
**INSTRUCTIONS FOR COMPLETING THE VETERAN BUSINESS ENTERPRISE**  
**(VBE) PARTICIPATION SUBMITTAL**

4. Dually verified firms. If a DGS-verified SDB is dually verified as a VBE, the firm may receive credit towards both the SDB participation goal and the VBE participation goal as set forth on the SDB and VBE Participation Summary Sheet.

*Example: The SDB participation goal is 10% and the VBE participation goal is 5%. A consultant is DGS-verified as both an SDB and a VBE and will perform 10% of the contract work. The Proposer can satisfy both the SDB participation goal and the VBE participation goal through that consultant's performance of 10% of the contract work., unless otherwise agreed to by the parties in writing and approved by the Bureau of Diversity, Inclusion, and Small Business Opportunities (BDISBO) and Public Works.*

5. Participation by VBE firms as proposer or consultants. A Proposer that qualifies as a VBE and submits a proposal is not prohibited from being included as a consultant in separate applications submitted by other proposers. A VBE may be included as a consultant with as many proposers as it chooses in separate proposals.
6. Questions about VBE verification. Questions regarding the VBE program, including questions about the self-certification and verification processes can be directed to:

Department of General Services  
Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)  
Room 611, North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-3119  
Fax: (717) 787-7052  
Email: [RA-BDISBOVerification@pa.gov](mailto:RA-BDISBOVerification@pa.gov)  
Website: [www.dgs.pa.gov](http://www.dgs.pa.gov)

**III. Guidelines Regarding VBE Proposers Self-Performance.**

1. An VBE firm submitting a proposal may receive credit towards the VBE Participation goal established for the procurement through their own self-performance.

*Example: A solicitation has a 15% VBE participation goal. An VBE Proposer self-performing contract work valued at only 10% of contract costs (if permitted by the solicitation documents) must still satisfy the remaining 5% VBE participation goal through its use of consultants or must request a Good Faith Efforts Waiver for the unmet VBE participation goal. Failure to satisfy the remaining 5% VBE participation goal or failure to obtain a Good Faith Efforts waiver for the unmet portion of the VBE participation goal will result in rejection of that VBE prime's proposal as nonresponsive.*

**VBE-1**  
**INSTRUCTIONS FOR COMPLETING THE VETERAN BUSINESS ENTERPRISE**  
**(VBE) PARTICIPATION SUBMITTAL**

2. For an VBE proposer to receive credit for self-performance, the VBE proposer must be a **DGS-verified** VBE as of the solicitation due date and time.

**IV. Calculating VBE participation during compliance.** BDISBO will credit the selected proposer for 100% of the total dollar amounts actually paid to an VBE consultant for providing a services toward satisfying the selected proposer's VBE participation commitment. In addition, the VBE consultant, through its own employees, must perform at least 50% of the amount of the subcontract..

**V. Document Submittal Errors.**

1. **Fatal errors.** The following errors will result in rejection of a proposal as non-responsive:
  - a. Failure to submit a completed **VBE Participation Submittal (VBE-2) indicating whether Proposer intends to meet the VBE participation goal, is requesting a partial waiver from the VBE participation goal, or is requesting a full waiver from the VBE participation goal;**
  - b. Failure to submit a **Good Faith Efforts waiver request** when not fully meeting the VBE participation goal.
2. **Potentially curable errors.** Public Works and BDISBO may provide proposers the opportunity to provide clarifications or to correct errors not listed as fatal errors above. If the additionally submitted information does not adequately address or clarify the submittal, the proposal may be rejected. **Proposers are not permitted to make material changes during clarifications and corrections in order to meet the VBE Participation Goal.**

**VBE-2**  
**VBE PARTICIPATION SUBMITTAL**

**CHECK ONE, AND ONLY ONE, BOX.**  
**FAILURE TO COMPLY WILL RESULT IN REJECTION OF YOUR PROPOSAL**  
*Click on bold titles to navigate to that specific page.*

**I agree to meet the VBE participation goal in full.** I agree that \_\_\_\_\_% of the work will be performed by VBEs.

**I am requesting a partial waiver of the VBE participation goal. I agree that \_\_\_\_\_% of the work will be performed by VBEs.**

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the VBE Participation Goal**, I am unable to achieve the remaining portion of the VBE participation goal for this solicitation and am requesting a partial waiver of that portion of the VBE participation goal.

I have completed and am submitting with my proposal a **Good Faith Efforts Waiver Request** for that portion of the VBE participation goal that I do not intend to meet, which is required in order to be considered for award.

**I am requesting a full waiver of the VBE participation goal**

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the VBE Participation Goal**, I am unable to achieve any part of the VBE participation goal for this solicitation and am requesting a full waiver of the VBE participation goal.

I have completed and am submitting with my proposal a **Good Faith Efforts Waiver Request** for the complete VBE participation goal, which is required in order to be considered for award.

**VBE-3  
RESERVED**

**VBE-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE  
VETERAN BUSINESS ENTERPRISE (VBE) PARTICIPATION GOAL**

*Proposers do not need to return VBE-4 with their VBE Participation Submittal*

In order for its proposal to be responsive, the Proposer must either (1) meet the VBE participation goal, or (2) when it does not meet the VBE participation goal, submit a Good Faith Efforts waiver request as set forth in Section IV below and the **Good Faith Efforts Documentation to Support Waiver Request (VBE-5)** of VBE Participation Goal.

**I. Definitions**

**Proposer** – for purposes of this Good Faith Efforts Documentation to Support Waiver Request, the term “Proposer” includes any entity responding to this solicitation for the consulting services.

**Good Faith Efforts** - The “Good Faith Efforts” requirement means that when requesting a waiver, the Proposer must demonstrate that it took all necessary and reasonable steps to achieve the VBE participation goal. Those steps are considered necessary and reasonable when their scope, intensity, and relevance could reasonably be expected to obtain sufficient VBE participation, even if those steps were not fully successful. The Department of General Services’ Bureaus of Public Works (PW) and Diversity, Inclusion and Small Business Opportunities (BDISBO) will determine whether or not the Proposer requesting a Good Faith Efforts waiver made adequate Good Faith Efforts by considering the quality, quantity, and intensity of the Proposer’s efforts. Mere *pro forma* efforts are not Good Faith Efforts to meet the VBE participation requirements. The determination concerning the sufficiency of the Proposer's Good Faith Efforts is subjective; meeting quantitative formulas is not required.

**Anticipated Scopes of Work** – all of the items of work the Proposer identified as possible items of work for performance by VBEs and should include all reasonably identifiable subcontractable work opportunities.

**Identified VBEs**– all of the VBEs the proposer identified as available to perform the Identified Items of Work and should include all DGS-verified VBEs that are reasonably identifiable.

**VBE** – “VBE” refers to Veteran-Owned Small Business Enterprises and Service-Disabled Veteran-Owned Small Business Enterprises verified by BDISBO.

**VBE participation goal** – “VBE participation goal” refers to the VBE participation goal set for a procurement for Veteran-Owned Small Business Enterprise and Service-Disabled Veteran-Owned Small Business Enterprise utilization.

**II. Types of Actions PW and BDISBO will Consider**

The following are types of actions PW and BDISBO will consider as part of the Proposer's Good Faith Efforts when the Proposer is unable to meet, in full, the VBE participation goal. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

**VBE-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE  
VETERAN BUSINESS ENTERPRISE (VBE) PARTICIPATION GOAL**

**A. Identify Program Items as Anticipated Scopes of Work for VBEs**

1. Anticipated Scopes of Work
  - (a) Proposers should reasonably identify sufficient anticipated scopes of work to be performed by VBEs. These anticipated scopes of work should include VBE subcontracting opportunities.
  - (b) Where appropriate, Proposers should break out anticipated scopes of work into economically feasible units to facilitate VBE participation, rather than perform these work items with their own forces. **The ability or desire of a Proposer to perform the work of an agreement with its own organization does not relieve the Proposer of the responsibility to make Good Faith Efforts to meet the VBE participation goal.**

**B. Identify VBEs to Solicit**

1. Identified VBEs
  - (a) Proposers must reasonably identify VBEs that are available to perform the Anticipated Scopes of Work.

Any VBEs identified as available by the Proposer should be certified to perform the Anticipated Scopes of Work (i.e., assigned the UNSPSC codes within the DGS Supplier Search that are applicable to the Scope of Work they will be performing).

**C. Solicit VBEs**

1. Proposers must solicit a reasonable number of identified VBEs for all Anticipated Scopes of Work by providing written notice. The Proposer must:
  - (a) provide the written solicitation to all identified VBEs at least 10 calendar days prior to the proposal due date to allow sufficient time for the identified VBE to respond;
  - (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the BDISBO Directory, unless the Proposer has a valid basis for using different contact information; and
  - (c) provide adequate information about the Anticipated Scopes of Work to assist identified VBEs in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
2. “All” Identified VBEs include any VBE Firms the Proposer identifies as potentially available to perform the Anticipated Scopes of Work, but it does not include identified VBEs who are no longer self-certified to perform the work as of the date the Proposer provides written solicitations.
3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the project. If an interested VBE cannot access the information provided by electronic means, the Proposer must make the information available in a manner that is accessible to the interested VBE.

## VBE-4

### GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE VETERAN BUSINESS ENTERPRISE (VBE) PARTICIPATION GOAL

4. Proposers must follow up on initial written solicitations by contacting identified VBEs to determine their interest in the Anticipated Scopes of Work. The follow up contact may be made:
  - (a) by telephone using the contact information in BDISBO's Directory, unless the Proposer has a valid basis for using different contact information; or
  - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up set forth in C.4, use all other reasonable and available means to solicit the interest of identified VBEs certified to perform the anticipated scopes of work.

#### D. Effort to Solicit VBEs

1. Proposers must make good faith efforts to solicit interested VBEs.
2. Evidence of good faith solicitation includes but is not limited to the following:
  - (a) the names, addresses, and telephone numbers of VBEs that were considered as potentially available to perform the Anticipated Scopes of Work;
  - (b) a description of the information provided regarding the plans and specifications for the Anticipated Scopes of Work and the means used to provide that information;
  - (c) efforts to divide Anticipated Scopes of Work into small tasks or quantities;
  - (d) efforts to identify the interest and availability of VBEs to perform the Anticipated Scopes of Work; and
  - (e) efforts to investigate the capability of VBEs to perform the Anticipated Scopes of Work.
3. Additional costs incurred in finding and using VBEs are not sufficient justification for the Proposer's failure to meet the VBE participation goal, as long as such costs are reasonable.
4. The Proposer may not use its price for self-performing work as a basis for rejecting an VBE.
5. The Proposer shall not reject an VBE as unqualified without sound justification based on a thorough investigation of the firm's capabilities. For each VBE that is rejected as unqualified the Proposer must provide a written detailed statement outlining the justification for this conclusion.



**VBE-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE  
VETERAN BUSINESS ENTERPRISE (VBE) PARTICIPATION GOAL**

- (a) The factors to take into consideration when assessing the capabilities of an VBE include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous agreements, and ability to meet reasonable agreement requirements.
- (b) The VBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of VBEs in the efforts to meet the VBE participation goal.

**E. Assisting Interested VBEs**

When appropriate under the circumstances, PW and BDISBO will consider whether the Proposer made reasonable efforts to assist interested VBEs in obtaining:

1. The insurance required by PW or the Proposer; and
2. Necessary equipment, supplies, materials, or related assistance or services.

**III. Other Considerations**

In making a determination of Good Faith Efforts, the procuring agency and BDISBO may consider general market availability and availability of certified VBEs in the area in which the work is to be performed; offers or costs substantiating significant variances between VBE and non-VBE costs of participation and their impact on the overall cost of the agreement to the Commonwealth; and any other relevant factors.

The procuring agency and BDISBO may consider whether the Proposer decided to self-perform potentially subcontractable work with its own forces. The procuring agency and BDISBO also may consider the performance of other Proposers in meeting the VBE participation goal. For example, when an Proposer fails to meet the VBE participation goal, but others meet it, this raises the question of whether, with additional reasonable efforts, the Proposer could have met the VBE participation goal. If the Proposer fails to meet the VBE participation goal but meets or exceeds the average VBE participation obtained by other Proposers, this, when viewed in conjunction with other factors, could be evidence of the Proposer having made Good Faith Efforts.

**IV. Documenting Good Faith Efforts**

At a minimum, the Proposer seeking a Good Faith Efforts waiver of the VBE participation goal or a portion thereof must provide written documentation of its Good Faith Efforts along with its proposal, which may include the following:

**A. Anticipated Scopes of Work (complete VBE 5, Part 1 – Identified Items of Work Proposer Made Available to VBEs)**

A detailed statement of the efforts made to select anticipated scopes of work proposed to be performed by VBEs in order to increase the likelihood of achieving the VBE participation goal.

**VBE-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE  
VETERAN BUSINESS ENTERPRISE (VBE) PARTICIPATION GOAL**

**B. Outreach and Solicitation**

1. A detailed statement of the efforts made to contact VBEs including:
  - (a) the names, addresses, and telephone numbers of the VBEs who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) (**complete VBE 5, Part 2 – Identified VBE Firms and Records of Solicitations. Include letters, fax cover sheets, e-mails, etc. documenting solicitations**); and
  - (b) a description of the information provided to VBEs regarding the anticipated scopes of work to be performed and the means used to provide that information.
2. The record of the Proposer's compliance with the outreach efforts set forth in **VBE 5, Part 3 - Outreach Efforts Compliance Statement**.

**C. Rejected VBEs (complete VBE 5, Part 4 - Additional Information Regarding Rejected VBEs)**

1. For each VBE that the Proposer concludes is not acceptable or qualified, a detailed statement of the reasons for the Proposer's conclusion, including the steps taken to verify the capabilities of the VBE and non-VBE firms who perform similar work.

**D. Unavailable VBEs (complete VBE 5, Part 5 – VBE Consultant Unavailability Certificate)**

1. **For each VBE that the Offeror contacted but found to be unavailable, submit an VBE Consultant Unavailability Certificate** or other form of communication signed by the VBE, an email from the VBE indicating the VBE is unavailable, or a statement from the Proposer that the VBE refused to sign the VBE Consultant Unavailability Certificate or failed to respond.

**E. Other Documentation**

1. Submit any other documentation requested by BDISBO or PW to ascertain the Proposer's Good Faith Efforts.
2. Submit any other documentation the Proposer believes will help BDISBO or PW ascertain its Good Faith Efforts.

**VBE-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF VBE PARTICIPATION GOAL**

|                                    |  |
|------------------------------------|--|
| <b>Project Description:</b>        |  |
| <b>Commonwealth Agency Name:</b>   |  |
| <b>DGS Project #:</b>              |  |
| <b>Proposal Due Date and Time:</b> |  |

|                                  |  |
|----------------------------------|--|
| <b>Proposer's Company Name:</b>  |  |
| Proposer's Contact Name:         |  |
| Proposer's Contact Email:        |  |
| Proposer's Contact Phone Number: |  |

**Part 1 – Anticipated Scopes of Work Proposer Made Available to VBEs**

Identify the anticipated scopes of work that the Proposer made available to VBE consultants. This includes, where appropriate, those items the Proposer identified and subdivided into economically feasible units to facilitate the VBE participation. It is the Proposer's responsibility to demonstrate that the total percentage of the anticipated scopes of work identified for VBE participation met or exceeded the VBE participation goal set for the procurement.

| Anticipated Scopes of Work | Does Proposer normally self-perform this work?              | Was this work made available to VBE Firms? If not, explain why. |
|----------------------------|---|---|
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |
|                            | <input type="checkbox"/> yes<br><input type="checkbox"/> no | <input type="checkbox"/> yes<br><input type="checkbox"/> no     |

Attach additional sheets if necessary.

**VBE-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF VBE PARTICIPATION GOAL**

**Part 2 – Identified VBEs and Record of Solicitations**

Identify the VBEs solicited to demonstrate interest to perform the Anticipated Scopes of Work made available for VBE participation. Include the name of the VBE solicited, anticipated scopes of work for which the Proposer solicited interest, date and manner of initial and follow-up, whether the VBE provided a response, and whether the VBE will be used toward meeting the VBE participation goal.

Note: Copies of all written solicitations and documentation of follow-up calls to VBEs must be attached to this form. For each identified VBE listed below that Proposer is not using to meet the VBE participation goal, Proposer should submit an VBE Consultant Unavailability Certificate signed by the VBE or a statement from the Proposer that the VBE refused to sign the VBE Consultant Unavailability Certificate.

| <b>Name of Identified VBE and Classification</b> | <b>Describe Anticipated Scope of Work Solicited</b> | <b>Initial Solicitation Date &amp; Method</b> | <b>Follow-up Solicitation Date &amp; Method</b> | <b>Details for Follow-up Calls</b>                             | <b>VBE interested in Anticipated Scope of Work?</b> | <b>Will VBE be Used?</b> | <b>Reason VBE Rejected</b>                                    |
|--|---|---|---|--|---|--------------------------|---|
| VBE Name:<br><br>___ VBE<br>___ SDVBE            |   | Date:<br><br>___ mail<br>___ email<br>___ fax | Date:<br><br>___ mail<br>___ email<br>___ fax   | Date and Time of Call:<br><br>Spoke with:<br><br>Left Message: | ___ yes<br>___ no                                   | ___ yes<br>___ no        | ___ Used other VBE<br>___ Used non-VBE<br>___ Self performing |
| VBE Name:<br><br>___ VBE<br>___ SDVBE            |   | Date:<br><br>___ mail<br>___ email<br>___ fax | Date:<br><br>___ mail<br>___ email<br>___ fax   | Date and Time of Call:<br><br>Spoke with:<br><br>Left Message: | ___ yes<br>___ no                                   | ___ yes<br>___ no        | ___ Used other VBE<br>___ Used non-VBE<br>___ Self performing |

Attach additional sheets as necessary.

**VBE-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**VBE PARTICIPATION GOAL**

**Part 3 – VBE Outreach Compliance Statement**

- 1. List the Anticipated Scopes of Work (consulting opportunities) for the solicitation along with specific work categories:**

- 2. Attach to this form copies of written solicitations (with Proposer’s instructions) used to solicit identified VBEs for these anticipated scopes of work.**

- 3. Proposer made the following attempts to personally contact the identified VBEs:**

**VBE-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF VBE PARTICIPATION GOAL**

**Part 4 – Additional Information Regarding Rejected VBEs**

This form must be completed if Part 2 indicates that an VBE was rejected because the Proposer will use a non-VBE or will self-perform the Anticipated Scopes of Work. List the Anticipated Scopes of Work, indicate whether the work will be performed by a non-VBE or will be self-performed, and if applicable, state the name of the non-VBE firm.

| <b>Describe Anticipated Scope of Work not being performed by VBEs</b> | <b>Self-performing or using non-VBE (provide name of non-VBE if applicable)</b>             | <b>Reason why VBE was not used for anticipated scope of work along with brief explanation</b>             |
|---|---|---|
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-VBE<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-VBE<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-VBE<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-VBE<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |
|   | <input type="checkbox"/> self-performing<br><input type="checkbox"/> using Non-VBE<br>Name: | <input type="checkbox"/> price<br><input type="checkbox"/> capabilities<br><input type="checkbox"/> other |

Attach additional sheets as necessary.

**VBE-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**VBE PARTICIPATION GOAL**

**Part 5 – VBE Consultant Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of VBE)

located at \_\_\_\_\_  
(Number) (Street)

\_\_\_\_\_ was offered an opportunity to provide  
(City) (State) (Zip)

\_\_\_\_\_ on DGS Project No. \_\_\_\_\_  
(anticipated scope of work)

by \_\_\_\_\_  
(Name of Proposer's Firm)

\*\*\*\*\*

2. \_\_\_\_\_(VBE), is unavailable for the anticipated scope of work  
for this project for the following reason(s):

\_\_\_\_\_  
(Signature of VBE's Representative) (Title) (Date)

\_\_\_\_\_  
(DGS VBE Verification #) (Telephone #)

\*\*\*\*\*

3. If the VBE does not complete this form, the Proposer must complete the following:

To the best of my knowledge and belief, the above-listed VBE is either unavailable for the anticipated  
scope of work for this project or did not provide a response.

\_\_\_\_\_  
(Signature of Proposer) (Title) (Date)

## Appendix G - Cost Submittal

Overview

This portion of the proposal must be seperately sealed and labeled "Cost Submittal"

|                         |                      |                          |
|-------------------------|----------------------|--------------------------|
| <b>PROPOSAL ADDRESS</b> | <b>EMAIL ADDRESS</b> |                          |
|                         |                      |                          |
|                         | <b>PHONE NUMBER</b>  |                          |
|                         |                      |                          |
|                         | <b>VENDOR NUMBER</b> | <b>FEDERAL ID OR SSN</b> |
|                         |                      |                          |

| Estimated JOC Project Value<br>(Based on average over the previous 3 years) | JOC Fee % | Estimate JOC Fee Amount<br>(Amount to be Evaluated) |
|---|-----------|---|
| \$ 30,000,000.00  |           |   |

**"Estimated JOC Project Value" shown above is for evaluation purposes only and is NOT guaranteed.**



**APPENDIX H**  
**DOMESTIC WORKFORCE UTILIZATION CERTIFICATION**

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. In order to be eligible for any consideration for this criterion, offerors must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, \_\_\_\_\_ [title] of \_\_\_\_\_ [name of Contractor] a \_\_\_\_\_ [place of incorporation] corporation or other legal entity, ("Contractor") located at \_\_\_\_\_ [address], having a Social Security or Federal Identification Number of \_\_\_\_\_, do hereby certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

\_\_\_\_\_ percent ( \_\_\_\_%) [Contractor must specify the percentage] of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Use additional sheets if necessary]

The Department of General Services [or other purchasing agency] shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

\_\_\_\_\_  
Corporate or Legal Entity's Name

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Printed Name/Title

**IRAN FREE PROCUREMENT CERTIFICATION FORM**

**(Pennsylvania’s Procurement Code Sections 3501-3506, 62 Pa.C.S. §§ 3501-3506)**

To be eligible for an award of a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Procurement Code **and** is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

To comply with this requirement, please insert your vendor or financial institution name and complete **one** of the options below. Please note: Pennsylvania law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Section 3503 of the Procurement Code.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS **and** is eligible to contract with the Commonwealth of Pennsylvania Sections 3501-3506 of the Procurement Code.

|  |                      |
|--|----------------------|
| <i>Vendor Name/Financial Institution (Printed)</i> |                      |
| <i>By (Authorized Signature)</i>                   |                      |
| <i>Printed Name and Title of Person Signing</i>    | <i>Date Executed</i> |

**OPTION #2 – EXEMPTION**

Pursuant to Procurement Code Section 3503(e), DGS may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to enter into a contract for goods and services.

If you have obtained a written exemption from the certification requirement, please fill out the information below, and attach the written documentation demonstrating the exemption approval.

|  |                      |
|--|----------------------|
| <i>Vendor Name/Financial Institution (Printed)</i> |                      |
| <i>By (Authorized Signature)</i>                   |                      |
| <i>Printed Name and Title of Person Signing</i>    | <i>Date Executed</i> |

**APPENDIX J**

**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 Certified Small Business) at the beginning of each contract year and upon each contract renewal date.**

**If you are asserting that your firm is a Department of General Services Certified Small Business, provide an active Department of General Services Small Business Certification.**

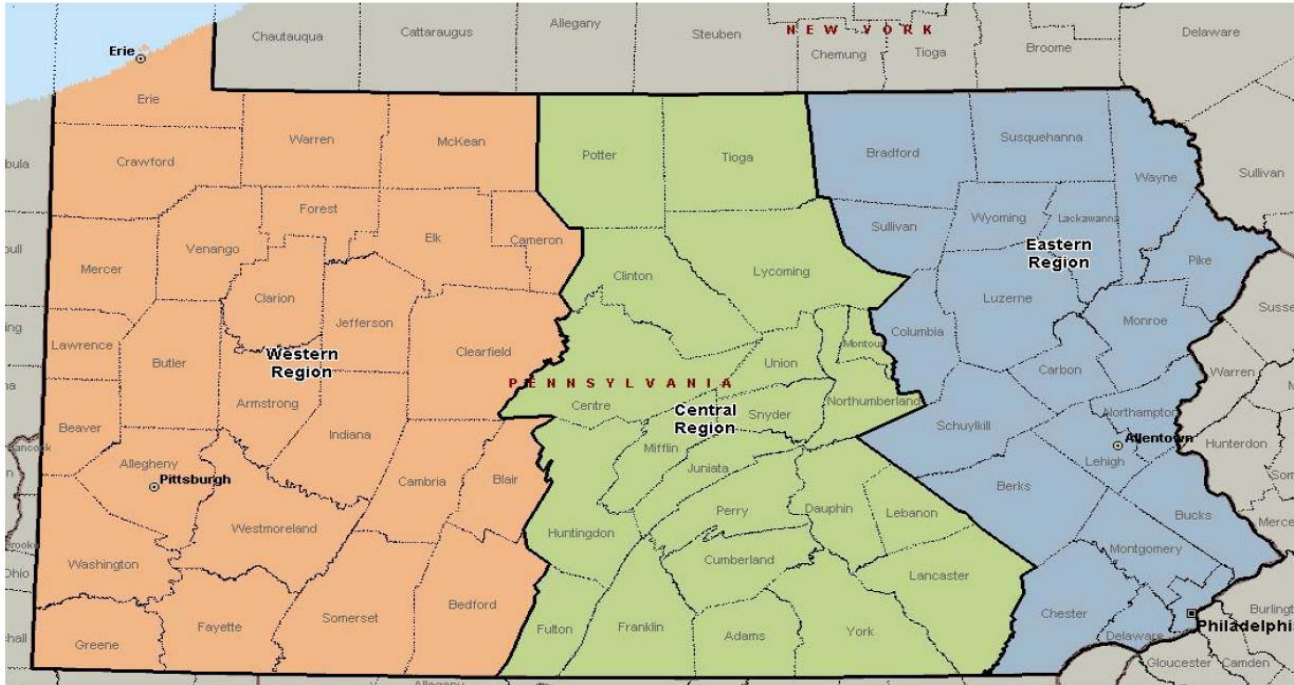
\_\_\_\_\_  
Corporate or Legal Entity Name

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name/Title

### Appendix K - Program Spend Data for Last 3 Years

| JOB ORDER VOLUME by Region* | 2017                    | 2018                    | 2019                    | TOTAL PER REGION        |
|-----------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| CENTRAL REGION              | \$ 18,934,343.32        | \$ 14,806,735.40        | \$ 9,684,259.86         | \$ 43,425,338.58        |
| WESTERN REGION              | \$ 7,987,091.13         | \$ 8,258,208.60         | \$ 6,773,548.65         | \$ 23,018,848.38        |
| EASTERN REGION              | \$ 13,312,479.40        | \$ 6,329,149.07         | \$ 5,765,350.41         | \$ 25,406,978.88        |
| <b>TOTAL PER YEAR</b>       | <b>\$ 40,233,913.85</b> | <b>\$ 29,394,093.07</b> | <b>\$ 22,223,158.92</b> | <b>\$ 91,851,165.84</b> |



\*Regions have changed based on the 2019 Job Order Contracting Contracts

## Appendix L

### Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this Attachment is to define requirements for technology solutions procured by the Commonwealth that are not hosted within Commonwealth infrastructure.

#### A. Hosting Requirements

1. The Licensor or its subcontractor shall supply all hosting equipment (hardware and software) required for the cloud services and performance of the software and services set forth in the Quote and Statement of Work.
2. The Licensor shall provide secure access to applicable levels of users via the internet.
3. The Licensor shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth and server capacity.
4. The Licensor or its subcontractors shall maintain all hosting equipment (hardware and software) and replace as necessary to maintain compliance with the Service Level Agreements.
5. The Licensor shall monitor, prevent and deter unauthorized system access. Any and all known attempts must be reported to the Commonwealth within **two (2) business days**. In the event of any impermissible disclosure unauthorized loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure of such Confidential Information. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the Licensor shall comply with state and federal data breach notification statutes and regulations, and shall report security incidents to the Commonwealth within **one (1) hour** of when the Licensor has reasonable confirmation of such unauthorized access, use, release, or disclosure of data.
6. The Licensor or the Licensor's subcontractor shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, and within at least **three (3) business days'** notice, to review the hosted system's data center locations and security architecture.
7. The Licensor's employees or subcontractors, who are directly responsible for day-to-day monitoring and maintenance of the hosted system, shall have industry standard certifications applicable to the environment and system architecture used.
8. The Licensor or the Licensor's subcontractor shall locate servers in a climate-controlled environment. The Licensor or the Licensor's contractor shall house all servers and equipment in an operational environment that meets industry standards

including climate control, fire and security hazard detection, electrical needs, and physical security.

9. The Licensor shall examine applicable system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. The Licensor shall completely test and apply patches for all third-party software products in the server environment before release.
11. The Licensor shall provide all Commonwealth data to the Commonwealth, upon request, in a form acceptable to the Commonwealth, at no cost to the Commonwealth.

**B. SOC Reporting Requirements:**

1. Subject to this section and unless otherwise agreed to in writing by the Commonwealth, the Licensor shall, and shall require its subcontractors to, engage, on an annual basis, a CPA certified third-party auditing firm to conduct the following, as applicable:
  - (i) a SOC 1 Type II report with respect to controls used by the Licensor relevant to internal and external procedures and systems that process Commonwealth financial transactions;
  - (ii) a SOC 2 Type II report with respect to controls used by the Licensor relevant to internal and external procedures and systems that access, process, host or contain Commonwealth Data designated as sensitive security or protected information as defined in ITP-SEC019 Policy and Procedure for Protecting Commonwealth Electronic Data; and
  - (iii) a SOC for Cybersecurity report with respect to controls used by the Licensor setting forth the description and effectiveness of Licensor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

Unless otherwise agreed to in writing by the Commonwealth, SOC Reports shall be provided upon contract execution and annually thereafter. While it is preferable that SOC Reports coincide with Pennsylvania's fiscal year (July 1 through June 30), SOC Reports, at the very least, must cover at least 6 consecutive months of Pennsylvania's fiscal year.

2. SOC 2 Type II reports shall address the following:
  - (i) Security of Information and Systems;
  - (ii) Availability of Information and Systems;
  - (iii) Processing Integrity;
  - (iv) Confidentiality;
  - (v) Privacy; and

- (vi) if applicable, compliance with the laws, regulations standards or policies designed to protect the information identified in ITP-SEC019 or other information identified as protected or Confidential by this Contract or under law.
3. At the request of the Commonwealth, the Licensor shall complete an additional SOC for Cybersecurity audits in the event:
- (i) repeated non-conformities are identified in any SOC report required by subsection 1; or
  - (ii) if the Licensor's business model changes (such as a merger, acquisition, or change sub-contractors, etc.);

The Licensor shall provide to the Commonwealth a report of the SOC for Cybersecurity audit findings within 60 days of its completion.

4. The Commonwealth may specify other or additional standards, certifications or audits it requires under any Purchase Orders or within an ITP.
5. The Licensor shall adhere to SSAE 18 audit standards. The Licensor acknowledges that the SSAE guidance may be updated during the Term of this Contract, and the Licensor shall comply with such updates which shall be reflected in the next annual report.
6. In the event an audit reveals any non-conformity to SSAE standards, the Licensor shall provide the Commonwealth, within 45 calendar days of the issuance of the SOC report, a documented corrective action plan that addresses each non-conformity. The corrective action plan shall provide, in detail:
- (i) clear responsibilities of the personnel designated to resolve the non-conformity;
  - (ii) the remedial action to be taken by the Licensor or its subcontractor(s);
  - (iii) the dates when each remedial action is to be implemented; and
  - (iv) a summary of potential risks or impacts to the Commonwealth that are associated with the non-conformity(ies).
7. The Commonwealth may in its sole discretion agree, in writing, to accept alternative and equivalent reports or certifications in lieu of a SOC report.

### **C. Security Requirements**

1. The Licensor shall conduct a third-party independent security/vulnerability assessment at its own expense on an annual basis.

2. The Licensor shall comply with the Commonwealth's directions/resolutions to remediate the results of the security/vulnerability assessment to align with the standards of the Commonwealth.
3. The Licensor shall use industry best practices to protect access to the system with a firewall and firewall rules to prevent access by non-authorized users and block all improper and unauthorized access attempts.
4. The Licensor shall use industry best practices to provide applicable system intrusion detection and prevention in order to detect intrusions in a timely manner.
5. The Licensor shall use industry best practices to provide applicable malware and virus protection on all servers and network components.
6. The Licensor shall limit access to Commonwealth-specific systems and services and provide access only to those staff, located in the United States, that must have access to provide services proposed.
7. The Licensor shall provide the Services, using security technologies and techniques in accordance with industry best practices and the Commonwealth's ITPs set forth in Attachment 2-A, including those relating to the prevention and detection of intrusions, and any other inappropriate use or access of systems and networks.

**D. Data Storage**

1. The Licensor shall store all Commonwealth data in the United States.
2. The Licensor shall use industry best practices to update and patch all applicable systems and third-party software security configurations to reduce security risk. The Licensor shall protect their operational systems with applicable anti-virus, host intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.
3. The Licensor shall be solely responsible for applicable data storage required.
4. The Licensor shall encrypt all Commonwealth data in transit and at rest.
5. The Licensor shall take all commercially viable and applicable measures to protect the data including, but not limited to, the backup of the servers on a daily basis in accordance with industry best practices and encryption techniques.
6. The Licensor agrees to have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, to protect that data particularly in instances where such critical or sensitive data may be stored on a Licensor-controlled or Licensor-owned electronic device.



7. The Licensor shall utilize a secured backup solution to prevent loss of data, back up all data every day and store backup media. Stored backup media must be kept in an all-hazards protective storage safe at the worksite and when taken offsite. All back up data and media shall be encrypted.

**E. Adherence to Policy**

1. Licensor support and problem resolution solution shall provide a means to classify problems as to criticality and impact and with appropriate resolution procedures and escalation process for classification of each problem.
2. Licensor shall abide by the applicable Commonwealth's Information Technology Policies (ITPs), a list of the most relevant being attached hereto as Attachment 2-A.
3. Licensor shall comply with all pertinent federal and state privacy regulations.

**F. Closeout**

When the purchase order's or other procurement document's term expires or terminates, and a new purchase order or other procurement document has not been issued by a Commonwealth Agency to the Commonwealth Software Reseller within **sixty (60) days** of expiration or termination, or at any other time at the written request of the Commonwealth, the Licensor must promptly return to the Commonwealth all Commonwealth's data (and all copies of this information) that is in the Licensor's possession or control. The Commonwealth's data shall be returned in a format agreed to by the Commonwealth.

## ATTACHMENT 1

### Information Technology Policies (ITPs) for Outsourced/Licensor(s)-hosted Solutions

| ITP Number - Name  | Policy Link   |
|--|---|
| ITP_ACC001- Accessibility Policy   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf">http://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf</a>     |
| ITP_APP030- Active Directory Architecture  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_app030.pdf">http://www.oa.pa.gov/Policies/Documents/itp_app030.pdf</a>     |
| ITP_BUS007- Enterprise Service Catalog   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf">http://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf</a>     |
| ITP_BUS010-Business Process Management Policy                                    | <a href="http://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf">http://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf</a>     |
| ITP_BUS011-Commonwealth Cloud Computing Services Requirements                    | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus011.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus011.pdf</a>   |
| ITP_BUS012-Artificial Intelligence General Policy                                | <a href="https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf">https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf</a>   |
| ITP_INF000- Enterprise Data and Information Management Policy                    | <a href="http://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf">http://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf</a>     |
| ITP_INF001- Database Management Systems  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf">http://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf</a>     |
| ITP_INF006- Commonwealth County Code Standard                                    | <a href="http://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf">http://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf</a>     |
| ITP_INF009- e-Discovery Technology Standard                                      | <a href="http://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf">http://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf</a>     |
| ITP_INF010- Business Intelligence Policy   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf">http://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf</a>     |
| ITP_INF011- Reporting Policy   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf">http://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf</a>     |
| ITP_INF012- Dashboard Policy   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf">http://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf</a>     |
| ITP_INFRM001- The Life Cycle of Records: General Policy Statement                | <a href="http://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf">http://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf</a> |
| ITP_INFRM004- Management of Web Records  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf">http://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf</a> |
| ITP_INFRM005- System Design Review of Electronic Systems                         | <a href="http://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf">http://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf</a> |
| ITP_INFRM006- Electronic Document Management Systems                             | <a href="http://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf">http://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf</a> |
| ITP_INT_B_1- Electronic Commerce Formats and Standards                           | <a href="http://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf">http://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf</a>   |
| ITP_INT_B_2- Electronic Commerce Interface Guidelines                            | <a href="http://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf">http://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf</a>   |
| ITP_INT006- Business Engine Rules  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_int006.pdf">http://www.oa.pa.gov/Policies/Documents/itp_int006.pdf</a>     |
| ITP_NET004- Internet Protocol Address Standards                                  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_net004.pdf">http://www.oa.pa.gov/Policies/Documents/itp_net004.pdf</a>     |
| ITP_NET005- Commonwealth External and Internal Domain Name Services (DNS)        | <a href="http://www.oa.pa.gov/Policies/Documents/itp_net005.pdf">http://www.oa.pa.gov/Policies/Documents/itp_net005.pdf</a>     |
| ITP_PRV001- Commonwealth of Pennsylvania Electronic Information Privacy Policy   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf">http://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf</a>     |
| ITP_SEC000 - Information Security Policy   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf</a>     |
| ITP_SEC002- Internet Accessible Proxy Servers and Services                       | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf</a>     |
| ITP_SEC003- Enterprise Security Auditing and Monitoring                          | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf</a>     |
| ITP_SEC004- Enterprise Web Application Firewall                                  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf</a>     |
| ITP_SEC006- Commonwealth of Pennsylvania Electronic Signature Policy             | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf</a>     |
| ITP_SEC007- Minimum Standards for IDs, Passwords and Multi-Factor Authentication | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf</a>     |
| ITP_SEC008- Enterprise E-mail Encryption   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf</a>     |
| ITP_SEC009- Minimum Contractor Background Checks Policy                          | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf</a>     |
| ITP_SEC010- Virtual Private Network Standards                                    | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf</a>     |

| ITP Number - Name  | Policy Link   |
|--|---|
| ITP_SEC011- Enterprise Policy and Software Standards for Agency Firewalls  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf</a> |
| ITP_SEC013- Identity Protection and Access Management (IPAM) Architectural Standard and Identity Management Services | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec013.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec013.pdf</a> |
| ITP_SEC015- Data Cleansing   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf</a> |
| ITP_SEC017- Copa Policy for Credit Card Use for e-Government   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf</a> |
| ITP_SEC019- Policy and Procedures for Protecting Commonwealth Electronic Data  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf</a> |
| ITP_SEC020- Encryption Standards for Data at Rest  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec020.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec020.pdf</a> |
| ITP_SEC021- Security Information and Event Management Policy   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf</a> |
| ITP_SEC023- Information Technology Security Assessment and Testing Policy  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf</a> |
| ITP_SEC024- IT Security Incident Reporting Policy  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf</a> |
| ITP_SEC025- Proper Use and Disclosure of Personally Identifiable Information (PII)                                   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf</a> |
| ITP_SEC029- Physical Security Policy for IT Resources  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf</a> |
| ITP_SEC031- Encryption Standards for Data in Transit   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf</a> |
| ITP_SEC032- Enterprise Data Loss Prevention (DLP) Compliance Standards   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf</a> |
| ITP_SEC034- Enterprise Firewall Rule Set   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf</a> |
| ITP_SEC037- Identity Proofing of Online Users  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec037.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec037.pdf</a> |
| ITP_SEC038- Commonwealth Data Center Privileged User IAM Policy  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf</a> |
| ITP_SFT000- Software Development Life Cycle (SDLC) Policy  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf</a> |
| ITP_SFT001 Software Licensing  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf</a> |
| ITP_SFT002 Commonwealth of PA Website Standards  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf</a> |
| ITP_SFT003- Geospatial Enterprise Service Architecture   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf</a> |
| ITP_SFT004 Geospatial Information Systems (GIS)  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf</a> |
| ITP_SFT005- Managed File Transfer (MFT)  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf</a> |
| ITP_SFT007- Office Productivity Policy   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf</a> |
| ITP_SFT008- Enterprise Resource Planning (ERP) Management  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf</a> |
| ITP_SFT009- Application Development  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf</a> |
| ITP_SYM003- Off-Site Storage for Commonwealth Agencies   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf</a> |
| ITP_SYM004- Policy for Establishing Alternate Processing Sites for Commonwealth Agencies                             | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf</a> |
| ITP_SYM006- Commonwealth IT Resources Patching Policy  | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf</a> |
| ITP_SYM008- Server Virtualization Policy   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf</a> |
| ITP_SYM010- Enterprise Services Maintenance Scheduling   | <a href="http://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf">http://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf</a> |

## Appendix M

### Cloud Services Requirements

Offeror/Contractors proposing solutions that include cloud services must respond to the questions included in this document. The purpose of this document is to gain the necessary information from the Offeror/Contractor to fully understand and evaluate the cloud service being proposed.

Offeror/Contractor shall describe if any part of the proposed cloud service is provided by another third party or subcontractor. The ability of each subcontractor to meet these Cloud Services Requirements must be incorporated into this document. Offeror/Contractor may add a separate attachment or denote responses as "Offeror/Contractor" or "Name of Subcontractor".

**If using links in Offeror/Contractor Response column, please provide specific reference point that addresses the question.**

| REQ # | Category       | Question   | Offeror/Contractor Response |
|-------|----------------|--|-----------------------------|
| 1     | <b>General</b> | <p>Offeror/Contractor shall provide an overview of the proposed cloud service.</p> <p>Please list the solution components, hosting environments, as well as the service organization and subservice organizations operating all aspects that are a part of the overall proposed solution.</p> <ul style="list-style-type: none"> <li>• <b>Solution Component(s)</b> – SKU/Product Titles and/or Resources utilized by solution provider</li> <li>• <b>Solution Environment(s)</b> – Which public cloud provider, which private cloud stack, and/or who's datacenter for traditional hosting of components.</li> <li>• <b>Solution Operator(s)</b> – Organizational name of the Service Organization and any Subservice Organizations actively supporting the proposed solution.</li> </ul> |                             |

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| 2 | <b>General</b> | <p>Offeror/Contractor shall describe if the proposed cloud service is a dedicated single tenant or shared (multi-tenant) cloud solution.</p> <p>If multi-tenant, Offeror/Contractor shall describe the security controls to isolate the tenants.</p>  |  |
| 3 | <b>General</b> | <p>Offeror/Contractor shall describe Service Level Agreements (SLAs) included with the proposed Cloud Service that identify both the services required and the expected level of service including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Availability</li> <li>• Performance</li> <li>• Disaster Recovery expectations (RTO/RPO)</li> <li>• Pandemic Recovery expectations</li> <li>• Location of the data Primary/Secondary (if applicable?)</li> <li>• Access to the data</li> <li>• Portability of the data (ability to move data to a different hosting provider)</li> <li>• Metrics used to measure the service, e.g. service level objectives</li> </ul> |  |
| 4 | <b>General</b> | <p>Offeror/Contractor shall describe controls for record retention and data destruction of data past retention period in accordance with <a href="#">ITP-SEC019 Policy and Procedures for Protecting Commonwealth Data</a> and <a href="#">ITP-SEC015 Data Cleansing Policy</a>.</p> <p>Offeror/Contractor shall describe how they will confirm that the data has been destroyed. Commonwealth preference is certified letter(s) of confirmation at end of contract and quarterly for aged data.</p>  |  |

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| 5 | <b>General</b> | <p>Offeror/Contractor shall, upon contract expiration or at any other time at the written request of the Commonwealth, return to the Commonwealth all of its data (and all copies of this information) in a format agreed to by the Commonwealth.</p> <p>Offeror/Contractor shall provide method of export of Commonwealth data during the contract term.</p>   |  |
| 6 | <b>General</b> | <p>Offeror/Contractor shall provide current FedRamp Status (ready, in process, authorized, not yet applied) and level (Low, Moderate, or High).</p> <p>If FedRamp status is "authorized," Offeror/Contractor shall provide details for the following:</p> <ul style="list-style-type: none"> <li>• Service Model</li> <li>• Deployment Model</li> <li>• Impact Level</li> <li>• Independent Assessor</li> <li>• Authorization Date</li> <li>• Service Description</li> <li>• Agencies using this service</li> </ul> |  |
| 7 | <b>General</b> | <p>Offeror/Contractor shall indicate if the following NIST guidelines are adhered to:</p> <ul style="list-style-type: none"> <li>• NIST SP 800-53 Assessing Security and Privacy Controls in FIS organizations</li> <li>• NIST SP 800-63 Digital Identity Guidelines</li> <li>• NIST SP 800-92 Guide to Computer Security Log Management</li> <li>• NIST SP 800-144 Guideline on Security and Privacy in Public Cloud Computing</li> </ul>  |  |

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|    |  | <ul style="list-style-type: none"> <li>• NIST SP 800-145 NIST Definition of Cloud Computing and Deployment Models</li> <li>• NIST SP 800-146 NIST Cloud Computing Synopsis and Recommendations</li> </ul> <p>Please also indicate if other NIST guidelines apply to the proposed cloud service.</p>  |  |
| 8  | <b>General</b>                                       | <p>Offeror/Contractor shall describe their support model including after-hours support.</p> <p>Offeror/Contractor shall indicate if any support mechanism or staff are geographically located in any location that is not subject to the laws and jurisdiction of the United States.</p>   |  |
| 9  | <b>Regulatory Compliance Verification</b>            | <p>Offeror/Contractor shall indicate if the proposed cloud service is subject to any of the following laws:</p> <ul style="list-style-type: none"> <li>• CJIS and CHRIA for criminal history data</li> <li>• HIPAA for health-related data</li> <li>• IRS Pub 1075 and SSA for federal protected data</li> <li>• PCI-DSS for financial data</li> </ul> <p>Offeror/Contractor shall provide certifications or letters of attestation for any deemed applicable to the proposed cloud service.</p> |  |
| 10 | <b>Data Storage Provisioning (ITP-BUS011 CSR-L3)</b> | <p>Offeror/Contractor shall ensure that under no circumstances will Commonwealth data be directly or indirectly transmitted or downloaded to, stored in, or accessible from any location that is not subject to the laws and jurisdiction of the United States.</p>  |  |

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| 11 | <b>Data Hosting<br/>(ITP-BUS011<br/>CSR-L4)</b>  | <p>Offeror/Contractor shall confirm that Commonwealth data can only be transmitted or downloaded to, stored in, or accessible from any location that is subject to the laws and jurisdiction of the United States.</p> <p>Offeror/Contractor shall completely test and apply patches for all third-party software products before release.</p> <ul style="list-style-type: none"> <li>• Offeror/Contractor shall describe which data centers are intended for use with the proposed cloud service.</li> <li>• Offeror/Contractor shall provide a description of the physical security measures in place within the proposed data centers. Describe both the physical data center access as well as server room and physical host access.</li> <li>• Offeror/Contractor shall provide a description of how often the infrastructure, hardware, and software are upgraded, hardened and patched and what notifications are provided to the customer.</li> </ul> |  |
| 12 | <b>SOC Reporting<br/>(ITP-BUS011<br/>CSR-L5)</b> | <p>Offeror/Contractor shall provide relevant SOC reports, which have been performed by an independent CPA-certified auditor, for the proposed cloud service. Reports should be submitted to the Contract Manager. <a href="#">Link to OPD BUS011B SOC Reporting Procedures</a></p> <p><b>SOC 3 Report</b> is required for the procurement of cloud services and Offeror/Contractors shall provide a SOC 3 report as part of the response to the solicitation.</p> <p><b>SOC 1 TYPE II Report</b> is required under the following conditions:</p>  |  |



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|    |   | <ul style="list-style-type: none"> <li>• The service organization is <b>hosting financial information</b> that could affect or have a material impact on a Commonwealth agency's financial statements and/or reporting.</li> <li>• Compliance mandate for federal or state audit requirements and/or policy.</li> <li>• A third-party provides financial service(s) (such as, but not limited to, payroll processing, accounts receivable, payable, or collection service).</li> </ul> <p><b>SOC 2 TYPE II Report</b> is required under the following conditions:</p> <ul style="list-style-type: none"> <li>• The service organization is <b>hosting, handling, or processing confidential or sensitive data/information</b> (as defined in <a href="#">ITP-SEC019 Policy and Procedures for Protecting Commonwealth Electronic Data</a>).</li> <li>• Compliance mandated with federal or state audit requirements and/or policy.</li> </ul> |  |
| 13 | <p><b>System Monitoring Audit Logging (ITP-BUS011 CSR-S1)</b></p> | <p>Commonwealth policy requirements:</p> <ul style="list-style-type: none"> <li>• Audit logging must be enabled and accessible to the Commonwealth (Information Security Office or designee)</li> <li>• Verbose logging is required</li> <li>• Vendor must have ability to correlate events, create security alerts, and based on severity of event (critical, severe, high-level) send incident notifications to Commonwealth Information Security Officers (ISOs).</li> <li>• Maintain reports online for a minimum of 90 days and archive for a minimum of 1 year. If the Commonwealth requires longer retention periods, the longer retention requirement takes precedence and should be documented in the SOW.</li> </ul>  |  |

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|  |  | <ul style="list-style-type: none"><li>a) Offeror/Contractor shall review and evaluate the system monitoring and audit logging requirements listed in <a href="#">ITP-BUS011 Section 4.2</a> and describe which apply and how they are being addressed as part of the proposed cloud service. Offeror/Contractor shall also indicate if any additional monitoring and logging is included.</li><li>b) Offeror/Contractor shall describe which system monitoring and audit logs are available to the customer and indicate how they are made available to the Commonwealth Information Security Officers (ISOs). Please indicate if authorized direct access, available only upon request, or other.</li><li>c) Offeror/Contractor shall provide an example of the logs to show what level of detail is available.</li><li>d) Offeror/Contractor shall describe if any dashboards and/or analytics are in place for Commonwealth ISO use.</li><li>e) Offeror/Contractor shall provide examples of monthly reporting.</li><li>f) Offeror/Contractor shall provide examples of annual reporting.</li><li>g) Offeror/Contractor shall define their continuous monitoring strategy, including measures, metrics and control assessments including frequencies.</li><li>h) Offeror/Contractor shall provide examples of log review, contingency plan testing, incident response plan testing and vulnerability scans</li></ul> |  |
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|    |   | <p>i) Offeror/Contractor shall describe responses to assessment findings, threshold alerts, decisions to either mitigate, transfer or accept risks related to identified vulnerabilities</p> <p>j) Offeror/Contractor shall describe method of access for all of the above.</p>  |  |
| 14 | <p><b>Data Segmentation Boundary Protection (ITP-BUS011 CSR-S2)</b></p> | <p>Offeror/Contractor shall provide a network/architecture diagram showing what security and technical controls are performing the network segmentation within the cloud service offering and including any connectivity to the Commonwealth's network (e.g. border gateway, perimeter and/or network firewall, web application firewall, VPN tunnels, security zone access, as applicable)</p> <p>Offeror/Contractor shall describe how data segregation (physically or logically) of Commonwealth data from non-Commonwealth data is guaranteed.</p> <p>Offeror/Contractor shall maintain the diagram throughout the contract term and provide updates if changes occur.</p> |  |
| 15 | <p><b>Endpoint Protection (ITP-BUS011 CSR-S3)</b></p>                   | <p>Offeror/Contractor shall provide and manage security controls. These are required to identify attacks, identify changes to files, protect against malware, protect user web services, Data Loss Prevention (DLP).</p> <p>Offeror/Contractor shall describe which of these security controls are included in the proposed cloud service and how these additional controls would generate a notification to the Commonwealth. Please indicate if any are not used and also if any are used that are not listed below.</p> <ul style="list-style-type: none"> <li>○ File Monitoring controls</li> <li>○ Antivirus controls</li> </ul>  |  |

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|    |   | <ul style="list-style-type: none"> <li>○ Cloud Aware IDS/IPS</li> <li>○ DLP controls</li> <li>○ Forensic controls</li> <li>○ Advanced Persistent Threat (APT) controls</li> </ul>  |  |
| 16 | <b>Encryption<br/>(ITP-BUS011<br/>CSR-S4)</b>                     | <p>Commonwealth policy requires the vendor to comply with SEC020, SEC031, and SEC019 encryption policies and minimum standards with the proposed cloud service. Encryption technical controls are required to protect data in transit and data at rest.</p> <p><a href="#">Link to SEC020 Encryption Standards Data at Rest</a><br/> <a href="#">Link to SEC031 Encryption Standards Data in Transit</a><br/> <a href="#">Link to SEC019 Protection of Commonwealth Data</a></p> <p>Offeror/Contractor shall describe what encryption protocols are used to secure data in transit, file uploads or transfers.</p> <p>Offeror/Contractor shall describe what encryption technology is used for data at rest. Describe how those encryption keys are managed.</p> <p>Offeror/Contractor shall describe what encryption technology is used for data backup and recovery. Describe how those encryption keys are managed.</p> <p>If databases are used, describe what level of encryption is applied.</p> |  |
| 17 | <b>Identity and Access Management<br/>(ITP-BUS011<br/>CSR-S5)</b> | <p>Offeror/Contractor must provide technical controls for authenticating users, provisioning and deprovisioning users, identity interaction and nonrepudiation needs for admins, internet users, and internal users.</p>   |  |

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|    |  | <p>Offeror/Contractor must describe reporting and audit mechanism for new staff, access changes, and deprovisioning of Offeror/Contractor staff.</p> <p>Offeror/Contractor must support use of Commonwealth Authentication services and Commonwealth Multi-Factor Authentication services.</p> <p>If cloud service is accessed by Commonwealth employees, Offeror/Contractor shall indicate if they can support Microsoft Azure Active Directory (AAD) or integration with ADFS.</p> <p>If cloud service is accessed by citizens or business partners, Offeror/Contractor shall indicate if they can support use of Keystone Login.</p> <p>If Offeror/Contractor cannot support use of Commonwealth authentication methods, Offeror/Contractor shall describe the technical controls used for authenticating users, multifactor services, provisioning and deprovisioning users, identity interaction and nonrepudiation needs for admins, internet user, internal users, etc.</p> |  |
| 18 | <p><b>Vulnerability Assessment (ITP-BUS011 CSR-S6)</b></p> | <p>Offeror/Contractor shall conduct third-party independent security/vulnerability assessments on a quarterly basis and submit the results of such assessment to the Commonwealth within three (3) business days.</p> <p>Offeror/Contractor shall describe its vulnerability assessment practices for the proposed cloud service and indicate how the following requirements will be addressed:</p> <ul style="list-style-type: none"> <li>a) Offeror/Contractor shall ensure cloud hosted application(s) are securely coded, vetted, and scanned.</li> </ul>  |  |

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|    |   | <p>b) Offeror/Contractor shall conduct quarterly vulnerability assessments, or sooner if due to compliance regulations or other requirements, or upon a major change to the solution.</p> <p>c) Offeror/Contractor shall provide vulnerability assessment results to the Commonwealth on a quarterly basis during the term of the contract and upon Commonwealth request. <i>(Refer to ITP-SEC021 and ITP-SEC023 for guidance)</i></p> <p>d) Offeror/Contractor shall be able to identify and validate vulnerabilities required for remediation and provide a mitigation plan and timeline to the Commonwealth.</p> <p>e) Offeror/Contractor shall ensure patching is up to date.</p>  |  |
| 19 | <b>Data Protection Recovery (ITP-BUS011 CSR-S7)</b> | <p>Offeror/Contractor shall provide a <b>business continuity plan</b> that addresses the following (indicate N/A if not applicable to the proposed cloud service and/or if customer responsibility):</p> <ul style="list-style-type: none"> <li>○ Data / Database Recovery</li> <li>○ Application Recovery</li> <li>○ Operating System Recovery</li> <li>○ Infrastructure Recovery</li> </ul> <p>Offeror/Contractor shall describe its capability to do a complete restoration in the event of a disaster.</p> <p>Offeror/Contractor shall describe what tests are performed as part of its disaster recovery plan.</p> <p>Offeror/Contractor shall describe its capability to provide services during a pandemic event.</p> |  |
| 20 | <b>Compliance (ITP-BUS011 CSR-S8)</b>               | <p>Offeror/Contractor shall describe its capability to meet compliance requirements if the proposed cloud service is subject to any regulations.</p>   |  |

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|    |  | <p>At minimum, all offerings shall meet Commonwealth ITP requirements and NIST Moderate Level security controls specified in the Federal Information Processing Standards (FIPS) and Special Publications (SPs).</p> <p>NIST control enhancements shall also apply unless specified otherwise.</p> <p>The agency reserves the right to upgrade the NIST control level. The agency also reserves the right to mandate additional regulations or standards such as HIPAA, PCI, IRS, CMs/ARS, etc.</p>   |  |
| 21 | <p><b>Security Incident Handling (ITP-BUS011 CSR-S9)</b></p> | <p>Offeror/Contractor shall agree to monitor, prevent, and deter unauthorized system access as per the requirements outlined below. If for any reason, Offeror/Contractor cannot meet this requirement it must be documented in their response.</p> <ul style="list-style-type: none"> <li>• Unauthorized system access must be reported to the Commonwealth within 48 hours.</li> <li>• In the event of any penetration, impermissible use or disclosure of data, loss or destruction of data, the Offeror/Contractor must immediately notify the Commonwealth and take all reasonable steps to mitigate the access and to mitigate any potential harm or further disclosure, loss or destruction of data. Licensor shall comply with state and federal data breach law and shall report security incidents to the Commonwealth within one (1) hour of when the Licensor knew of such unauthorized access, use, release, or disclosure of data.</li> <li>• The Commonwealth will provide escalation contacts and resource account to be used for notification purposes.</li> </ul> |  |

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|    |   | <ul style="list-style-type: none"> <li>Licensors shall not disclose the Commonwealth was a customer in the event of any penetration, impermissible use or disclosure of data, loss or destruction of data.</li> </ul> <p>Offeror/Contractor shall provide a copy of its Incident Response Plan (IRP). IRP should include incident handling practices, severity classification levels, customer notification and escalation processes, expected timeframes from time of impact to resolution, etc.</p>   |  |
| 22 | <b>Inventory (ITP-BUS011 CSR-S10)</b>           | <p>Offeror/Contractor shall describe how it maintains a complete, accurate, and up-to-date asset inventory of all resources involved in the proposed cloud service.</p> <p>Offeror/Contractor shall provide a detailed asset inventory list, including country of origin, that will be used for the proposed cloud service offering. The Commonwealth reserves the right to prohibit use of certain hardware based on risk.</p> <p>Include manufacturer, model numbers, processors, disk drives, database hardware, data center networking components (routers, switches, etc.), security devices (firewalls, etc.), load balancers, and any other hardware relevant to the delivery of the service.</p> <p>Offeror/Contractor shall provide notice to the Commonwealth for any changes to the asset inventory used to support the cloud service being provided to the Commonwealth that would impact regulatory compliance (refer to REQ#5 Regulatory Compliance Verification)</p> |  |
| 23 | <b>Data Backup and Recovery (Hosting Terms)</b> | <p>Offeror/Contractor shall take all necessary measures to protect the data including, but not limited to, the backup of the servers on a daily and weekly basis in accordance with</p>   |  |



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|  |  | <p>industry best practices and encryption techniques in accordance with Commonwealth retention requirements.</p> <p>Offeror/Contractor shall describe its backup and archival process including but not limited to the following:</p> <ul style="list-style-type: none"><li>• What is the length of time backups are available?</li><li>• Do you perform test restores?</li><li>• What archival backup/restore/versioning is part of the agreement and what actions require any additional service fees?</li><li>• Explain any shadowing or redundancy you have across multiple datacenters or repositories and if those data repositories are within the US and controlled by the vendor.</li><li>• Is storage of backup media offsite provided? If so, for how long?</li><li>• Location of backups and key management and storage for any backup encryption keys.</li></ul> |  |
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**Appendix N - Scoring Matrix**

**Request for Proposal for Job Order Contracting Program Consultant**

**Proposer's Name:**

| <b>Proposal Total Score</b> |                   |                          |
|-----------------------------|-------------------|--------------------------|
| <b>Criteria</b>             | <b>Max Points</b> | <b>Proposer's Points</b> |
| Statement of the Problem    | 25                |                          |
| Management Summary          | 25                |                          |
| Work Plan                   | 175               |                          |
| Prior Experience            | 100               |                          |
| Personnel                   | 75                |                          |
| Training                    | 75                |                          |
| Financial Capacity          | 25                |                          |
| <b>Total</b>                | <b>500</b>        |                          |



**pennsylvania**  
DEPARTMENT OF GENERAL SERVICES

**GENERAL CONDITIONS**  
**FOR**  
**DESIGN BUILD CONTRACTS FOR**  
**JOC JOB ORDERS**

**Department of General Services**  
**Harrisburg, PA**  
**2019**  
**JOC Edition**

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| 1.6  | Beneficial Occupancy  |
| 1.7  | Bi-weekly   |
| 1.8  | Commonwealth  |
| 1.9  | Contract for Job Order Contracting Program Consulting Services    |
| 1.10 | Construction Inspector  |
| 1.11 | Construction Manager (CM)   |
| 1.12 | Consultant  |
| 1.13 | Contract Bonds  |
| 1.14 | Contract Documents  |
| 1.15 | Contract Duration   |
| 1.16 | Contract Expiration Date  |
| 1.17 | Contract Start Date   |
| 1.18 | Construction Task Catalog®  |
| 1.19 | Days  |
| 1.20 | Deficiency Item   |
| 1.21 | Department of General Services                                    |
| 1.22 | Design Build Job Order Contract (a.k.a. Contract or JOC Contract) |
| 1.23 | Design Professional   |
| 1.24 | Detailed Scope of Work  |
| 1.25 | Design Cost Proposal  |
| 1.26 | Design Documents  |
| 1.27 | Design Job Order  |
| 1.28 | Effective Date of Contract  |
| 1.29 | Emergency Work  |
| 1.30 | Estimated Annual Value  |
| 1.31 | Extension of Time   |
| 1.32 | Field Order   |
| 1.33 | Final Inspection  |
| 1.34 | Job Order   |
| 1.35 | Job Order Completion Time   |
| 1.36 | Job Order Price   |
| 1.37 | Job Order Price Proposal  |
| 1.38 | Job Order Proposal  |
| 1.39 | JOC Contractor (Contractor)                                       |
| 1.40 | JOC Contractor's Retained Professional (Retained Professional)    |
| 1.41 | Joint Scope Meeting   |
| 1.42 | Labor & Industry (L&I)  |
| 1.43 | Lead JOC Contact  |
| 1.44 | Letter of Intent (LOI)  |
| 1.45 | Manufacturer  |

|      |                                    |
|------|------------------------------------|
| 1.46 | Milestone Activity                 |
| 1.47 | Modification                       |
| 1.48 | Non Pre-priced Task                |
| 1.49 | Normal Working Hours               |
| 1.50 | Notice of Deficiency               |
| 1.51 | Notice to Proceed                  |
| 1.52 | Off-Site Work                      |
| 1.53 | On-Site Work                       |
| 1.54 | Option Term                        |
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| 1.59 | Pre-priced Task                    |
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| 1.62 | Project Completion Date            |
| 1.63 | Project Limits                     |
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| 1.66 | Project Schedule                   |
| 1.67 | Project Start Date                 |
| 1.68 | Record Drawings                    |
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| 1.80 | Substantial Completion of the Work |
| 1.81 | Superintendent                     |
| 1.82 | Supplemental Job Order             |
| 1.83 | Supplier                           |
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|     |                         |
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- 12.7 Investigation by the Client Agency
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- 13.7 Payment Made When Grounds are Resolved
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- 20.11 Right-to-Know Law
- 20.12 Non-Appropriation Clause
- 20.13 Contractor Integrity Provisions
- 20.14 Contractor Responsibility Provisions

## **ARTICLE 1: DEFINITIONS**

Whenever in this Contract the following words and expressions occur, they have the following meanings, which shall be construed in conjunction with the applicable definitions of the Commonwealth Procurement Code:

- 1.1 Administrative Procedures** – The JOC Program’s Job Order procedures manual to be followed for various administrative functions, including but not limited to project correspondence, job conferences, preparation of Job Order Proposals, use of the eGordian® system, schedule, testing, submittals, Applications for Payment, changes in the Work, Supplemental Job Orders, Extensions of Time, Steel Product Procurement compliance, and Final Inspection.
- 1.2 Adjustment Factor** - A competitively bid adjustment to be applied to the Unit Prices listed in the Construction Task Catalog®.
- 1.3 Application for Payment** – The document required by the Client Agency to be submitted by the JOC Contractor to the Client Agency pursuant to the applicable Administrative Procedure for the Client Agency’s review and/or release of payment.
- 1.4 As-Built Record Drawings** – Terminology used to identify contract prints or drawings, corrected with suitable markings to show all changes or variations from the original contract drawings, including all items uncovered during the Work and show details of the Work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment and similar items.  
  
As-built record drawings are not “Record Drawings”, which terminology is used to describe the revised set of construction documents (also referred to as L&I Record Drawings) in which the Design Professional is responsible for submitting to L&I for approval of changes made during construction that are not in accordance with the Design Documents.
- 1.5 Base Term** - The initial period of the Contract and does not include any Option Terms.
- 1.6 Beneficial Occupancy** – The date upon which the Design Professional certifies and the Client Agency, or CM (if applicable), concurs that the Work is sufficiently complete, in accordance with the Detailed Scope of Work and Contract Documents, so that the Client Agency may use, occupy or operate the Project as fit for the use for which it was intended.
- 1.7 Biweekly** – an event occurring every two weeks.
- 1.8 Client Agency** - The Department or any other executive agency, government agency, independent agency, state-affiliated agency, state-aided institution or state-related institution requesting the Project, which includes the Work covered by the Job Order. If a Construction Manager is managing a Job Order or Project, the term “Construction Manager” is used interchangeably with Client Agency in the Contract Documents.

- 1.9 Commonwealth** – The Commonwealth of Pennsylvania
- 1.10 Contract for Job Order Contracting Program Consulting Services** – The agreement between the Department of General Services and The Gordian Group, Inc. The Department of General Services has retained the services of The Gordian Group, Inc. to administer the Commonwealth’s JOC program and work in conjunction with the Client Agency to procure Job Orders and perform all applicable Construction Manager Services.
- 1.11 Construction Inspector** – the Construction Manager’s and/or Client Agency’s employee(s) assigned to the Project to assist in inspecting the Work of specific disciplines.
- 1.12 Construction Manager (CM)** – The Construction Manager shall be either the Gordian Group, Inc., retained by the Department, or the Client Agency which will act as the authorized representative to coordinate and manage the Project. The term “Construction Manager” is used interchangeably with “Client Agency” in the Contract Documents. Also known as “JOC Consultant.”
- 1.13 Consultant** – A consultant is a specialist retained by the Client Agency or the Design Professional for the performance of its specialty.
- 1.14 Contract Bonds** – When required for a Job Order, the Contract Bonds are the bonds to be executed by one or more surety companies legally authorized to do business in the Commonwealth of Pennsylvania for the faithful performance of the contract and for payment of labor and material, as required by the Client Agency.
- 1.15 Contract Documents** – As described in Article I of the Job Order Contract, the Contract Documents shall consist of the Job Order Contract; JOC Request Proposal Process; the Request For Proposal and all appendix documents attached thereto (“RFP”); the Construction Task Catalog®, the Technical Specifications, all bulletins; the JOC Contractor’s proposal submitted in response to the RFP; the Contract Bonds; the Conditions of the Contract (General, Special, JOC Supplementary, and other Conditions); The Job Order and all related documents issued in conjunction with the Job Order, including but not limited to, the Detailed Scope of Work, the Job Order Proposal, Supplementary Job Orders, the Design Documents, all Contract Drawings created by or for the Design Professional, the specifications created by or for the Design Professional, including specifications associated with all bulletins; all RFI responses and Supplementary Job Orders; Amendments to the Contract; and the Administrative Procedures for the JOC Projects. All of these documents form the contract and are incorporated by reference and are as fully part of the contract as if attached to this Contract or repeated herein. To the extent that any of these documents are amended by statute, the statutory language will control.
- 1.16 Contract Duration** – The number of calendar days until the Contract expires and includes the Base Term and all Option Terms.
- 1.17 Contract Expiration Date** – The date on which the Contract expires and includes the Base Term of all available Option Terms.
- 1.18 Contract Start Date** – For purposes of calculating date for completion of the

Contract, this is the Effective Date of the Contract.

- 1.19 Construction Task Catalog®** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- 1.20 Days** – Calendar days unless specifically stated otherwise in the Contract.
- 1.21 Deficiency Item** – Any work or activity, either performed or unperformed, which the Client Agency or CM (if applicable) will not certify as being performed in accordance with the Detailed Scope of Work and Contract Documents.
- 1.22 Department of General Services**– the Department of General Services of the Commonwealth of Pennsylvania.
- 1.23 Design Build Job Order Contract (a.k.a. Contract or JOC Contract)** – A written agreement consisting of the Contract Documents, as defined in Article I of the Design Build Job Order Contract and executed by the JOC Contractor and the Commonwealth in accordance with the Commonwealth Attorneys Act. The Design Build Job Order Contract represents the entire an integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent that any of these documents are amended by statute, the statutory language will control. Also known as “Contract” and “JOC Contract.”
- 1.24 Design Professional** - the licensed engineer(s) and/or architect(s) providing necessary design services for the Job Order or Project. This will be either the JOC Contractor’s “Retained Professional” or the Client Agency as the “Professional.”
- 1.25 Detailed Scope of Work** - A document setting forth the work the JOC Contractor is obligated to complete for a particular Job Order.
- 1.26 Design Cost Proposal** – The Lead JOC Contractor’s submission in response to a Request for Design Cost Proposal. The Design Cost Proposal shall include the items listed in the Design Guidelines (Appendix T).
- 1.27 Design Documents** – The documents created by the Design Professional or the Client Agency defining the Detailed Scope of Work.
- 1.28 Design Job Order** – A Job Order issued in response to the Lead JOC Contractor’s submission of a Design Cost Proposal.
- 1.29 Effective Date of the Contract** – the date on which the last Commonwealth official who is required to execute the contract executes it.
- 1.30 Emergency Work** - work necessitated by a Declaration of Emergency to remove or correct the basis of emergency.
- 1.31 Extension of Time** – a formal approved extension of the Job Order Completion Time.
- 1.32 Field Order** – A field order is a record of a minor adjustment in the work that results in no change in the Job Order Price or Job Order Completion Time.

- 1.33 Final Inspection** – A review of the Work conducted by the Design Professional and the Client Agency or CM (if applicable) after the JOC Contractor requests a Final Inspection. Prior to this request, the JOC Contractor shall obtain the Certificate(s) of Occupancy from the Department of Labor & Industry. The review shall determine whether the Project is substantially complete. If, as a result of this inspection, the Work is determined by the Client Agency to be substantially complete, the Design Professional generates a certificate of final inspection and a Punch List of incomplete items and a reasonable estimated cost of completion.
- 1.34 Job Order** - A written order issued by the Client Agency, such as a Purchase Order, requiring the JOC Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
- 1.35 Job Order Completion Time** - The calendar days within which the JOC Contractor must complete the Detailed Scope of Work.
- 1.36 Job Order Price** - The value of the approved Job Order Price Proposal and the amount the JOC Contractor will be paid for completing a Job Order.
- 1.37 Job Order Price Proposal** - A price proposal prepared by the JOC Contractor that includes the Pre-priced Tasks, Non-Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- 1.38 Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors; (d) Construction schedule; and (e) other requested documents.
- 1.39 JOC Consultant** - The Department of General Services has retained the services of The Gordian Group, Inc. to be the JOC Consultant for the Contract and work in conjunction with the Client Agency as the JOC Consultant to procure Job Orders from identification through issuance of the Job Order, purchase order, or similar document.
- 1.40 JOC Contractor (Contractor)** – The person, entity, or organization identified as such in the Job Order Contract and is referred to throughout the Contract Documents, as if singular in number.
- 1.41 JOC Contractor’s Retained Professional** (Retained Professional/Design Professional) – the licensed engineer(s) and/or architect(s) retained by the JOC Contractor to provide necessary design services under the Job Order Contract. The term JOC Contractor’s Retained Professional is referred to throughout the Contract Documents as if singular in number and means a person or firm and/or persons or firms that have contractual responsibility for all or any portion of the Project design.
- 1.42 Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- 1.43 Labor & Industry (L&I)** – The Commonwealth of Pennsylvania’s Department of Labor & Industry also referred to as “L&I”.



- 1.44 Lead JOC Contractor** - The Prime JOC Contractor who coordinates the progress of the Work. The Lead JOC Contractor will be designated in the Detailed Scope of Work but usually the General Construction JOC Contractor on most Job Order Projects.
- 1.45 Letter of Intent (LOI)** – Written notification issued by the Client Agency upon award of the Job Order. The JOC Contractor may rely upon this document to initiate the scope of activities described in the letter (off-site Work) before there is a fully executed Job Order with the Client Agency and to incur costs in conducting these activities described in the letter.
- 1.46 Manufacturer.** A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications and who receives compensation from the Design Build JOC Contractor, pursuant to the terms of a purchase order or invoice, to provide any material and/or any equipment to the Project. Nothing contained in the Contract Documents between the JOC Contractor and the Commonwealth creates any contractual relationship between the Commonwealth, the Client Agency, and any Manufacturer. A Manufacturer lacks privity of Contract to the Commonwealth and every Manufacturer agrees that it neither acquires nor intends to acquire any rights against the Commonwealth or Client Agency on a third party beneficiary theory or any other theory.
- 1.47 Milestone Activity** – The beginning date or the completion date for significant construction events set forth in the Work Statement portion of the Job Order.
- 1.48 Modification.** Amendments to the Contract. Modifications can be made only after execution of the Contract.
- 1.49 Non Pre-priced Task** - A task that is not set forth in the Construction Task Catalog®.
- 1.50 Normal Working Hours** - Includes the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, except for Owner holidays.
- 1.51 Notice of Deficiency** – A written document issued by the Client Agency to record non-conforming work, deficient work and/or schedule slippage.
- 1.52 Notice to Proceed** - A written notice issued by the Client Agency directing the JOC Contractor to proceed with construction activities to complete the Job Order.
- 1.53 Off-Site Work** – All work that is not physically carried out on the project site.
- 1.54 On-Site Work** – All work that is physically carried out on the site.
- 1.55 Option Term** - An additional period of time beyond the Base Term which extends the termination date of the Contract.
- 1.56 Orientation Meeting** - The meeting scheduled, according to the Administrative Procedures, no later than the thirtieth day following the effective date of the contract to review and discuss the JOC Program.

- 1.57 Other than Normal Working Hours** – Includes the hours of 4:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and Owner Holidays.
- 1.58 Post-Consumer Material** – Material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.
- 1.59 Post-Consumer Recovered Paper** – Any paper, paperboard, and fibrous wastes from retail stores, office buildings, homes and so forth, after they have been passed through their end-usage as a consumer item including: used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards and used coreage, as well as all paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste.
- 1.60 Pre-priced Task** - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
- 1.61 Professional** - The Client Agency's employee(s) acting as the Architect and/or Engineer to provide necessary design services for the Job Order or for the Project.
- 1.62 Project** – The collective improvements to be constructed by the JOC Contractor pursuant to a Job Order, or a series of related Job Orders
- 1.63 Project Completion Date** – the date on which the Detailed Scope of Work must be complete. The Job Order Completion Time is calculated by adding the Job Order Completion Time to the Project Start Date.
- 1.64 Project Limits** – the area designated in the Job Order that establishes the perimeter within which the JOC Contractor shall perform the Detailed Scope of Work.
- 1.65 Project Manager** – JOC Contractor's person responsible for direct supervision of the Project, including all design and construction, in accordance with the Detailed Scope of Work, the Contract Documents and the Job Order Contract with the Client Agency. The Project Manager is responsible for continuous contract operations including supervision, coordination and completion of all of the work. The Project Manager shall have full authority to act on behalf of the JOC Contractor in relation to Project activities and associated work.
- 1.66 Project Procedures Manual** – The Project Procedures Manual for Design Professional for JOC Contracts ('the Manual' or 'PPM') provides the Design Professional of the JOC Contract with a guideline of procedures and standards for the design and construction of the Client Agency JOC projects. The Manual's organization reflects the sequence in which services and submissions will normally occur.
- 1.67 Project Schedule** – The Critical Path Method (CPM) schedule prepared by the JOC Contractor.
- 1.68 Project Start Date** – For purposes of calculating the date for completion of the

Detailed Scope for Work, this is the date of the Initial Job Order Conference.

- 1.69 Record Drawings** – (also referred to as L&I Record Drawings) - The revised set of construction documents in which the Design Professional is responsible for submitting to L&I for approval of changes made during construction that are not in accordance with the Design Documents. The JOC Contractor shall also submit one (1) set to the Client Agency.
- 1.70 Recovered Material** – Waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from and commonly reused within an original manufacturing process.
- 1.71 Recovery Plan** – If a milestone date is missed, the JOC Contractor shall submit a plan consisting of a narrative explanation and a revised CPM that illustrates how the JOC Contractor will complete the Detailed Scope of Work within the Job Order Completion Time.
- 1.72 Request for Information** – A written question issued by the JOC Contractor seeking clarification of the Contract Documents or Detailed Scope of Work. For any RFI or other written communication between the JOC Contractor and the Design Professional that could be considered a project RFI, the JOC Contractor shall also copy the Client Agency and the CM.
- 1.73 Request for Job Order Proposal** - A written request to the JOC Contractor to prepare a Job Order Proposal for the Detailed Scope of Work referenced therein.
- 1.74 Samples** – Physical examples furnished by the JOC Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the work will be judged.
- 1.75 Secured Facility** – A facility with a secure perimeter through which admission of persons, material, and equipment is regulated by inspection and visitors within the facility are monitored and/or supervised, for example within the secure perimeter of a correctional facility.
- 1.76 Small Diverse Business** – Department verified Minority Business Enterprises (MBEs), Woman Business Enterprises (WBEs), Disability-Owned Business Enterprises (DOBE), and LGBT-owned Business Enterprises (LGBTBE).
- 1.77 Specification** – A description of the physical or functional characteristics or the nature of a construction item, including a description of any requirement of inspecting, testing or preparing a construction item for delivery. The specifications are a part of the Contract Documents and must be interpreted in conjunction with the other Contract Documents, as specified further in these General Conditions.
- 1.78 Subcontractor** – A person or organization which has a contract with the JOC Contractor to perform any of the design, construction or testing work. The term subcontractor is referred to throughout the Contract Documents as if singular in number and means a subcontractor or its authorized representative. The Design Professional shall be deemed to be included in the definition of a subcontractor.

The JOC Contractor and every subcontractor agree that there is no privity of contract between the Client Agency and any subcontractor and that, to the extent set forth by law, the subcontractor has no direct cause of action against the Client Agency for any claim arising out of the Project.

- 1.79 Submittals** – Administrative or technical information, including but not limited to drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data, samples and other data that are prepared by the JOC Contractor, the Design Professional or any subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the Work or how it fits in relation to other parts of the Work.
- 1.80 Sub-Subcontractor** – A sub-subcontractor is a person or organization who has a contract with a subcontractor to perform any of the design, construction or testing work. The term sub-subcontractor is referred to throughout the Contract Documents as if singular in number and means a sub-subcontractor or its authorized representative.
- 1.81 Substantial Completion of the Work** – When the Work on the Detailed Scope of Work is sufficiently completed in accordance with the Job Order and certified by the Construction Manager and/or Client Agency so that the Project or specified part(s) of the Project can be used, occupied or operated for its intended use. In no event shall a Project be certified as substantially complete until at least 90% of the Detailed Scope of Work has been completed and accepted by the Construction Manager and/or Client Agency and is capable of Beneficial Occupancy.
- 1.82 Superintendent** – The JOC Contractor's full time construction representative at the project site. The Superintendent is responsible for continuous field supervision, coordination and completion of the construction work, and, unless another person is designated in writing by the JOC Contractor to the Client Agency, for the prevention of accidents. The Superintendent shall have full authority to act on behalf of the JOC Contractor in relation to construction activities and associated work.
- 1.83 Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
- 1.84 Supplier** – An individual, firm, partnership, association, corporation or other legal entity who receives compensation from the JOC Contractor, pursuant to the terms of a purchase order or invoice, to provide any material and/or any equipment to the Project. Nothing contained in the Contract Documents between the JOC Contractor and the Commonwealth creates any contractual relationship between the Commonwealth, Client Agency, and any Supplier. A Supplier lacks privity of Contract to the Commonwealth and every Supplier agrees that it neither acquires nor intends to acquire any rights against the Commonwealth on a third party beneficiary theory or any other theory.
- A. Stocking Supplier:** a firm that owns, operates, or maintains a store, warehouse, or other establishment, in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or

leased to the public in the usual course of business.

**B. Nonstocking Supplier:** Nonstocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer's representative or a stocking supplier. In order for a non-stocking supplier to receive credit, it must perform a useful business function by engaging in meaningful work (i.e., negotiating price; and determining quality and quantity; and ordering materials; and paying for the materials).

- 1.85 Technical Specifications** - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.86 Uniform Construction Code (UCC)** – Pennsylvania's Uniform Construction Code (35 P.S. §7210.101 *et seq.*) that grants the Pennsylvania Department of Labor & Industry sole jurisdiction over state-owned buildings. A general description and important links can be found at <http://www.dli.state.pa.us> and clicking on the Building Codes Quick Link. The JOC Contractor is responsible for compliance as set forth in the UCC and these General Conditions.
- 1.87 Unit Price** - The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
- 1.88 Veteran Business Enterprise** – Department verified Veteran-Owned Small Business Enterprises and Service-Disabled Veteran-Owned Small Business Enterprises.
- 1.89 Work** – All materials, labor and use of tools, equipment and services necessary by the JOC Contractor and/or Subcontractor to complete the Job Order.

## **ARTICLE 2: EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS**

- 2.1 Contract Execution.** The Commonwealth and the JOC Contractor shall sign the Design Build Job Order Contract. All drawings created during the design portion of any Project shall be sealed as appropriate by the Design Professional. Any Licensed Consultant(s) of the Design Professional shall as appropriate sign and seal for their part of the Work. No oral contract or conversation with any officer, agent or personnel of the Client Agency or Client Agency, either before or after the execution of the Job Order Contract, shall affect or modify any of the terms or obligations herein contained.
- 2.2 Contract Interpretation.**

- A. The Contract Documents are complementary, and what is required by any one of the Contract Documents is binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items or conditions necessary for the proper design, construction and testing of the work for its intended use. Work not covered under any heading, section, branch, class, or trade of the specifications need not be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable as being necessary to produce the intended results.

The omission of words or phrases for brevity of the Contract Documents, the inadvertent omission of words or phrases or obvious typographical or written errors shall not nullify the Client Agency's interpretations so long as that interpretation is reasonably inferable from the Contract Documents as a whole. Except as noted otherwise, references to standard specifications or publications or associations, bureaus, or organizations shall mean that latest edition or revision of the referenced standard specification or publication as of the issuance date of the Job Order. Words which have well-known technical or trade meanings are used in this contract in accordance with such recognized meanings.

- B. In the event of a conflict in the Contract Documents, the JOC Contractor shall notify the Design Professional and the Client Agency within the time frame stated below. The Design Professional (as appropriate) shall interpret the Contract Documents Client the following priorities:
1. Amendments shall govern over all Contract Documents and subsequent Amendments shall govern over prior Amendments only to the extent modified.
  2. The Job Order Contract.
  3. JOC Supplementary Conditions shall govern over all specifications.
  4. Special Conditions shall govern over General Conditions, and drawings.
  5. Specifications and drawings shall govern over the General Conditions.
  6. The General Conditions.
  7. Supplemental Job Orders shall govern over Job Orders and subsequent Supplemental Job Orders shall govern over prior Supplemental Job Orders.
  8. All Job Orders including the Detailed Scope of Work and Job Order Proposal.
  9. The Construction Task Catalog®.
  10. The Technical Specifications.
  11. Bulletins or addenda and subsequent addenda shall govern over prior addenda only to the extent modified.
  12. The RFP.
  13. The Administrative Procedures.
  14. If there is a conflict regarding quantities or quality of products in the Contract Documents, the higher quantity or quality shall be delivered.

15. If there is a conflict between the contract drawings and the specifications, the specifications shall prevail.

- 2.3 Contract Organization.** The organization of the specifications into divisions, sections and articles and the arrangement of drawings shall not control the JOC Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade. The JOC Contractor shall comply with all provisions of the Project Procedures Manual. Nothing in this paragraph shall relieve the JOC Contractor from the requirements of the Separations Act as may be provided for in the RFP.
- 2.4 Contract Detail.** Where the Work is shown in complete detail on only a portion of a drawing or there is an indication of continuation, the remainder being depicted or described in an outline or schematic form, the Work drawn out in detail applies to other like portions of the Work.
- 2.5 Contract Errors or Conflicts.** If the JOC Contractor, in the course of design and construction, finds any conflict, error or discrepancy on or among the Contract Documents, such conflict, error or discrepancy shall be immediately referred to the Retained Professional in writing, with a copy of each such referral to be forwarded to the Client Agency. If the matter concerns the Design Documents only, the Retained Professional must review the matter and issue an interpretation to the JOC Contractor in writing within seven (7) days after receipt of the JOC Contractor's written request. If the Retained Professional is providing the interpretation, a copy of each such interpretation to be forwarded to the Client Agency for acceptance. If the matter concerns the Detailed Scope of Work documents, the Client Agency shall review the matter and issue an interpretation to the JOC Contractor in writing within seven (7) days after receipt of the JOC Contractor's written request, with a copy to the Retained Professional.
- 2.6 Ownership and Copies of Detailed Scope of Work.** Unless otherwise provided in the Job Order, the Retained Professional will furnish three (3) complete paper sets and three (3) complete sets in the Client Agency accepted electronic format and media of drawings and specifications to the Client Agency at the time they are issued for construction of the project. These three sets of the Detailed Scope of Work, including any drawings and specifications, shall be in addition to any drawings and specifications submitted as preliminary design documents. If the Client Agency requires additional sets for the Client Agency's use during the project, the Client Agency shall pay for the cost of obtaining additional specifications and drawings. All drawings, specifications and copies thereof furnished by the Design Professional are and shall remain the property of the Client Agency. They are not to be used on any other project, and, with the exception of one Contract set for each party to the Contract, are to be returned to the Client Agency on request at the completion of the Work.

## **ARTICLE 3: JOC CONTRACTOR'S RETAINED PROFESSIONAL'S RESPONSIBILITIES AND SERVICES**

- 3.1 Relationship between the Client Agency, JOC Contractor and Retained Professional.** The Retained Professional shall be a single entity under contract to the JOC Contractor for an individual Project and shall engage as subcontractors and/or consultants, qualified professionals as appropriate for all design, testing and related services required for the Project. As such the JOC Contractor has ultimate responsibility to the Client Agency for the design and/or the Retained Professional's coordination of the work of multiple professionals utilized for different portions of the Work. The Retained Professional is responsible to the JOC Contractor and only the JOC Contractor may give instructions which bind the Retained Professional. Although the Client Agency will obtain a copy of the fully executed contract between the JOC Contractor and the Retained Professional, the Client Agency will not assume any privity or liability for the performance of the JOC Contractor/Retained Professional contract. The JOC Contractor is constructing the Project for the Client Agency on behalf of the Client Agency in accordance with the Detailed Scope of Work and Contract Documents. Neither the Client Agency nor the Retained Professional may change scope or direct that items be included in the design that will increase the Job Order Price. All requests for such changes must be submitted to the Client Agency by the JOC Contractor. The JOC Contractor shall only utilize DGS-self-certified Small Business designers as the Retained Professional for Job Order Projects.
- 3.2 Professional Design Services.** The Retained Professional's Design Services will be in accordance with the Separations Act and consist of design of the Project described in the Detailed Scope of Work. They include coordination of all architectural, structural, mechanical, plumbing and electrical engineering, and landscape architectural design and all other professional services and stated construction phase services required for the Project. The Retained Professional shall perform its services in accordance with the Design Guidelines.
- 3.3 Consultants.** The Retained Professional's responsibilities include the coordination for all its subcontractors and/or consultants and in the several branches of the architectural and engineering professions.
- 3.4 Representation as to Qualifications.** The Retained Professional specifically represents that the Retained Professional and all consultants, agents, servants, employees, officers and subcontractors possess and shall possess the required licenses and certifications, the experience, knowledge, and skills necessary to qualify them individually for the particular duties they perform. The Retained Professional warrants that it shall perform the design in accordance with all engineering and architectural principles, practices and methods generally accepted as standards of the industry for projects similar in nature, size and complexity to this project. The Client Agency may demand of the JOC Contractor, with written justification to the Retained Professional, the removal from the Project



of any person employed by the Retained Professional who the Client Agency deems to be insufficiently qualified for that portion of the Work or who is incompetent or guilty of misconduct.

**3.5 Retained Professional Liability Insurance.**

- A. The Retained Professional and any subcontractors and/or consultants of the Retained Professional that are required to provide sealed documents shall secure and maintain Professional Liability Insurance as specified in Article 10.
- B. Alternately, the Retained Professional may be covered under the JOC Contractor policies as provided for in the RFP. The JOC Contractor is ultimately responsible for the Project design and any errors, omissions or other acts covered by professional liability insurance and shall ensure that the JOC Contractor and the Retained Professional are adequately and appropriately covered by insurance.
- C. The proper Certificate of Insurance shall be provided to the Client Agency prior to commencing design services.

**3.6 Coordination of Separate Subcontracts.** The Retained Professional shall coordinate the plans and Specifications for all of its subcontracts and/or consultants to insure against omissions, conflicts, overlaps or duplications of any items of work or materials on the Project.

**3.7 Selected Construction Management.** The Retained Professional shall cooperate with the Construction Manager. The Retained Professional shall promptly make available to the Construction Manager, in appropriate formats, the drawings, specifications and other information pertinent to the selected construction management services.

**3.8 Responsibility.** The Retained Professional is responsible for the compliance of the Contract Documents related to Design with all applicable permits, laws, regulations and ordinances of all commissions, agencies and governments, federal, state and local, insofar as they are applicable to, and have jurisdiction over, the Project. The Retained Professional shall make all required submittals to, and shall obtain all required approvals from, the applicable agency in a timely manner so as not to cause delays to the Project.

**3.9 Cooperation with Local Bodies.** During the design of the Project, the Retained Professional shall keep the local government informed about the Project and comply with any applicable requirements of local zoning, planning and supervisory bodies. If any of these requirements vary with the RFP and substantially increase the cost of the Project, or should any required approvals be withheld by the local bodies, the Retained Professional shall immediately notify both the JOC Contractor and the Client Agency in writing of the issue.

**3.10 JOC Contractor's Retained Professional's Interpretation of Documents.** The JOC Contractor's Retained Professional is the initial interpreter of the

requirements of the Detailed Scope of Work related to Design. The JOC Contractor's Retained Professional will, within seven (7) days after receipt of a written request, render in writing such interpretation and shall copy the Client Agency on all such correspondence rendering an interpretation of the Detailed Scope of Work. All interpretations by the JOC Contractor's Retained Professional shall be consistent with the Detailed Scope of Work and Contract Documents.

- 3.11 JOC Contractor's Retained Professional's Review of Submittals.** The installing contractor or subcontractor must submit items to be incorporated into the Project for review to the Construction Manager and/or the JOC Contractor's Retained Professional. The Construction Manager and/or the JOC Contractor's Retained Professional will then review submittals as provided in these General Conditions. The Construction Manager and/or JOC Contractor's Retained Professional shall cooperate with the Client Agency to develop a list of approved shop drawings, approved descriptive data, approved catalogue cuts, and approved technical data to be submitted to the Client Agency for review
- 3.12 Replacement of JOC Contractor's Retained Professional.** If the JOC Contractor terminates the Retained Professional, the JOC Contractor may hire a new Retained Professional whose status under the Contract Documents shall be that of the former JOC Contractor's Retained Professional. The decision of whether or not to terminate the Retained Professional rests solely with the JOC Contractor. The Client Agency expressly reserves the right to evaluate and either accept or reject the JOC Contractor's replacement Retained Professional. The JOC Contractor will not hire a replacement Retained Professional without the prior written consent of the Client Agency.
- 3.13 Attendance at and Minutes of Conferences and Meetings.** The Retained Professional, or its authorized representative, and the Retained Professional's Subcontractors and/or Consultants when appropriate, shall attend all meetings and conferences as required by the Client Agency. The Retained Professional shall submit to the Client Agency detailed minutes of all meetings and conferences within one week after each such conference and meeting. The Retained Professional must have in attendance at the meeting all individuals from the Retained Professional or any of its Subcontractors and/or Consultants who are necessary to properly address the agenda. Meetings with regulatory agencies or other agencies required to properly design the Project are included in this requirement. In the absence of a Retained Professional, and when required for a Job Order, the JOC Contractor shall perform the duties described in this paragraph.
- 3.14 Coordination with Existing Facilities and Utilities.** The Retained Professional, their Subcontractors and/or Consultants, shall consult with the Client Agency to obtain all necessary data for coordinating the Project with existing structures and all support utilities. The Retained Professional shall consult with the Client Agency regarding any correlation of design with future planning. The Retained Professional shall confirm in writing to the Client Agency, through the JOC Contractor, all data furnished to the Retained Professional in this connection and the data's adequacy. The Retained Professional shall verify the information provided in the Detailed Scope of Work regarding the various public services and utility companies, such as gas, electric, water, steam, waste water

treatment/disposal, surface water disposal, telephone and communication, the commitment of their capability to service this Project, and shall submit same to the Client Agency as part of its design submissions. The Retained Professional shall bring to the Client Agency' immediate attention any reservations to this commitment by the utility companies, such as in-house engineering and construction costs and any inconsistencies regarding the locations and characteristics of such utilities between the actual field conditions and those indicated.

- 3.15 Visits to Site During the Design Phase of the Project.** The Retained Professional, its Subcontractors and/or Consultants shall visit the Project Site as required and shall obtain and study available record drawings, investigate existing conditions, visual topographic and site data, and the Client Agency's available future plans for the purpose of obtaining any and all pertinent or necessary information as to local conditions not required to be shown, or shown without complete detail, in the Detailed Scope of Work, on the Plat of Survey and Report of Surveyor furnished by the Client Agency, as may affect the design of the Project and the necessity for special provisions or wording in the specifications. The Retained Professional shall verify in writing to the Client Agency, through the JOC Contractor, no later than with its preliminary submission, that it has requested and obtained pertinent interference documentation from all utility companies and any other entity that may have underground or concealed lines or objects in the area of the proposed construction. The Retained Professional shall verify existing conditions by visual inspection and measurement and not by sole reliance on record documents or land survey. If corrective or additional work becomes necessary by reason of such failure to obtain all necessary, clarifying and available data for a proper and correct design of the Project, the cost of such corrective work shall be borne by the JOC Contractor.
- 3.16 Submittal Schedule.** The JOC Contractor shall submit all necessary submittals to the Retained Professional in accordance with a submittal schedule established by the JOC Contractor and its subcontractors. The submittal schedule shall be established by the JOC Contractor and distributed to the Client Agency or the Construction Manager no later than the first Job Conference.
- 3.17 Scheduling of Submissions.** During the design phase, the Retained Professional shall schedule and coordinate its work so the Client Agency has adequate time and opportunity to review and accept both the program and the design concepts prior to the scheduled submissions to the Client Agency. During the final phases of design, the Retained Professional shall coordinate its work with the Client Agency to keep the agency current with the project development. The Retained Professional must obtain acceptance in a timely manner to permit the Work to continue on schedule.
- 3.18 Preliminary Design Phase - Scope of Phase.** Upon receipt of Letter of Intent from the Client Agency, the Retained Professional shall, based on the Detailed Scope of Work, prepare the Preliminary Design Submission Documents which will be reviewed by the Client Agency and Gordian Group.
- 3.19 Reports During Design on Special Conditions Relating to Operations and Maintenance.** The Retained Professional shall familiarize itself with the Client

Agency's normal operating and maintenance programs and shall submit with the Preliminary Design Phase submission, reports on any special operating or maintenance procedures required by the design. If the design does not require departures from the Client Agency's normal procedures, the Retained Professional shall submit a signed statement to that effect to the Client Agency with the Preliminary Design Submission.

- 3.20 Final Design Phase - Scope of Phase.** Upon receipt of the Client Agency's written acceptance of the Preliminary Design Submission, the Retained Professional shall develop the Final Design Documents which will be reviewed by the Client Agency and Gordian Group.
- 3.21 Access to Work and On-Site Representation.** The Retained Professional, their Subcontractors and/or Consultants and authorized representatives shall, at all times have access to the Work, wherever it is in preparation and progress. The JOC Contractor shall provide the facilities and means for such access so the JOC Contractor's Retained Professional may perform its functions under the Contract Documents.
- 3.22 Visits to the Site During Construction.** The Retained Professional, or an authorized and qualified representative, shall visit the site as often as required by the Job Order and/or construction activities, progress during periods of active construction, and payments. The Retained Professional shall review the progress of the Work, including the completeness of the JOC Contractor's record prints. The Retained Professional's Subcontractors and/or Consultants must visit the site at such intervals as deemed necessary by the Client Agency or the Retained Professional, to review their respective phases of the Work in order to achieve the requirements of the Contract. In addition, the Retained Professional is to attend any and all project site conferences that are determined by the Client Agency to be necessary to clarify the Contract Documents related to Design. The Retained Professional is not responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.
- 3.23 Progress Reports as to Construction.** As required for a Project, the Retained Professional shall, within seven (7) days of each site visit, submit written reports to the Client Agency or Construction Manager, through the JOC Contractor, relative to the progress of the Work. The Progress Reports shall include the findings of the Retained Professional, its Subcontractors and/or Consultants on each of their visits. In the absence of a Retained Professional, the JOC Contractor shall perform the duties described in this paragraph.
- 3.24 Interpreter.** The Client Agency, or its designee, who created the Detailed Scope of Work shall interpret the JOC Contractor's Retained Professional's Contract Documents' compliance with the design and performance intent of the Detailed Scope of Work. The Retained Professional shall be the interpreter of the Detailed Scope of Work related to Design themselves. Interpretation shall comply with Article 2 of these General Conditions.
- 3.25 Standards of Quality.** If the JOC Contractor wishes to utilize material or equipment that is of the same type as specified, but manufactured by others than

those named in the Technical Specifications or Detailed Scope of Work, or design documents (if any), the JOC Contractor shall submit a request to the Client Agency and Construction Manager to install such equipment or material. The JOC Contractor shall certify at the time of submittals that the material or the equipment is equal in quality, performance and appearance to that mentioned in the specifications. No substitutions or "equal" submissions can be made to proprietary items.

- 3.26 Review of JOC Contractors' Shop Drawings and Materials.** The Retained Professional shall review and approve shop drawings for compliance with the Detailed Scope of Work and Contract Documents, and process as provided in these General Conditions and the Administrative Procedures. The Retained Professional shall review and approve all samples, materials, and other submissions of the JOC Contractor for conformity to and harmony with the design concept of the Project and for compliance with the requirements of the Detailed Scope of Work and Contract Documents. The Retained Professional shall request from the JOC Contractor and may rely on bona fide test data, certifications and other evidence submitted by the JOC Contractor as needed to establish conformity with the contract requirements prior to approving material and products submitted.
- 3.27 Approval of Shop Drawings.** The Retained Professional shall return all approved shop drawings, or detailed notation for resubmission if required, promptly and in accordance with the terms of its agreement with the JOC Contractor. If the Retained Professional's receipt of the shop drawings is late based upon the accepted schedule, the Retained Professional shall endeavor to meet the schedule for acting upon the submission and deliver to those identified pursuant to this Section 3.11 of this Article to the Client Agency and Construction Manager for quality assurance / Job Order compliance acceptance as scheduled. Failure of the JOC Contractor and/or its subcontractor(s) to deliver required submittals to the Retained Professional and/or the Retained Professional's failure to deliver required submittals to the Construction Manager and/or Client Agency for review and acceptance in accordance with the accepted schedule and procedures shall not reduce the time allocated for the Construction Manager's and/or Client Agency review and acceptance nor constitute grounds for increased project duration. The Construction Manager and/or Client Agency's acceptance of a separate item does not indicate acceptance of an assembly in which the item functions. A detailed log shall be maintained by the Retained Professional as to time of receipt of the shop drawings and time of return with adequate notes as to their disposition.
- 3.28 Non-Conforming Work.** If corrective work or drawings are required from the JOC Contractor's Retained Professional due to defective or non-conforming work by the JOC Contractor, the cost for the Retained Professional's additional services shall be borne by the JOC Contractor. The Client Agency and/or the Construction Manager shall review for acceptance the corrective work and/or drawings which are prepared by the JOC Contractor's Retained Professional in order to determine that the corrective work and/or drawings fall within the original scope of the Job Order.

- 3.29 JOC Contractor's Retained Professional's Review of As-Built Record Documents.** The JOC Contractor's Retained Professional shall, prior to substantial completion, receive from the JOC Contractor all as-built record field drawings, shop drawings and record data, as needed, in order to prepare as-built record drawings. The JOC Contractor's Retained Professional shall review said documents for accuracy and compliance with the Detailed Scope of Work and Contract Documents and, after final approval, submit required documents to the Client Agency as in accordance with this Article.
- 3.30 Operations and Maintenance Data.** Prior to Final Inspection of the Project, the Retained Professional shall collect from the JOC Contractor, as provided in the Job Order, a final draft of the Operation and Maintenance Instructions Manuals prepared by the JOC Contractor and its various subcontractors. The Retained Professional shall review the draft for completeness including all pertinent shop drawings, diagrams, catalog data, manufacturers operating instructions, manufacturer's or supplier's maintenance instructions, certificates, warranties, guarantees and other pertinent operating and maintenance data. The Retained Professional shall indicate its approval of the draft with correction if necessary or request a revised draft and resubmission of the manual for the Retained Professional's review and approval. Upon receipt of the two (2) final bound manuals from the JOC Contractor, the Retained Professional shall review them for accuracy and content, and when they meet with its approval, the Retained Professional shall forward to the Client Agency the two (2) copies and two (2) identical, additional copies in electronic format(s) and on media acceptable to the Client Agency prior to Closeout Inspection.
- 3.31 "Record Drawings" for Department of Labor & Industry.** The JOC Contractor is responsible for submitting to the Department of Labor and Industry a revised set of Design Documents for approval for changes made during construction that are not in accordance with the Design Documents submitted for permitting. This revised set of construction shall be referred to as "L&I Record Drawings" and shall be submitted in accordance with L&I UCC requirements.
- 3.32 "As-Built Record Drawings" for the Client Agency.** No later than at Final Inspection of the Project, the Retained Professional shall submit As-Built Record Documents showing all changes or variations from the original contract drawings and specifications made during the course of construction. These drawings shall indicate all items uncovered during the Work and show details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment and similar items. Recorded changes shall be obtained from clearly marked field prints provided by the construction contractors and field office and from Supplemental Job Orders. Changes shall all be placed in and indicated as such through clouding in the original format CAD files prior to final electronic transfer of the native CAD files to the Client Agency. These As-Built Record Drawings shall be on archival Mylar reproducible media for drawings, archival paper for documents, shall include three complete, identical electronic copies formatted and on media acceptable to the Client Agency, shall be identified as "the Client Agency As-Built Record Documents", shall be delivered to, and shall become the sole property of the Client Agency.

**3.33 Final Inspection.** Final Inspection occurs within fifteen (15) days from the receipt of a written request by the JOC Contractor to the Client Agency and/or the Construction Manager for a Final Inspection and an application for final payment. Final Inspection shall be conducted by the Construction Manager and/or the Client Agency. The JOC Contractor or its authorized representative must be present throughout the duration of the Final Inspection.

The Client Agency and/or the Construction Manager have the sole authority, in light of the Project's Detailed Scope of Work, to determine whether parts or the whole of the Project are ready for a Final Inspection.

If the Client Agency and/or the Construction Manager concur that the Work is at substantial completion, the Retained Professional shall issue a certificate of completion and a final certificate for payment. In such case, the Retained Professional shall produce and deliver to the JOC Contractor, at Final Inspection, a list of uncompleted items and a reasonable cost of completion (Punch List).

The JOC Contractor shall complete all Punch List items within thirty (30) calendar days of Final Inspection.

**3.34** The Client Agency will make payment in full within 45 days of the submission of the accepted final application except as set out in this Article, less one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the Design Professional. Payment of any amount withheld for the completion of the Punch List shall be paid upon completion of the items in the Certificate.

**3.35 The Client Agency Owns Documents.** All contract drawings and specifications, special requirements and all other data compiled by the Retained Professional or the consultants for this Project, become the sole property of the Client Agency, and may be used by it for any purpose desired by the Client Agency without compensation. The JOC Contractor and, by contracting to the JOC Contractor, the Retained Professional and all consultants convey to the Client Agency the copyright of the design and all design documents produced under this contract. The JOC Contractor and Retained Professional and consultants are not liable for any reuse of these documents by the Client Agency.

## **ARTICLE 4: THE CLIENT AGENCY**

- 4.1 **Easements and Rights of Access.** If the Client Agency deems it necessary, the Client Agency will secure and pay for the appropriate interests in land, including but not limited to permanent and temporary easements. If such easements are insufficient for the erection of temporary construction facilities and storage of materials, the JOC Contractor shall provide easements and space as necessary at no cost to the Client Agency.
- 4.2 **Administrative Procedures.** The Administrative Procedures are incorporated herein by reference and made a part hereof, as if fully set forth herein. In the event there is any redundancy, conflict, contradiction, discrepancy or inconsistency between any portions of, or criteria set forth in the Administrative Procedures and the other Contract Documents, the most restrictive or demanding of the criteria shall take precedence over any less restrictive or demanding criteria as determined by the Client Agency and/or its designee.
- 4.3 **The Client Agency Not Responsible for JOC Contractor Means/Methods/Techniques.** The Client Agency is not responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work since these are solely the JOC Contractor's responsibilities.
- 4.4 **The Client Agency Not Responsible for JOC Contractor Acts or Omissions.** The Client Agency will not be responsible for the acts or omissions of the JOC Contractor, or any of its subcontractors or any of their agents or employees, or any other persons performing any of the Work for the JOC Contractor.
- 4.5 **The Client Agency's Access to the Work.** The Client Agency and its designee will, at all times, be provided full access to any area the Client Agency deems necessary in order to perform its responsibilities to inspect the Work. The JOC Contractor shall provide the facilities for such access so the Client Agency may perform its functions under the Contract Documents.
- 4.6 **The Client Agency's Use and/or Occupancy of the Work.** The Client Agency may use or permit the Client Agency to use or occupy any completed or partially completed portions of the Work, whether or not the time may have expired for completing the entire Work or said portions of Work. Such use or occupancy shall not be deemed an acceptance of the portion of the Work so taken or used. Prior to such use or occupancy, an inspection of the Work to be occupied by the Client Agency shall be made by the Client Agency and the Design Professional to determine if it is in conformity with the Detailed Scope of Work and Contract Documents. Any damage subsequent to the inspection due solely to the use and occupancy of the completed portion is not the responsibility of the JOC Contractor.
- 4.7 **Rejection of Work.** The Client Agency may reject Work that is not in conformance with the Detailed Scope of Work or direct the JOC Contractor to stop any portion of the Work, or to require special inspection or testing of the Work whenever such action is necessary or advisable to insure the proper implementation of the Detailed



Scope of Work. The Client Agency's failure to reject Work does not relieve the JOC Contractor from performing Work in accordance with the Contract Documents.

- 4.8 **Client Agency Acting as Retained Professional.** The Client Agency can only design or seal drawings for an emergency Job Order.

## **ARTICLE 5: THE CONSTRUCTION MANAGER**

- 5.1 **Information and Services Provided by the Construction Manager.** The CM shall carry out the duties specified in the Contract Documents acting as an agent and authorized representative/designee of the Client Agency. The CM shall be either the JOC Consultant, if hired by the Client Agency, or the Client Agency itself.

- A. The CM will determine in general that the Work is being performed in accordance with the requirements of the Detailed Scope of Work and Contract Documents, will keep the Client Agency informed of the progress of the Work, and will endeavor to guard the Client Agency against defects and deficiencies in the Work.
- B. The CM will not have control over or charge of and will not be responsible for construction means, methods techniques or procedures in connection with the Work, since these are solely the JOC Contractor's responsibility.
- C. The CM will not be responsible for site safety. Site safety is the sole responsibility of the JOC Contractor. The CM will review, certify and recommend to the Client Agency payment for all acceptable Applications for Payment from the JOC Contractor, including final payment.
- D. The CM will review and advise the Client Agency on Supplemental Job Orders.
- E. At a point in time no later than the Joint Scope Meeting, the CM will provide the JOC Contractor and the Client Agency a list of its principal staff assignments, including the Site Representative and other personnel to be in attendance at the site, identify individuals, their duties and responsibilities and list their addresses, and cell phone numbers.
- F. Except as expressly stated in the Contract Documents, the CM shall have no authority and no liability to relieve the JOC Contractor of any of its obligations under the Contract Documents.
- G. It is not the intention of these Contract Documents to inhibit communications between the Client Agency, the CM and the JOC Contractor.
- H. If, in the opinion of the CM, an emergency occurs affecting the Work or adjoining property, the CM may, without relieving the JOC Contractor of any of its duties and responsibilities under the Contract, instruct the JOC

Contractor to execute all such Work or to do all such things as may, in the opinion of the CM, be necessary to abate or reduce the risk. The JOC Contractor shall immediately comply, despite the absence of acceptance of the Client Agency, with any such instruction of the CM.

- I. The CM's Site Representative will be responsible for the administration of this Project, and shall carry out all required duties and exercise such authority as may be required under the terms of this Contract, including but not limited to reviewing Supplemental Job Orders, applications for payment and extensions of time.
- J. The CM's Site Representative will execute the duties and authorities vested in the CM. The CM has been fully vested with a level of authority that is adequate to execute the requirements of the management for this Project. The JOC Contractor is expected to and allowed to rely upon the directions that may be provided from the CM.
- K. Any communication given by the CM's Site Representative to the JOC Contractor in accordance with such delegation shall have the same effect as though given by the CM or the Client Agency.
- L. The CM may appoint any number of persons from its staff to assist in carrying out the CM's duties. Such assistants shall have no authority to issue any instructions to the JOC Contractor unless such instruction may be necessary to enable the JOC Contractor to carry out their duties and to secure their acceptance of materials, equipment or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been given by the Construction Manager.
- M. Instructions given by the CM shall be in writing, but if, for good reason, the CM considers it necessary to give such instruction orally, the JOC Contractor shall comply with such instruction. Written confirmation of such oral instruction given by the CM shall be deemed to be an instruction within the meaning of this paragraph. If the JOC Contractor within 7 days of the oral instruction confirms in writing the CM's oral instruction and such confirmation is not contradicted in 7 days by the CM, it shall be deemed to be an instruction of the CM. The provisions of this subparagraph shall equally apply to instructions given by the Construction Manager's assistants.
- N. In all cases of misunderstanding and disputes, verbal instructions that were not subsequently reduced to writing as discussed above, will not be considered binding upon the Client Agency. The JOC Contractor must produce written evidence in support of its contentions and may not submit any claim without such writing. The JOC Contractor may not use any conversation with the CM or the Client Agency in prosecuting any claim.
- O. Wherever, under the Contract, the CM is required to exercise its discretion by:

1. Giving decision, opinion or consent; or
2. Expressing satisfaction or dissatisfaction; or
3. Determining value; or
4. Otherwise taking action which may affect the rights and obligations of the Client Agency or the JOC Contractor,

the CM shall exercise such discretion impartially within the terms and conditions of the Contract and having regard to all the circumstances. To the extent the JOC Contractor disagrees with the CM's determination on an issue, any such decision, opinion, consent, expression of satisfaction, or dissatisfaction, determination of value or action may be subject to the Disputes Article of these General Conditions of the Contract.

- P. The CM's failure to insist on strict compliance with any term, condition or provision of this Contract or instruction under it, or to exercise any right, remedy, privilege or power provided under this Contract, or the CM's waiver of any breach, shall not relieve the JOC Contractor of responsibility for compliance with the Contract requirements and shall neither waive nor prevent the CM or the Client Agency from subsequently requiring strict compliance with that term, condition, provision, instruction, right, remedy, privilege or power.

**5.2 CM's Access to the Work.** The CM will, at all times, be provided full access to any area it deems necessary in order to perform its responsibilities to inspect the Work. The JOC Contractor shall provide the facilities for such access so the CM may perform its functions under the Contract Documents.

**5.3 CM Not Responsible for JOC Contractor Acts or Omissions.** The CM is not responsible for the acts or omissions of the JOC Contractor, or any of its subcontractors or any of their agents or employees or any other persons performing any of the Work for the JOC Contractor.

**5.4 JOC Contractor Not an Intended Third Party Beneficiary of the Contract for Job Order Contracting Program Consultant.** The JOC Contractor is not an intended third party beneficiary of the Contract between the Commonwealth and the JOC Consultant or the JOC Consultant's Agreement between the JOC Consultant and its sub consultants. Nothing in the Contract Documents should be construed to authorize any person not a party to the JOC Consultant/Commonwealth Contract or the JOC Consultant Agreement with sub- consultants to maintain any lawsuit involving these contracts, unless otherwise provided by law.

## **ARTICLE 6: THE JOC CONTRACTOR**

### **6.1 Review of Contract Documents and Site Conditions.**

- A. Proposal Preparation Stage Investigation and Document Review. During

the proposal preparation stage, the JOC Contractor has an affirmative duty to examine the nature of the Work. The JOC Contractor also has a duty to carefully study and compare the Contract Documents for consistency. If the JOC Contractor does not request a clarification during the proposal preparation stage with regard to any possible discrepancies within the Contract Documents, the JOC Contractor may not submit a claim after award of the contract alleging insufficient data, ambiguity in the documents or incorrectly assumed conditions.

**B. Post-Job Order Award Investigation and Document Review.**

1. Site Conditions – If, after award of a Job Order, the JOC Contractor finds any material change in the condition of the site since the submission date of the Job Order Proposal, the JOC Contractor must immediately inform the Client Agency in writing of the change site condition. The Client Agency will, within 7 days from receipt of such notice, address the alleged material change in the site conditions and notify the JOC Contractor in writing of such review.
2. Contract Documents – If, after a Job Order award, the JOC Contractor contends that there are discrepancies or errors in the Detailed Scope of Work, the JOC Contractor must submit the contention as a written Request for Information to the Client Agency within 10 days of discovering the alleged discrepancy.

**6.2 Supervision and Construction Procedures.** The JOC Contractor is solely responsible for all construction means, methods, techniques, procedures, and safety programs in connection with the work under the Contract. Furthermore, the JOC Contractor shall perform the Work in accordance with applicable industry standards for performance, service life, deterioration and wear; in a good and workmanlike manner, and in accordance with manufacturer's recommendations and requirements; in compliance with regulatory approvals and applicable laws, regulations, and ordinances; and in accordance with the Contract Documents.

**6.3 Coordination of the Work.** The JOC Contractor is solely responsible for the coordination of the Work, ensuring the proper function and sequence to avoid delays. The progress of the Work shall not be delayed by any disputes between the JOC Contractor and any subcontractors and/or suppliers.

**6.4 Duty to Coordinate the Work with Other Prime JOC Contractors.**

The JOC Contractor explicitly acknowledges that it has a contractual duty to coordinate the Work within their Job Order with the Work to be performed on the Project by all other JOC Contractors.

The JOC Contractor agrees that this duty to coordinate exists between each JOC Contractor on the Project and that each JOC Contractor is an intended third party beneficiary of each Job Order between the Client Agency and each JOC Contractor.

The JOC Contractor further agrees that the efforts of the Construction Manager (if one is used) and the Client Agency to facilitate the coordination of the Work shall

not release or in any way diminish the JOC Contractors' duty to coordinate the Work.

If the JOC Contractor sustains any damage as a result of any act or omission of any other JOC Contractor having a Job Order with the Client Agency or through an act or omission of a Subcontractor of such JOC Contractor, the JOC Contractor shall have no claim against the Client Agency, the Professional or the Construction Manager for such damage, but shall have a right to recover such damage from the other JOC Contractor.

If any other JOC Contractor on the Project sustains any damage through any act or omission of the JOC Contractor or a Subcontractor of the JOC Contractor, the JOC Contractor agrees to reimburse such other JOC Contractor for all such damages and to indemnify and hold the Client Agency, and the Construction Manager harmless from all such claims.

The JOC Contractor shall indemnify and hold the Client Agency and the Construction Manager harmless from any and all claims or judgments for damages and from costs and expenses to which the Client Agency may be subjected or which it may suffer or incur by reason of the JOC Contractor's failure to comply with directions promptly.

The exercise of the right of the Client Agency to permit or require others to perform Work in or about the construction site shall not relieve the JOC Contractor from any liability for loss or damage, or from any of its obligations under this Contract. No agreement or arrangement between the JOC Contractor and others as to a division or proportionate share of liability for loss or damage incurred, or of the cost of insurance shall in any way relieve the JOC Contractor from any liability or damage, or from any of its obligations under this Contract and/or Job Order.

Each JOC Contractor shall afford other JOC Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate its Work with the Work awarded by the Client Agency to other JOC Contractors.

## **6.5 Project Coordination.**

Project Coordination shall be facilitated among the JOC Contractors through professional conduct and adherence to the Contract Specifications and the General Conditions, including, but not limited to, the following subparagraphs, which shall not be construed to be the exclusive means of achieving a properly coordinated Project:

Each JOC Contractor acknowledges the complex nature of the Project, the sequential nature of the Work to be performed under all of the Prime JOC Contractor Job Orders and the concurrent operations of this Project.

Each JOC Contractor shall become thoroughly familiar with the requirements of the Contract Documents, including the General Conditions of the Contract, the Administrative Procedures of the Contract, the Project Schedule and the Detailed Scope of Work for the Project.

Close coordination shall be required of each JOC Contractor with the Construction Manager, other JOC Contractors, the Client Agency and others having an interest in the Project to assure that Work on-site, access to and from the site and the general conduct of operations is maintained in a safe and efficient manner, and that disruption and inconvenience to existing streets and the surrounding community is minimized.

Each JOC Contractor is responsible for coordinating their Work with every JOC Contractor on this Project.

The JOC Contractor shall, whenever conditions permit, proceed without delay and maintain the Project Schedule. All operations shall be conducted so as to comply with all applicable laws, ordinances and regulations.

The JOC Contractor shall maintain free access to all buildings, gates and areas of the site for emergency vehicles, service vehicles and firefighting equipment and at no time shall block off or close roadways or fire lanes without providing auxiliary roadways and means of entrance acceptable to the Client Agency.

There may be limited parking at the site. Each JOC Contractor and their sub-contractors must limit temporary parking of company vehicles and storage of materials as can be accommodated within the limits of the construction site and staging area as directed by the Client Agency unless noted otherwise within the Contract Documents. All transportation to the site is the responsibility of each JOC Contractor. JOC Contractors shall not park in spaces reserved for State employees. If more than one ticket is issued to an individual for parking violations, the Client Agency has the authority to prohibit the owner of the vehicle(s) from continuing work at the site.

JOC Contractors shall work similar hours in order to prosecute the Work under an orderly and systematic means. If there is a disagreement between JOC Contractors relative to the normal work hours, the Client Agency shall establish the hours to be worked by all JOC Contractors. No claim of hardship shall be made by any JOC Contractor as a result of the Client Agency's decision.

1. Whenever the JOC Contractor intends to depart from normal work hours, it shall notify the Client Agency in writing at least forty-eight (48) hours in advance, unless there is an emergency-type condition requiring immediate repair or attention. If such an emergency condition occurs, the JOC Contractor shall provide immediate written notification to the Client Agency. Failure of the JOC Contractor to give such timely notice may be cause for the Client Agency to require the removal or uncovering of Work performed without the knowledge of the Client Agency, at no additional costs or Extension of Time, regardless of whether or not the Work is deemed properly installed.

The JOC Contractor shall coordinate the Work with all other JOC Contractors as outlined in the Coordination Drawings so that interference between mechanical, electrical, architectural and structural Work, including existing services, will be avoided. The JOC Contractors shall also coordinate the Work so as to provide the maximum practical space for operation, repair, removal, and testing of equipment. The JOC Contractors shall keep pipes, ducts, conduit and the like as close as

possible to ceiling slab, walls, and columns to take up a minimum amount of space. The JOC Contractors shall locate pipes, ducts, conduits and equipment so that they do not interfere with the intended use of eyebolts and other lifting devices.

Particular attention shall be given to coordination and correlation of submittals as to the requirements of the Job Order including, but not limited to:

1. Motor size;
2. Motor service connections for size and type of materials;
3. Equipment size and supports;
4. Piping routing;
5. Penetration of materials and fire stopping; and
6. Connections to another JOC Contractor's Work.

JOC Contractors shall coordinate Work to determine exact locations of outlets, pipes, diffusers and pieces of equipment to avoid interference with properly installed Work.

The JOC Contractor shall be responsible for a complete operating system as designated within the Detailed Scope of Work. Major items for Mechanical and Electrical Work are will be specified in their respective Divisions of work. This may not be the complete extent of this Work, however, since requirements may appear in other locations within the Contract Documents. Mechanical and Electrical Work shall be verified with other sections. JOC Contractors performing that Work shall supply sufficient information for completing the system.

As various areas or parts of the site and building are complete, or otherwise suitable for the subsequent JOC Contractors to commence Work, those JOC Contractors shall be allowed to deliver materials and start Work. Such phased commencement shall be in accordance with the Project Schedule. Prior to commencing Work at any area or part, certain contract requirements shall be met for that area or part, such as verification of conditions as specified. Material lay down areas shall be coordinated with the Client Agency and other JOC Contractors.

## **6.6 Coordination Disputes.**

The Lead JOC Contractor is principally responsible for the coordination of the Project Work. The JOC Contractor is to coordinate all of its Work with the Work of other JOC Contractors for proper function and sequence to avoid construction delays. If necessary, in instances when the Lead JOC Contractor and the other affected JOC Contractor(s), after due diligence, cannot agree on a coordination decision, the Client Agency will upon written request from one or more of the JOC Contractors, take whatever action(s) the Client Agency deems necessary to resolve the coordination issue, including, but not limited to:

1. Withholding any payment otherwise due until the JOC Contractor(s) comply with the Construction Manager's or the Client Agency's direction; and/or

2. Directing others to perform portions of the Work and deducting the cost of the Work from the JOC Contractor's Job Order balance; and/or
3. Deleting and crediting through Supplemental Job Orders any and all portions of the Work.

The Client Agency's decision in no way releases the JOC Contractors from their continuing duty to coordinate the Work. The final coordination decision of the Client Agency will be observed, accepted, and fully followed by all JOC Contractors and their subcontractors on the Project, subject only to the disputes procedure set out in these General Conditions of the Contract. The progress of the Work in accordance with the final coordination decisions of the Client Agency shall not be delayed pending any such dispute proceeding.

#### **6.7 Coordination of Subcontractors.**

- A. The JOC Contractor shall be responsible for all acts of its subcontractors utilized under this Contract and any Job Order, and for their compliance with all terms and provisions of the Contract and Job Order applicable to their performance. The JOC Contractor shall continuously coordinate the Work of all subcontractors to assure proper processing and progress of the Work. The JOC Contractor shall require each Subcontractor to comply with the following:
  1. Examine the shop drawings and the Work of other Prime JOC Contractors and all sections of the specifications to the extent necessary for satisfactory installation of its Work, and connection between its Work and the Work of other Prime JOC Contractors; and
  2. Coordinate its Work accordingly; and
  3. Cooperate with other JOC Contractors and Subcontractors toward timely and satisfactory completion of the Project.
- B. Subcontractors proposed by the JOC Contractor will not be acceptable to the Construction Manager or the Client Agency if evidence exists or arises during the Work that the proposed subcontractors are unable or unwilling to comply with the requirements of the Contract Documents which govern the Work of the subcontractors involved, or if the Subcontractors have experience which is inconsistent with requirements for the Work of the Subcontractors. In these instances, the JOC Contractor will not be entitled to a change in the Job Order Price or Job Order Duration and shall propose substitute Subcontractors for unacceptable Subcontractors.
- C. The failure of any Subcontractor to complete its portion of the Work in a satisfactory manner within the proper time will not relieve the JOC Contractor of responsibility for the proper and satisfactory execution and completion of the entire Work.

**6.8 Means, Methods and Techniques of Construction.** The JOC Contractor is solely responsible for all construction means, methods, techniques, procedures and safety programs in connection with the Work under the Contract. Neither the CM (if there is one) nor the Client Agency nor the Client Agency shall have control over or charge of and will not be responsible for construction means, methods, techniques or



procedures or for safety precautions or programs in connection with the Work.

**6.9 Use of Site.** The JOC Contractor shall confine its apparatus, the storage of equipment, tools and materials and its operations and workers at the site to the limits of contract as permitted by law, ordinances, permits and the Contract Documents. The JOC Contractor shall not unreasonably encumber the site with any materials or equipment.

**6.10 Job Conferences.** Job Conferences may be held as often as required, but shall be held as needed for each Project depending on the complexity of the Work, and must be attended by the JOC Contractor. The names of the authorized representative of the JOC Contractor shall be submitted to the Client Agency at the Orientation Conference. The CM (if applicable) and/or the Client Agency Construction Regional Director or the Client Agency Construction Inspector Manager will also attend the Job Conference. The Client Agency or the CM will advise the JOC Contractor of the dates and times of the Job Conferences. Failure to attend a Job Conference or any other mandatory meeting (unless excused by the Client Agency) constitutes a breach of the Job Order Contract.

**6.11 Supervision.** At the Joint Scope Meeting, the JOC Contractor shall identify the staff assignments. The information shall include the JOC Contractor Project Manager, General Field Superintendent and other personnel to be in attendance at on or off the site, their duties and responsibilities and their addresses and cell phone numbers. The JOC Contractor, or its designee, shall provide full time supervision at the project site by a duly authorized and competent superintendent, whenever the JOC Contractor is carrying out any work on the site or when any subcontractor is performing any work at the project site. The JOC Contractor may not change the superintendent without written approval of the Client Agency, and must submit to the Client Agency, in writing, justification for the change, along with the name and qualifications of the individual whom the JOC Contractor proposes to be the new superintendent. The Client Agency may demand that the JOC Contractor dismiss from the project any person employed and/or subcontracted by the JOC Contractor whom the Client Agency determines is incompetent or guilty of misconduct. The Client Agency may withhold any payments, which are or may become due to the JOC Contractor, or the Client Agency may suspend the work at the expense of the JOC Contractor, if the JOC Contractor fails to comply with the provisions of this paragraph. The removal and replacement for any reason of any person shall not entitle the JOC Contractor to any adjustment to the JOC Contractor's Job Order Price and Job Order Completion Time.

**6.12 Surveys and Laying Out Work.**

- A. If Drawings are issued with a Job Order, they shall be used for all dimensions in laying out the Work for Detailed Scope of Work.
- B. The Lead JOC Contractor shall utilize a competent, licensed surveyor, whose name and qualifications shall be submitted to the Client Agency for approval with the Job Order Proposal, to lay out the building lines, walls, floor elevations, and other required elements from the initial points established on the Drawings by the Design Professional. The JOC Contractor shall not change its surveyor without written approval of the

Client Agency, and must submit to the Client Agency in writing, justification for the change, along with the name and qualifications of the individual whom the JOC Contractor proposes to be the new surveyor.

- C. The Surveyor shall take as a basis the figures on the plans and shall lay out all intersections and all building lines at corners and centers; test and check all elevations and levels; locate levels and plumb lines of walls, beams and columns; and lay out other parts of the construction as the Work progresses.
- D. All Work of every description shall be laid out by the JOC Contractor, who is solely responsible for its correctness. The JOC Contractor shall bear expenses in connection with this Work.
- E. The JOC Contractor shall submit one copy of its survey notes to the Client Agency for record keeping. Submission of the survey notes does not relieve the JOC Contractor of its duty to identify discrepancies on the site or in the Contract Documents.
- F. The JOC Contractor shall examine the conditions under which the Work is to be installed and notify the Client Agency in writing of any discrepancies. The JOC Contractor is not to proceed until the required corrections are accomplished or written direction is given by the Client Agency. The JOC Contractor shall be responsible for correct location, dimensions and elevations of its Work. Commencement of Work implies acceptance of prior Work as it relates to the JOC Contractor's Work.
- G. All operations shall be neatly and carefully organized to maximize space utilization and provide the most orderly execution of the Work. The JOC Contractor shall carefully plan the layout and review any questionable installations or operations with the Design Professional and the Client Agency, if necessary.

#### **6.13 Drawings and Specifications at the Site.**

- A. The JOC Contractor shall maintain in good order at the site, for the Client Agency and the Design Professional, one record copy of the Detailed Scope of Work, all Job Order drawings, specifications, bulletins, addenda, Supplemental Job Orders, and requests for information. As appropriate, the above will be updated daily to record accurately as-built conditions, selections and changes. The JOC Contractor shall include the value of the as-built drawings as a cost item and activity in the Project Schedule. The value included in the Project Schedule for this item is subject to the acceptance of the Client Agency.
- B. The JOC Contractor shall also maintain at the site one record copy of approved shop drawings, catalog data, operating and maintenance instructions, certificates, warranties, samples and similar submittals. These shall be available to the Client Agency and Design Professional at all times, and they shall be delivered to the Client Agency as part of the Operation and Maintenance Instruction Manuals.

- C. The JOC Contractor shall also maintain one record copy of approved coordination drawings, to include as-built conditions, selections and changes to be submitted as part of the Operations and Maintenance Instruction Manuals.

**6.14 Provision of Labor and Materials.** Unless otherwise specifically noted, the JOC Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work.

**6.15 Responsibility for those Performing Work.** The JOC Contractor is responsible for the acts and/or omissions of all of its employees and all subcontractors, their agents and employees, and all other persons performing any of the Work under a subcontract or purchase order with the JOC Contractor.

**6.16 Equipment and Materials.** The JOC Contractor shall furnish and deliver the necessary equipment and materials in ample quantities and as frequently as required the proper prosecution of the work in an acceptable manner and at a satisfactory rate of progress as depicted in the JOC Contractor's Schedule. The equipment used on any portion of the work shall be such as not to endanger the lives of the operators or any persons in the vicinity of the equipment nor cause damage to adjacent property or highways. Any damages resulting from the operations of such equipment to any person or property is the responsibility of the JOC Contractor.

**6.17 Good Order Among Employees.** The JOC Contractor shall at all times enforce good order and conduct among its employees and subcontractors. Every employee and subcontractor shall be skilled in the performance of work assigned to that employee or subcontractor. All JOC Contractor personnel shall be respectful of all Commonwealth employees and the general public. Any incidents of disrespect, verbal abuse, threatening statements, unwelcome comments, unwelcome interaction or any form of harassment from any JOC Contractor personnel toward any Commonwealth employee, CM employee or the general public is strictly prohibited. Any violation is sufficient cause for the Client Agency to direct the JOC Contractor to remove such person from employment on the site. If any JOC Contractor personnel ignore or refuse to take action on any requirements of the Contract Documents, ignores or refuses to take immediate action to correct any endangerment to the health and safety of the public, as solely determined by the Client Agency or its designee, then this action or inaction shall be sufficient cause for the Client Agency to demand that the JOC Contractor dismiss the person from the job site. The Client Agency will not be responsible or liable for any delays caused to the Project due to any individual being removed from the site.

**6.18 Permits and Fees.** Due to the UCC, all state-owned facilities fall under the jurisdiction for plan review and inspection only by the Commonwealth Department of Labor & Industry. Consequently, the JOC Contractor shall not obtain any building permits from local authorities. The JOC Contractor shall, however, continue to obtain and pay for all other necessary permits, licenses, and certificates required by law for the proper execution and completion of its work. The JOC Contractor shall furnish proof of payment for all such items, or proof that no such items are required.

No Supplemental Job Order will be issued for these costs since they are to be included in the Job Order Price.

Sewer and Water Tap In Fees shall be reimbursed to the JOC Contractor by Supplemental Job Order without mark-up. Tap Fees shall not be included in the JOC Contractor's Job Order Price Proposal.

**6.19 UCC Inspections and Compliance with Applicable Laws, Ordinances, Regulations, etc.**

- A. The JOC Contractor shall give all notices and comply with all applicable laws, ordinances, regulations, rules and orders of any public authority bearing on the performance of the work. If the JOC Contractor observes that any of the Detailed Scope of Work is at variance therewith in any respect, it shall promptly notify the Design Professional and the Client Agency in writing. Any necessary modifications will be made by the Design Professional at no cost to the Client Agency unless applicable laws, ordinances, regulations, rules and/or orders are changed after the receipt of the JOC Contractor's Job Order Proposal, If the JOC Contractor performs any work knowing it to be contrary to such applicable laws, ordinances, regulations, rules or orders, and without such written notice to the Design Professional and the Client Agency, the JOC Contractor assumes full responsibility therefore and shall bear all costs attributable thereto.
  
- B. The Project shall be subject to the Uniform Construction Code. The JOC Contractor shall become familiar, and is responsible for complying, with all aspects of the UCC, including but not limited to the site inspection procedure set forth in the Client Agency of Labor & Industry's Inspection Procedures. For purposes of inspection, the JOC Contractor shall be deemed "the owner" as described in the UCC. The most recent list of inspections required by L&I can be found on L&I's website. The JOC Contractor must include both the dates for notification to L&I and the date of all UCC inspections as milestones in the Project Schedule. The L&I mandated advance notice, defined for each inspection activity, shall be considered and included as lead time in the development of the Project Schedule. The JOC Contractor shall assume the responsibility of the permit applicant/permit holder as applicable. The JOC Contractor shall be responsible to contact L&I to schedule the required inspections in accordance with the inspection procedures outlined in the Building Permit. Failure to do so shall not be cause for a delay claim against the Client Agency.

**6.20 Existing Utilities.**

- A. The JOC Contractor shall comply with all notification requirements established by applicable law relative to protection of underground utilities and shall also check the location of existing utilities required to remain in place, including those overhead or underground, and take all necessary precautions to prevent injury or damage during the performance of the Work.
  
- B. When performing excavation, the JOC Contractor is responsible for costs

associated with locating all existing underground utilities prior to commencing excavation, including utilities that are owned and operated by the Client Agency or the Department of Corrections.

- C. The JOC Contractor shall be responsible for the costs associated with utility interruption and repair due to any excavation if the utility location was not requested and/or proper location procedures were not performed and/or followed prior to commencing excavation.
- D. If the JOC Contractor damages a utility, the JOC Contractor shall immediately notify the utility company and the Client Agency (and the CM if one has been retained) and assume the cost of relocating the service of any utility disrupted due to excavation, or any JOC Contractor action, whatever the circumstance. The Client Agency reserves the right to immediately restore the service of any utility disrupted due to actions of the JOC Contractor and to deduct the cost of such restoration from the JOC Contractor's next Application for Payment.
- E. Utilities and/or other service which are shown or not shown but encountered shall be protected by the JOC Contractor from any damage from any Work and operations of the JOC Contractor, unless or until they are abandoned.

**6.21 Interruption of Existing Services.** Whenever it becomes necessary to interrupt existing services in use by the Client Agency, such as sewer, water, gas, steam, and electric, the JOC Contractor shall perform the Work during such hours as required by the Client Agency in coordination with the Client Agency, so as to complete the Work and restore all existing services with minimal interruption or disruption to the Client Agency. The JOC Contractor shall continue its work on a twenty-four hour bases until the Work is completed and the services restored or at such alternate time required by the Client Agency. Before beginning the Work, the JOC Contractor shall apply in writing and receive acceptance in writing from the Client Agency to establish a time when interruption of the service will cause minimum interference with the activities of the Client Agency. The JOC Contractor's request to interrupt service must be submitted to the Client Agency at least 15 calendar days prior to the date desired for interruption.

**6.22 JOC Contractor Performing Excavation or Demolition.** If the JOC Contractor performs excavation or demolition work, the JOC Contractor shall fully comply with the requirements of Act 287-74 the Underground Utility Line Protection Law, approved December 10, 1974, and as amended, relative to protection of underground utilities which shall include, but not be limited to:

- A. Ascertain approximate location and type of utility lines at the site by inspecting drawings or by obtaining a list of utility companies' lines on the site from the County Recorder of Deeds and then contacting the utility company.
- B. Three (3) days before excavation or demolition, request information from the utility companies regarding the steps the JOC Contractor should take to avoid damage.

- C. Provide each equipment operator or blaster (if applicable) with information obtained in (1) and (2) above.
- D. Report to the utility company any damage to utility line made or discovered in the course of the work.
- E. Alert occupants of premises as to any emergencies created or discovered.
- F. Provisions of (A) (B) and (C) do not apply in an emergency. An emergency is any condition constituting a clear and present danger to life or property by escaping gas, exposed wires or other utility line breaks or defects.

**6.23 OBSERVATION OR INSPECTION OF THE WORK BY OTHERS.** Observation and/or inspection of the Work by the Construction Manager, the Design Professional, or the Client Agency shall not relieve the JOC Contractor of full responsibility for completing the Work in accordance with the Detailed Scope of Work and Contract Documents. The JOC Contractor's responsibilities include, but are not limited to, performance, supervision, scheduling and coordination of the JOC Contractor's Work.

**6.24 Coordination Drawings for Sleeves and Openings.** If the JOC Contractor or the JOC Contractor's subcontractors require sleeves and openings for their work in any deck, concrete slab or wall, they shall furnish to the Design Professional a complete set of location sketch drawings showing size and shape of openings. Completion of these drawings must be consistent with the construction sequence. The JOC Contractor and the Design Professional are responsible for reviewing the drawings in order that there will be no interference and/or conflict in its portion of the Work. When this review is finalized, the JOC Contractor shall submit these drawings to the Client Agency and the Design Professional in a final workable form.

**6.25 Cutting and Patching of Work.** The JOC Contractor shall do all cutting, fitting or patching of existing materials required for its Work to make its several parts fit together properly, and shall not endanger any work by cutting, excavating or otherwise altering the work, or any part of it. Work shall be completed to the satisfaction of the Client Agency.

**6.26 Cleaning the Project.**

- A. The JOC Contractor shall be responsible for the cost of cleaning and removing from the site its identifiable debris, including but not limited to, bulky debris, packaging containers, unused materials and equipment and materials not suitable for disposal by standard commercial procedures, such as masonry, concrete materials, crates and combustible items. Good housekeeping shall be observed at all times, and waste, debris, and garbage shall be removed daily or placed in appropriate waste containers outside of the work place and all materials, tools and equipment shall be stored in a safe and orderly fashion.
- B. Prior to Final Inspection, the following is a list (which is not intended to be an all-inclusive list) of cleaning levels required by the JOC Contractor as part of basic contract Work:

1. remove labels which are not required as permanent labels.
  2. clean transparent materials, including mirrors, windows, and doors to a polished condition.
  3. remove substances which are noticeable as vision-obscuring materials.
  4. clean exposed exterior and interior hard-surfaced finishes to a dirt-free condition, free of dust, stains, paint spatters, films and similar noticeable distracting substances. Except as otherwise indicated, avoid disturbance of natural weathering of exterior surfaces. Restore reflective surfaces to original reflective condition.
  5. Clean concrete floors; in non-occupied spaces, broom clean. Remove all stains, marks, paint, rust, etc. caused by construction activities.
  6. Clean plumbing fixtures to a sanitary condition, free of stains, including those resulting from water exposure.
  7. Clean mechanical and electrical equipment, ductwork and replace all filters.
- C. Prior to Close Out Inspection, in addition to the cleaning specified above, the site shall be prepared for occupancy by a thorough cleaning, including removal of all trash, rocks, wood and debris as required. Particular care shall be taken within all prison areas to remove and verify the removal of any tools, blades, fasteners, metal or other debris or any other object that could possibly be used as a weapon or projectile. Roadways and sidewalks shall be washed and swept clean.
- D. The JOC Contractor shall maintain a clean and safe passageway for the Client Agency and others utilizing the facility.
1. The JOC Contractor shall insure that the Work shall not damage streets connecting to the Project, which shall be protected from mud, sand, and stones/gravel. Streets and adjacent property sites shall be kept free from run-off, litter and/or debris in any form from the Project site. Mud, litter, and/or debris from the Project site that appears on adjacent property shall be removed immediately. All mud collected on vehicle tires shall be removed by the JOC Contractor before leaving the site. If any mud or debris from the Project collects on streets, it shall be removed immediately by the JOC Contractor to prevent any hazards to vehicular or pedestrian traffic, as well as from entering the storm sewer system.
  2. The JOC Contractor is prohibited from discharging any waste products from concrete trucks or from concrete coring work or any other unsuitable materials, fluids or other products on the site or into the storm water system.

- E. If the JOC Contractor fails to comply with these requirements, the Client Agency reserves the right, with 24 hours prior notice to the JOC Contractor, to clean and/or remove mud, trash, litter, debris or any unauthorized discharge from the Project, adjacent streets or adjacent property. The cost of cleaning/removing and mobilization shall be deducted from the JOC Contractor's next application for payment.
- 6.27 Failure of JOC Contractor to Clean.** If the JOC Contractor fails to clean up, the Client Agency may estimate the value of the work and retain such costs from any applications for payment until such time as the work is performed to the Client Agency's satisfaction.
- 6.28 Chases and Openings.** The JOC Contractor will construct, or have built, into new walls, new partitions, and new floors, all such chases and openings as are required. The JOC Contractor will be responsible to see that the chases and openings affecting its work are installed in accordance with the drawings submitted to the Client Agency.
- 6.29 Chases and Openings after Construction of Walls.** If cutting of chases and openings is required after construction of walls, partitions and floors is completed, the Client Agency may require the work to be performed in such a manner as to result in unmarred work, even to the extent of requiring the removal and rebuilding of walls and partitions, all of which shall be at the sole cost of the JOC Contractor.
- 6.30 Tests.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction that are in effect at the time of receipt of the JOC Contractor's Cost Submittal require any work to be inspected, tested or approved, the JOC Contractor shall give the Client Agency timely notice of its readiness and of the date arranged, so the Client Agency may observe such inspection, testing or approval. The JOC Contractor shall bear all costs of such inspections, tests and approvals, unless otherwise provided.
- A. All expenses incurred in the collection, packing and delivering of samples or materials or equipment to the job site shall be paid for by the JOC Contractor.
- B. The JOC Contractor shall pay the costs of transporting samples from the job site to the laboratory and for the testing of same, except where otherwise noted in these General Conditions, specifications, or called for in the contract drawings.
- C. Approved samples to be incorporated in the building shall be returned to the job site by the testing laboratory under the supervision of the JOC Contractor.
- D. The JOC Contractor shall bear all costs of such inspections, tests and approvals, including such assistance, labor, electricity, fuels, storage, apparatus and instruments as are normally required for examining, measuring and testing any materials or Work and shall supply samples of materials, before incorporation in the Work, for testing as may be selected and required by the Client Agency.



- E. Prior to testing, inspection or verification, the Client Agency or its designee may require written sign-off by the JOC Contractor's representative affirming that the item or Work or installation is complete and ready for such testing, inspection or verification.
- F. Work requiring testing, inspection or verification of probable compliance of Work shall not proceed to be concealed, covered or closed up until approval is given by the Client Agency or its designee. Examples of work to be reviewed before being concealed include but are not limited to sub- grades prior to backfilling, verification of rebar and formwork prior to placing concrete and installed Work in concealed spaces before the space is closed.
- G. The non-productive downtime or delay in an operation required to provide the reasonable opportunity for testing, inspection or verification by the Client Agency or its designee constitutes a portion of Contract Work and is included in the JOC Contractor's Adjustment Factors. No claim for additional compensation will be allowed related to establishment and timely observation of testing, inspection or verification of Work.
- H. Testing, inspection, or verification by the Client Agency or its designee in no way relieves the JOC Contractor of its obligation to meet all the requirements of the Contract Documents.
- I. JOC Contractor is responsible for all Quality Control testing as specified in the Detailed Scope of Work and Contract Documents.

**6.31 Special Testing.** If, after the commencement of the work, the Client Agency determines that any work requires special inspection, testing or approval the Client Agency will, by written authorization, instruct the JOC Contractor to order such special inspection, testing or approval, and the JOC Contractor shall give the Client Agency sufficient notice. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Detailed Scope of Work and Contract Documents or with respect to the performance of the work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the JOC Contractor shall bear all costs thereof, including any the additional services by the Design Professional necessitated by such failure. If the Work is in compliance with the Detailed Scope of Work and Contract Documents, however, the Client Agency shall bear such costs, and an appropriate Supplemental Job Order shall be issued.

**6.32 Certificates of Inspection.** The JOC Contractor is responsible to secure any required certificates of inspection, testing or approval. Such required certificates of inspection, testing and approval include those required by the UCC. The JOC Contractor shall deliver such certificates to the Design Professional and the Client Agency within 7 calendar days of it being secured by the JOC Contractor.

**6.33 Design Professional's Observation of Testing.** The Design Professional and, where required by the UCC, L&I, shall observe the inspections, tests or approvals required by the Tests and Special Testing paragraphs of these General Conditions and it shall be the JOC Contractor's responsibility to serve sufficient notice to the

Design Professional and, where required by UCC, to L&I of such inspections, tests or approvals to enable the timely inspection of the Work without impacting the Project Schedule.

- A. UCC Required Testing Observation and/or Inspection, When the UCC requires any special testing to be observed, inspected and approved by L&I, the JOC Contractor shall be responsible to contact L&I sufficiently in advance to allow L&I to schedule such observation, inspection and approval of such testing. The JOC Contractor is responsible for determining whether the UCC requires L&I's approval of the testing. The Work shall remain accessible and exposed for inspection by L&I.

**6.34 Effect of Tests.** Neither the observations of the Design Professional in its administration of the construction Contract, nor inspections, tests or approvals by persons other than the JOC Contractor shall relieve the JOC Contractor from its obligations to perform the Work in accordance with the Detailed Scope of Work and Contract Documents.

**6.35 Environmental Quality Control.** The JOC Contractor and its Subcontractors shall perform their work in a manner that minimizes the possibility of air, water, land and noise pollution.

- A. The JOC Contractor shall be responsible for all dewatering to prevent surface water and ground water from entering excavations (including foundations and drilled piers) from ponding on prepared subgrades and from flooding the Project site and surrounding areas.
- B. The JOC Contractor shall be responsible to protect subgrades from softening, undermining, washout and damage by rain or water accumulation. The JOC Contractor shall reroute surface water runoff away from excavated areas. The JOC Contractor shall not allow water to accumulate in excavations. The JOC Contractor shall not use excavated trenches as temporary drainage ditches.
- C. The JOC Contractor shall be responsible for installing a dewatering system to keep subgrades dry and convey ground water away from excavations. The JOC Contractor shall maintain the dewatering system until dewatering is no longer required.

**6.36 Solid Waste.** Storage, collection, transportation and final disposal of solid waste shall be in accordance with the Solid Waste Management Act regulations and standards of the Department of Environmental Protection (DEP). Immediately upon the effective date of the contract, the JOC Contractor shall obtain, at its cost, the necessary permit(s) from DEP and conduct waste disposal to sites approved under this permit. A copy of this permit must be submitted to the Client Agency before commencing waste disposal. A record of receipt of the waste material that is signed by the waste company certified to receive the waste material acknowledging receipt and proper disposal must be provided to the Client Agency.

**6.37 Compliance with Statutes and Regulations Administered by DEP.** The JOC Contractor shall comply with all statutes and regulations of the Commonwealth of

Pennsylvania concerning environmental quality control administered by DEP. These statutes include those listed in the Environmental Statement set forth in the RFP and are not limited to, the Clean Streams Law, the Clean Water Act, Pennsylvania Sewage Facilities Act, Air Pollution Control Act, Surface Mining Conservation and Reclamation Act, Bituminous Coal Open Pit Mining Conservation Act, Dams and Encroachments Act, Water Well Driller's Act, Water Works Act and Atomic Energy Act, all as amended to date. The JOC Contractor is responsible for any violations and shall secure all required permits. Erosion control measures are shown on drawings and specifications and/or specified in the General Requirements. The Design Professional, if required, shall obtain an erosion control permit. If there are changes to such statutes, regulations and etc. after the time of receipt of the JOC Contractor's Cost Submittal, the JOC Contractor may request an appropriate adjustment through the Changes provision of these General Conditions.

- 6.38 Burning of Materials.** Burning of materials from clearing and grubbing operations periodic and final clean-up, and all related construction, shall be governed by local codes and ordinances and/or the regulations of DEP. Where required, for each day that the JOC Contractor may contemplate open burning, it shall secure written approval from DEP and failure to secure such permission for open burning shall require the JOC Contractor to remove material from the project site and dispose of it in a manner acceptable to DEP.
- 6.39 Suspension from Metal Roof Decks – New and Existing.** Ductwork, conduit, ceiling systems, lighting fixtures or any other miscellaneous equipment shall not be suspended from metal roof decks. These components shall only be suspended from the structural members or a suspension system supported by the structural members. All concentrated loads must be reviewed and approved by the Design Professional.
- 6.40 Asphalt or Tar Kettles.** Asphalt or tar kettles shall not be used inside of or on the roof of any building. Fired kettles shall not be left unattended. There shall be at least one portable fire extinguisher with a minimum 20 BC rating within thirty feet of each fired kettle and one additional portable fire extinguisher with the same rating by the Work area.
- 6.41 Insulation for Construction Projects.** All insulation incorporated into the Project **must** contain the minimum percentage of postconsumer recovered paper or recovered material as shown below for the applicable product:

| <u>Material Type</u>                                 | <u>Percent by Weight</u>         |
|--|----------------------------------|
| Cellulose loose – fill and spray on                  | 75% postconsumer recovered paper |
| Perlite Composite Board                              | 23% postconsumer recovered paper |
| Plastic rigid foam,<br>polyisocyanurate/polyurethane |                                  |
| Rigid Foam   | 9% recovered material            |
| Foam-in-Place  | 5% recovered material            |
| Glass Rigid Foam                                     | 6% recovered material            |
| Phenolic Rigid Foam                                  | 5% recovered material            |
| Rock Wool  | 50% recovered material           |

**6.42 Enforcement of Insulation Requirement.** The JOC Contractor may be required to provide the Client Agency with documentary evidence that the insulation provided for the Project was produced with the required minimum percentage of postconsumer recovered paper or recovered material.

**6.43 Landscaping Recycled Products Content.** All landscaping products included in the final product and sold to the Commonwealth **MUST** contain the minimum percentage of postconsumer and recovered material content as shown below for the applicable products:

| <u>Landscaping Product</u>                         | <u>Recovered Material Content</u>   |
|--|---|
| Hydraulic Mulch:<br>Paper<br>Wood/Paper            | 100% (post-consumer)<br>100% total  |
| Compost Made from Yard Trimmings and/or Food Waste | Purchase or use of compost made from yard trimmings, applications such as landscaping, seeding of grass or other plants, as nutritious mulch under trees and shrubs, and in soil erosion control reclamation. the Client Agency further recommends implementing a composting system for these materials when agencies have an adequate volume and sufficient space. |
| Garden Hose:<br>Rubber and/or Plastic              | 60% (post-consumer)   |
| Soaker Hose:<br>Rubber and/or Plastic              | 60% (post-consumer)   |
| Lawn and Garden Edging<br>Rubber and/or Plastic    | 30% post-consumer/30-100% total   |

The JOC Contractor shall submit certification that the landscaping product(s) which the JOC Contractor used contains the required minimum percentage of post-consumer and recovered material content as shown in this chart. In addition, a Manufacturer's Certification must be completed and signed by the manufacturer before payment will be made to the JOC Contractor for the delivered items. The Manufacturer's Certification must indicate, at a minimum, the manufacturer's federal id number, this project number, and the following paragraph:

I, the undersigned officer of the manufacturer do hereby certify that I am authorized to provide this certification on behalf of the manufacturer and that the type of construction product(s) listed above which my company furnished to the JOC Contractor on this project contained not less than \_\_\_\_\_% post-consumer materials and \_\_\_\_\_% recovered materials as those terms are defined in these General Conditions. I understand that this document is subject to the provisions of the Unsworn Falsification to Authorities Act, 18 P.S. §4904.

The Client Agency shall have no obligation to pay for item(s) until a properly completed and signed Manufacturer's Certification is submitted.

**6.44 Construction Products Recycled Content.** All construction products offered by the JOC Contractor or included in the final product offered by the JOC Contractor and sold to the Commonwealth must contain the minimum percentage of postconsumer and recovered material content as shown in the chart below for the applicable products.

| Construction Products   | Material  | % of Post-Consumer Materials | % of Total Recovered Materials |
|---|---|------------------------------|--------------------------------|
| Structural Fiberboard   | Recovered Materials   | -                            | 80                             |
| Laminated Paperboard  | Post-consumer Paper   | 100                          | -                              |
| Rock Wool Insulation  | Slag  | -                            | 75                             |
| Fiberglass Insulation   | Glass Cullet  | -                            | 20                             |
| Cellulose Insulation (loose-fill and spray-on)  | Post-consumer Paper   | 75                           | -                              |
| Perlite Composite Board Insulation  | Post-consumer Paper   | 23                           | -                              |
| Plastic Rigid Foam, Polyisocyanurate/<br>Polyurethane: Rigid Foam Insulation  | Recovered Material  | -                            | 9                              |
| Foam-in-Place Insulation  | Recovered Material  | -                            | 5                              |
| Glass Fiber Reinforced Insulation   | Recovered Material  | -                            | 6                              |
| Phenolic Rigid Foam Insulation  | Recovered Material  | -                            | 5                              |
| Floor Tiles (heavy duty/commercial use)   | Rubber<br>Plastic   | 90<br>-                      | -<br>90                        |
| Patio Blocks  | Rubber or Rubber Blends<br>Plastic or Plastic Blends                    | 90<br>-                      | -<br>90                        |
| Polyester Carpet Fiber Face   | Polyethylene terephthalate (PET) resin                                  | 25                           | -                              |
| Latex Paint:<br>Consolidated <sup>1</sup><br>Reprocessed <sup>2</sup><br>White, Off-White, Pastel Colors<br>Grey, Brown, Earthtones, and<br>Other Dark Colors | Recovered Material<br><br>Recovered Material<br>Recovered Material      | 100<br><br>20<br>50          | -<br><br>-<br>-                |
| Shower and Restroom Dividers/Partitions:  | Plastic<br>Steel <sup>4</sup>   | 20<br>16<br>67               | -<br>9<br>33                   |
| Carpet Cushion:<br>Bonded Polyurethane<br>Jute<br>Synthetic Fibers<br>Rubber  | Old Carpet Cushion<br>Burlap<br>Carpet Fabrication Scrap<br>Tire Rubber | 15<br>40<br>-<br>60          | -<br>-<br>100<br>-             |
| Railroad Grade Crossing Surfaces  |   |                              |                                |

<sup>1</sup> Consolidated latex paint used for covering graffiti, where color and consistency of performance are not primary concerns.

<sup>2</sup> Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceiling, and trim; gutterboards; and concrete, stucco, masonry, wood, and metal surfaces.

See next page for continuation of footnotes

| Construction Products | Material     | % of Post-Consumer Materials | % of Total Recovered Materials |
|-----------------------|--------------|------------------------------|--------------------------------|
| Concrete              | Coal Fly Ash | -                            | 15                             |
| Rubber <sup>3</sup>   | Tire Rubber  | -                            | 85                             |
| Steel <sup>4</sup>    | Steel        | 16                           | 9                              |
|                       |              | 67                           | 33                             |

The JOC Contractor shall submit certification that the landscaping product(s) which the JOC Contractor used contains the required minimum percentage of post-consumer and recovered material content as shown in this chart. In addition, a Manufacturer's Certification must be completed and signed by the manufacturer before payment will be made to the JOC Contractor for the delivered items. The Manufacturer's Certification must indicate, at a minimum, the manufacturer's federal id number, this project number, and the following paragraph:

I, the undersigned officer of the manufacturer do hereby certify that I am authorized to provide this certification on behalf of the manufacturer and that the type of construction product(s) listed above which my company furnished to the JOC Contractor on this project contained not less than \_\_\_\_\_% post-consumer materials and \_\_\_\_\_% recovered materials as those terms are defined in these General Conditions. I understand that this document is subject to the provisions of the Unsworn Falsification to Authorities Act, 18 P.S. §4904.

The Client Agency shall have no obligation to pay for item(s) until a properly completed and signed Manufacturer's Certification is submitted.

**6.45 Storage Enclosure.** The JOC Contractor shall provide, at its cost, in a location directed by the Client Agency, a suitable, substantially watertight storage shed in which it shall store all materials that might be damaged by the weather. A mobile trailer is acceptable. The enclosure shall be situated on site as directed by the Client Agency. All storage enclosures shall have floors raised at least six (6) inches above the ground on heavy joists or sleepers. Storage sheds shall have sufficient natural ventilation to preclude condensation. The JOC Contractor shall maintain the storage shed at its cost and shall remove the shed(s) when directed by the Client Agency.

**6.46 No Storage in Existing Buildings.** The JOC Contractor shall not store any materials in any existing building or beyond the contract limits as defined by the drawings without prior written authorization from the Client Agency.

**6.47 Operation and Maintenance Instruction Manuals.** The JOC Contractor shall, for its scope of work, carefully compile during the progress of the Work indexed Operation and Maintenance Manuals to include methods of care and cleaning of

<sup>3</sup>The recommended recovered materials content for rubber railroad grade crossing surfaces are based on the weight of the raw materials, exclusive of any additives such as binders or additives

<sup>4</sup>The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.

all types of visible surface materials, both interior and exterior, and descriptions of all systems and equipment and methods of operations thereof. Descriptions shall give pertinent diagrams, identifying charts, color coding, connections, lubricating instructions, and single line and detailed wiring diagrams, Client manufacturers' printed information where possible. Where manufacturers' printed information is not available, the JOC Contractor shall obtain written instructions prepared by subcontractors and sub-subcontractors. The JOC Contractor shall include names, addresses and phone numbers of all subcontractors and sub-subcontractors, and of service firms of each mechanical item, for the Institution's use after expiration of the guarantee period. Prior to Final Inspection, the JOC Contractor shall submit a final draft of the manual in a loose-leaf binder for approval by the Design Professional and the Client Agency. After approval and before final payment, the JOC Contractor shall furnish two (2) corrected, indexed, bound copies and one (1) electronic copy in the Client Agency accepted formats and media to the Client Agency for issuance to the Institution no later than Closeout Inspection.

**6.48 As-Built Record Drawings.** No later than at the time of Final Inspection, the JOC Contractor shall prepare and deliver to the Client Agency through the Design Professional a complete set of contract prints, corrected with suitable markings to show all changes or variations from the original contract, including all items uncovered during the Work and showing the details of the Work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment.

**6.49 Traffic Control.** If required for a Job Order, the JOC Contractor will provide a Traffic Control Plan as described in Article 19.

**6.50 Warranty and Guarantee.** In addition to the Contract Bond, the JOC Contractor shall unconditionally warrant and guarantee equipment, materials and workmanship against defects arising from faulty equipment, faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of Final Inspection Work unless other warranties found within the Contract Documents specify or indicate longer periods. The JOC Contractor shall replace such defective equipment, materials or workmanship without cost to the Client Agency. The JOC Contractor warrants that such replacement equipment, material or workmanship furnished under this provision shall be furnished in conformance with the Contract Documents for an additional twelve (12) months from the completion of the replacement work. The JOC Contractor shall warrant that such equipment, material or workmanship furnished under this JOC Contractor shall be furnished in conformance with the Contract Documents. All Work not conforming to these standards may be considered non-conforming.

- A. If items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The JOC Contractor shall replace such defective equipment or materials, without cost to the Client Agency, within the manufacturer's warranty period. Nothing in this paragraph relieves the JOC Contractor or its surety of their obligations under the Contract Bond.

- B. The JOC Contractor shall assign and deliver to the Design Professional all warranties for review as part of the Operations & Maintenance submission. The Design Professional will transfer the warranties to the Client Agency. The warranty provided in this Paragraph shall be in addition to, and not in limitation of, any other warranty or remedy provided by Law, by the Contract Documents, or by the Detailed Scope of Work.
- C. If there is a substitution of material or equipment in accordance with the Substitution Paragraph, the JOC Contractor warrants that such installation, construction, material or equipment will perform to the standard of the item originally specified. The JOC Contractor explicitly warrants the merchantability, and the fitness for use and quality of all substituted items provided for or by it.
- D. The Client Agency may bring an action for latent defects that were hidden or not readily apparent to the Client Agency at the time of beneficial occupancy or Final Inspection, whichever occurred first, in accordance with applicable law.

**6.51 Taxes.** The JOC Contractor shall pay all sales, consumer, use and other similar taxes required by law. The JOC Contractor should be familiar with and take full advantage of all sales tax exemptions allowed by the Pennsylvania Department of Revenue.

**6.52 Offset of Amounts Due to Commonwealth.** The JOC Contractor, by execution of the Contract and each Job Order, certifies that it has no outstanding tax liability to Pennsylvania; authorizes the Department of Revenue to release information related to its tax liability to the Client Agency; and authorizes the Commonwealth to offset the amount of any state tax or JOC Contractor liability owed to the Commonwealth by the JOC Contractor or its affiliates and subsidiaries, as well as any other amount due to the Commonwealth from the JOC Contractor not being contested on appeal by the JOC Contractor, against any payments due the JOC Contractor under this or any other contract with the Commonwealth. The certification of no outstanding tax liability is a material representation of fact, which the Client Agency relies upon in entering into the Contract. If it is later determined that the JOC Contractor knowingly rendered an erroneous certification, the Client Agency may find the JOC Contractor in default and terminate the Contract. Such erroneous certification may also be grounds for initiation of civil, criminal and/or debarment proceedings.

**6.53 Nondiscrimination and Sexual Harassment.** During the term of the Contract, the JOC Contractor agrees as follows:

- 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.

**6.54 JOC Contractor Evaluations.** The JOC Contractor by entering the Job Order Contract, consents to the evaluation of its performance by the Client Agency and/or the Client Agency's designee and understands that any such evaluation may be used in future procurements to determine the JOC Contractor's responsibility. The Client Agency and/or the Client Agency's designee shall provide the JOC Contractor with written notice of any unsatisfactory evaluations and the reasons therefore. The JOC Contractor shall be entitled to submit a reply.

## **ARTICLE 7: SUBCONTRACTORS**

**7.1 JOC Contractor's Interest in Subcontractor.** Pursuant to the JOC Contractor Integrity Provisions set forth in the RFP, a JOC Contractor may not, except with the consent of the Commonwealth, have a financial interest in any other JOC Contractor, Subcontractor, or Supplier providing services, labor, or material on this project. The JOC Contractor is required to disclose the names of all Subcontractors and/or Suppliers in which the JOC Contractor has a financial interest, and which will be utilized in the Project. This information must be disclosed with the Job Order Proposal. If the Client Agency has any objection to the proposed Subcontractors and/or Suppliers listed, the JOC Contractor shall promptly propose another Subcontract and/or Supplier to whom the Client Agency does not have an objection. The Client Agency's acceptance of the Subcontractors and/or Suppliers will be deemed to be consent for the purposes of the JOC Contractor Integrity Provisions. Failure to disclose the names of such Subcontractors and/or Suppliers for which the JOC Contractor has a financial interest is a violation of the JOC Contractor Integrity Provisions. For violations of any of these JOC Contractor Integrity Provisions, the

Commonwealth may terminate this and any other contract with JOC 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 JOC Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of anyone 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. The JOC Contractor shall not replace any Subcontractor and/or Supplier previously selected and/or approved by the Client Agency, without prior written notification to the Client Agency and receipt of the Client Agency's written approval for such substitution.

**7.2 Subcontractor/Supplier Responsibility.** If the JOC Contractor enters into any subcontracts or purchase orders under this Contract with Subcontractors or Suppliers currently suspended or debarred by the Commonwealth, or who become suspended or debarred by the Commonwealth during the term of this Contract or any extensions or renewals of it, the Client Agency may require the JOC Contractor to terminate such Contract.

**7.3 JOC Contractor Responsibility for Actions and Compliance.** The JOC Contractor shall be responsible for all acts of its Subcontractors and Suppliers utilized under this Contract, and for their compliance with all terms and provisions of the Contract applicable to their performance. The JOC Contractor shall continuously coordinate the Work of all Subcontractors to assure proper processing and progress of the Work.

- A. The JOC Contractor shall require each Subcontractor to comply with the following:
  - 1. Examine the shop drawings and the Work of other subcontractors and all sections of the specifications to the extent necessary for satisfactory installation of its Work, and connection between its Work and the Work of other subcontractors; and
  - 2. Coordinate its Work accordingly; and
  - 3. Cooperate with other subcontractors toward timely and satisfactory completion of the Project.
  
- B. Subcontractors proposed by the JOC Contractor will not be acceptable to the Client Agency if evidence exists or arises during the Work that the Subcontractors are unable or unwilling to comply with the requirements of the Contract Documents which govern the Work of the Subcontractors involved, or if the Subcontractors have experience which is inconsistent with requirements for the Work of the Subcontractors. In the event a Subcontractor is or becomes unacceptable to the Client Agency, the JOC Contractor will not be entitled to a change in the Job Order Price and Job Order Completion Time and shall propose substitute Subcontractors for unacceptable Subcontractors.
  
- C. The failure of any Subcontractor to complete its portion of the Work in a satisfactory manner within the proper time will not relieve the JOC

Contractor of responsibility for the proper and satisfactory execution and completion of the entire Work.

**7.4 Acts and Omissions of Subcontractors.** The JOC Contractor acknowledges its full responsibility to the Client Agency for the acts and omissions of its Subcontractors, and of the persons and firms either directly or indirectly employed by them, equally to the extent that the JOC Contractor is responsible for the acts and omissions of persons and firms directly or indirectly employed by it. The JOC Contractor acknowledges that it remains fully responsible for the proper performance of its Contract whether work is performed by the JOC Contractor's own forces or by Subcontractors engaged by the JOC Contractor.

**7.5 Subcontracts and Purchase Orders.**

A. Subcontractors:

1. All Work performed for the JOC Contractor by a Subcontractor shall be done pursuant to a written subcontract between the JOC Contractor and the Subcontractor.
2. The form of the written subcontracts may vary at the discretion of the JOC Contractor, but must contain the provisions noted below in Subsection A.3.b.
3. All subcontracts between the JOC Contractor and each Subcontractor **must**:
  - a. Be signed by both parties;
  - b. Contain Provisions that:
    - i. Set forth the amount the Subcontractor is to be paid; and
    - ii. Describe the scope of Work to be performed by the Subcontractor; and
    - iii. Preserve and protect the rights of the Client Agency under the Contract with respect to the Work to be performed under the Subcontract, so that the subcontracting thereof will not prejudice such rights; and
    - iv. Require that such Work be performed in accordance with the requirements of the Contract Documents; and
    - v. Require submission to the JOC Contractor of applications for payment under each Subcontract to which the JOC Contractor is a party, in reasonable time to enable the JOC Contractor to apply for payment in accordance with the provisions of the Prompt Payment Schedule (62 Pa. C. S. §3931-§3939) and the provisions of these General Conditions governing payment by the Client Agency; and Require that all claims for additional costs, extensions of time or otherwise with respect to subcontracted portions of the Work shall be submitted to the JOC Contractor in the manner provided in the Contract Documents for like claims by the JOC Contractor upon the Client Agency; and

- vi. Prior to commencing onsite or offsite work, require each Subcontractor to comply with the provisions of the Public Works Employment Verification Act (43 P.S. §§ 167.1 – 167.11), which requires subcontractors to utilize the Federal E-Verify program to verify the employment eligibility for every new employee hired after January 1, 2013 and to submit to the Department a Commonwealth Public Works Verification Form available on the Department's web site at [www.dgs.state.pa.gov](http://www.dgs.state.pa.gov); and.
- vii. Require each Subcontractor to include provisions in each of its subcontracts regarding the applicability of the Public Works Employment Verification Act (43 P.S. §§ 167.1 – 167.11), information regarding the use of the Federal E-Verify program, and reference to the Department's web site to obtain a downloadable copy of the Commonwealth Public Works Employment Verification Form required to be submitted to the Client Agency.
- viii. Require acknowledgement by the Subcontractor that the Subcontractor is without privity of Contract with the Commonwealth and Client Agency and that the Subcontractor agrees by signing the Subcontract that it neither acquires or intends to acquire any rights against the Client Agency on a third party beneficiary theory or any other theory; and
- ix. Require each Subcontractor to notify its Subcontractors, in writing, that their rights of recovery against the bond of the JOC Contractor for failure of payment may not be exercised unless the JOC Contractor is notified of the claim within ninety (90) days from the last performance of labor or provision of materials and/or equipment; and
- x. Obligate each Subcontractor to specifically consent to all provisions of this Article of the General Conditions of the Contract; and
- xi. Contain the following certification language:
  - 1. **Certification:** I, \_\_\_\_\_ the undersigned officer of the JOC Contractor, do certify that, to the best of my knowledge, this subcontract complies with the provisions of the Subcontractor Article of the General Conditions of the Contract with the Client Agency. I understand that by signing this document I certify that this document is subject to the provisions of the Unsworn Falsifications to Authorities (18 P.S. §4904). I acknowledge that if my company does not comply with the terms of the Subcontractor Article my firm may be subject to suspension for a period up to three (3) months and/or debarment from bidding on any Commonwealth of Pennsylvania Public Works Projects for a period of three (3) years.
- xii. The JOC Contractor agrees that failure to incorporate these terms in its Subcontracts is a material breach of the terms of the

Contract Documents. The JOC Contractor will have five (5) days, as required by the Administrative Procedures, to provide proof in writing that such a deficiency in its subcontract documents has been remedied. Failure to provide written proof within five (5) days may constitute grounds for default of the JOC Contractor by the Department.

4. All subcontracts between the JOC Contractor and Small Diverse Businesses, Veteran Business Enterprises, and Small Businesses must contain, in addition to the items listed in Section 3 above, the following:
  - a. The fixed percentage commitment and/or associated estimated dollar value that each SDB, VBE, or SB will receive based on the Job Order; and
  - b. Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected offeror's contract with the Commonwealth and that do not place disproportionate risk on the SDB or VBE relative to the nature and level of the SDB's or VBE's participation in the contract; and
  - c. The requirement that the SDB, VBE, or SB submit to BDISBO utilization reports.
5. The JOC Contractor shall submit one copy plus an electronic copy of all subcontracts for Work to be performed on the Project to the Client Agency for the Project **prior to the commencement of any Work by the Subcontractor**.
6. The JOC Contractor shall also submit a copy of every subcontract with a Small Diverse Business or Veteran Business Enterprise to the DGS' Bureau of Diversity, Inclusion, and Small Business Opportunities with its Quarterly Report.
7. The JOC Contractor shall submit to the Client Agency a list of its subcontractors' personnel to be in attendance at the site or Job Conferences, their duties and responsibilities and their addresses and cell phone numbers. Once construction by a subcontractor begins at the project site, the subcontractor shall be represented by a duly authorized and competent superintendent, whenever it is carrying out any work on the site. The subcontractor may not change its superintendent, unless it provides, in writing, justification for the change, along with the name and qualifications of the individual whom the JOC Contractor proposes to be the subcontract superintendent. The Client Agency may demand that the JOC Contractor dismiss from the project any person subcontracted by the JOC Contractor whom the Client Agency determines is incompetent or guilty of misconduct. The Client Agency may withhold any payments, which are or may become due to the JOC Contractor, or the Client Agency may suspend the work at the expense of the JOC Contractor, if the JOC Contractor fails to comply with the provisions of this paragraph.

**B. Manufacturers and Suppliers:**

1. Manufacturers and Suppliers do not have to sign Purchase Orders.
2. The JOC Contractor shall submit one (1) certification letter, on the JOC Contractor's letterhead, with language identical to that set forth in the sample letter included as part of the Administrative Procedures governing Material and Subcontractor approvals. This one (1) letter, which shall apply to all purchase orders, shall certify the JOC Contractor's compliance with the terms set forth in the letter. The language required by the Administrative Procedures to be included in the letter shall not be altered in any way
3. The JOC Contractor shall submit this certification letter to the Client Agency prior to the delivery of any material and/or equipment by any Manufacturer or Supplier.
4. For every purchase order with a Small Diverse Business or Veteran Business Enterprise, the JOC Contractor shall submit a copy of the purchase order to the DGS' Bureau of Diversity, Inclusion, and Small Business Opportunities with its Small Diverse Business and Veteran Business Enterprise Utilization Report. The purchase order for a Nonstocking Supplier must include the fee or commission paid to the Nonstocking Supplier.
5. The JOC Contractor shall identify all material and/or equipment that will be supplied by a Small Diverse Business or Veteran Business Enterprise Supplier or a Small Diverse Business or Veteran Business Enterprise Manufacturer on a separate line item (per Supplier/Manufacturer, not per material and/or equipment).

**7.6 No Contractual Relationship between the Client Agency and Subcontractor.**

Nothing contained in the Contract Documents creates any contractual relationship between the Client Agency and any Subcontractor, Sub-Subcontractor or any of its authorized representatives. Nothing contained in the Contract Documents creates any contractual relation between the Construction Manager (if there is one on the Project) and any Subcontractor, Sub-subcontractor or supplier. The JOC Contractor is not an intended third party beneficiary of the Construction Manager's Contract with the Client Agency. Nothing in the Contract Documents between the Client Agency and the JOC Contractor should be construed to authorize any person not a party to the Standard Form of Contract or Construction Manager's Contract to maintain any lawsuit involving that contract, unless otherwise provided by law.

**7.7 No Contractual Relationship between the Client Agency and Supplier.**

Nothing contained in the Contract Documents creates any contractual relationship between the Client Agency and any Supplier or its authorized representatives. Nothing contained in the Contract Documents creates any contractual relation between the Construction Manager (if there is one on the Project) and any supplier. The supplier is not an intended third party beneficiary of the Construction Manager's Contract with the Client Agency. Nothing in the Contract Documents between the Client Agency and the JOC Contractor should be construed to authorize any person not a party to the Standard Form of Contract or Construction Manager's Contract to maintain any lawsuit involving that contract, unless otherwise provided by law.

- 7.8 Payment of Subcontractor by JOC Contractor Governed By Prompt Payment Schedule.** Payments to the Subcontractor are subject to the provisions of the Commonwealth Procurement Code (62 Pa. C. S. §3931 *et seq.*) *also known as the "Prompt Payment Schedule"*. The general description set forth in the General Conditions does not relieve the JOC Contractor from strict compliance with the requirements of the Prompt Payment Schedule. Nothing described in these General Conditions is intended to impose a duty greater than that imposed by the Prompt Payment Schedule. In the event of any discrepancy between this language and the language of the Schedule, the Schedule controls.
- 7.9 Failure of the Client Agency to Make Progress Payment.** If the Client Agency fails to pay some or all of an accepted Application for Payment for any cause which is the fault of the JOC Contractor and not the fault of a particular Subcontractor, the JOC Contractor shall pay that Subcontractor, upon demand made by the Subcontractor at any time after the accepted Application for Payment should otherwise have been issued, for its Work to the extent completed, less the retained percentage.
- 7.10 JOC Contractor Disclosure of Due Date for Progress Payments from the Client Agency.** The JOC Contractor must disclose to a subcontractor, before a subcontract is executed, the due date for receipt of progress payments from the Client Agency. If the JOC Contractor fails to accurately disclose the due date to a subcontractor, the JOC Contractor must pay the subcontractor as though the Client Agency has paid the JOC Contractor within 45 days of receipt of its application for payment. This section does not apply to a change in due dates because of conditions beyond the JOC Contractor's control, including, but not limited to, design changes, change in the Work, or delays in construction due to weather conditions.
- 7.11 Insurance Receipts.** The JOC Contractor shall pay each Subcontractor a just share of any insurance moneys received by the JOC Contractor under the Insurance Article of these General Conditions of the Contract, and shall require each Subcontractor to make similar payments to its sub-subcontractors.
- 7.12 Percentage of Completion.** The Client Agency may, on request, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the JOC Contractor on account of work done by such Subcontractor.
- 7.13 No Obligation on Part of the Client Agency to Pay Subcontractor or Supplier.** Subcontractor or Supplier issues concerning delayed and non-payment should be addressed to the JOC Contractor and the JOC Contractor's payment bond surety. The Client Agency shall have no obligation to pay or to ensure the payment of any moneys to any Subcontractor or Supplier except as may otherwise be required by law. Subcontractors and Suppliers acknowledge they have no direct cause of action (unless otherwise provided by law) against the Construction Manager (if there is one on the Project) or the Client Agency relating to any payment issues.
- 7.14 Subcontractor, Supplier and Manufacturer Claims.** The JOC Contractor agrees to require the Subcontractor, Supplier and/or Manufacturer to submit all claims for extras, extensions of time or for damages to the JOC Contractor in the manner provided in the Contract Documents for claims by the JOC Contractor against the Client Agency in accordance with the Disputes Article of these General Conditions.



The Client Agency shall have no obligation to pay or to ensure the payment of any moneys to any Subcontractor, Supplier, or Manufacturer except as may otherwise be required by law. Subcontractors, Suppliers and Manufacturers acknowledge that they have no privity of contract with the Client Agency and therefore they may not pursue a claim directly against the Client Agency or the Construction Manager (if there is one on the Project).

**7.15 Deficiency Items.** The JOC Contractor may withhold payment from any subcontractor responsible for a deficiency item. The JOC Contractor shall pay any subcontractor according to the provisions of this section for any item which appears on the application for payment and which has been satisfactorily completed. If a JOC Contractor withholds payment from a subcontractor for a deficiency item, it must notify the subcontractor or supplier and the Client Agency of the reasons within 15 calendar days of the date after receipt of the notice of the deficiency item from the Client Agency.

## **ARTICLE 8: SCHEDULE**

8.1 As requested for a Job Order, the JOC Contractor shall prepare and submit a construction schedule in a format requested by the Client Agency, including but not limited to, bar chart format, Critical Path Method (CPM), and/or in conjunction with the remainder of this Article 8.

8.2 **CLIENT AGENCY RESERVATION OF RIGHTS.** The Client Agency or their designee reserves the right to accept the Project Schedule developed, signed and submitted by the JOC Contractors, while preserving exceptions to any defects in the means, methods, sequences, durations and/or logic which the Client Agency believes exist in the schedule. The acceptance of the updated Project Schedule by the Client Agency in no way relieves the JOC Contractors from their duty to coordinate amongst themselves and shall not make the Client Agency, its designee or the Professional a guarantor of the Project Schedule.

Upon request, the Lead JOC Contractor shall provide to the Construction Manager or the Client Agency, in hardcopy and electronic format (format to be determined by the Client Agency), all the planning data used to develop the Project Schedule. This planning data shall include, but is not limited to:

1. Job Sequences;
2. Activity Logic;
3. Man loading;
4. Crew sizes;
5. Number of shifts planned per working day;
6. Number of crews per shift; and
7. Equipment loading.

8.3 **TIME OF THE ESSENCE.** All time limits stated in the Contract Documents and the Job Order are of the essence. The JOC Contractor shall perform the Detailed Scope of Work expeditiously with adequate forces Client all calendar days to complete the Detailed Scope of Work no later than the Job Order Completion Time.

8.4 **COMMENCEMENT OF WORK.** If the Client Agency does not direct otherwise, the date of commencement of the Work is the date the Job Order is issued.

8.5 **INITIAL JOB CONFERENCE.** The Initial Job Conference may be held on a day and time determined by the Client Agency.

**Paragraphs 8.6 through 8.15 only apply to Projects where the Client Agency or the Construction Manager requires a CPM Schedule.**

8.6 **PROJECT SCHEDULE PREPARATION.**

- A. CPM: Unless directed otherwise by the Client Agency, the project management tool commonly called the Critical Path Method (CPM) scheduling system will be used on this Project for planning, scheduling implementation and reporting of all Work to be performed under this Contract, including all activities of Subcontractors, equipment vendors and Suppliers. Unless directed otherwise by the Client Agency, the precedence diagramming method shall be used in preparing the Project Schedule and all related network diagrams. Primavera Project Planner version 5.0 (or later versions) shall be used by all Prime JOC Contractors to maintain the Project Schedule, unless all JOC Contractors agree upon and request the Client Agency's permission to utilize alternate software. The Project Schedule network plan, including all appropriate milestone dates and the computer-produced reports shall be part of the Contract Documents. The following outline is provided to indicate to all JOC Contractors the scope of the scheduling work and the responsibility of all JOC Contractors to comply with this method. The CPM Schedule shall be developed, prepared, and submitted in accordance with this paragraph and the requirements of the Scheduling Administrative Procedure. **No JOC Contractor shall assert any claim whatsoever for any delay or additional cost incurred in connection with the development of the CPM Schedule.**
- B. SCOPE: The CPM will be used to establish and control the Project Schedule. This system will be implemented by the Lead JOC Contractor Client the services of a qualified Subcontractor or the Lead JOC Contractor's own in-house staff. The CPM scheduler must demonstrate to the Client Agency that it has the capability of performing the CPM Scheduling required on the Project by submitting (no later than the Initial Job Conference) a written description of:
1. the scheduler's CPM scheduling system, which must be recognized in the industry as adequate for CPM Scheduling of a project of this size; and
  2. the scheduler's experience over the previous five (5) years with projects of this size and nature.
- C. COOPERATION OF JOC CONTRACTORS: To the extent necessary for the Lead JOC Contractor to reflect the JOC Contractors' proposed plan for completion of its Work in a computerized CPM Project Schedule network diagram, the JOC Contractors shall meet with and assist the Lead JOC Contractor and furnish information as directed in a Letter of Intent or otherwise directed subsequent to award of Contract. All Work shall be done in accordance with accepted CPM planning and scheduling methods and it shall be the responsibility of all JOC Contractors to cooperate fully with the Lead JOC Contractor and with each other to create and update the CPM schedule as required. The Project Schedule, including all updates, will reflect the decisions of all JOC Contractors as to sequences, durations, construction logic, and all means and methods of construction. Each JOC Contractor must provide persons of sufficient skill and information of sufficient detail to enable the Lead JOC Contractor to prepare and update the CPM Schedule. The JOC Contractors are required to allocate to home office and field office costs sufficient financial resources to enable the JOC Contractor to fulfill their responsibilities for coordinating and cooperating in the creation and maintenance of the CPM Schedule.

D. DUE DATES: Each JOC Contractor expressly acknowledges the duty to cooperate fully with these scheduling requirements.

1. The Lead JOC Contractor on the Project shall, within seven (7) calendar days of the issuance of the Job Order, furnish each separate JOC Contractor a draft schedule of the proposed prosecution of the work under that JOC Contractor's Job Order. The Lead JOC Contractor shall prepare and submit to the Design Professional, the Client Agency and/or the Construction Manager within thirty (30) calendar days of the issuance of the Job Order, the completely integrated Project Schedule in CPM format, signed by all other Prime JOC Contractors, indicating their approval, and showing in detail, to the acceptance of the Client Agency, the proposed coordinated dates for the performance of each part of the Work under each Job Order on the Project. The submission of the Project Schedule, and all subsequent updates, shall be done by hard copy (including all requested sorts and arrangements; utilizing color print), and in electronic format (computer disk or file) containing all data files in the Primavera scheduling system used to develop the schedule. This schedule shall begin with the Initial Job Conference and end with the Job Order Completion Date.
2. **On multiple JOC Contractor Projects or single JOC Contractor Projects greater than 15 days, the Client Agency will only review and pay (if the application is otherwise acceptable) the JOC Contractor's Application for Payment #1 without an integrated Progress Schedule being submitted and accepted by the Client Agency. If there is no Project Schedule submitted and accepted after Application for Payment #1, the Client Agency may withhold payments from every JOC Contractor until such time as there is an accepted Project Schedule.**

E. PRELIMINARY PROJECT SCHEDULE: The CPM Project Schedule will be developed by the Lead JOC Contractor in the form of a CPM arrow network or CPM precedence diagram from the information provided by the JOC Contractors.

1. Within seven (7) calendar days of the issuance of the Job Order, the Lead JOC Contractor shall furnish each JOC Contractor a draft progress schedule of the proposed prosecution of the Work under that JOC Contractor's Contract.
2. Within seven (7) calendar days of receipt of the Lead JOC Contractor's draft progress schedule, each separate JOC Contractor shall submit to the Lead JOC Contractor a schedule of the proposed prosecution of its Work, which the JOC Contractor has integrated with the Lead JOC Contractor's Work. The information provided by the JOC Contractors to the Lead JOC Contractor shall include all proposed sequences of operation, time estimates to complete operations, man loading, and data from subcontractors, material supplies, and vendors required for the

preparation of the Project Schedule. Each JOC Contractor shall cooperate with the Lead JOC Contractor to aid in the preparation of the draft Project Schedule. The Lead JOC Contractor may conduct a meeting with each of the other JOC Contractors to discuss details and inclusion of all of their Work in the draft Project Schedule.

3. Seasonal weather conditions shall be considered by the JOC Contractors in the planning and scheduling of all Work influenced by high or low ambient temperatures to insure the completion of the Detailed Scope of Work within the allotted Job Order Completion Time and milestone completion dates.
4. The accepted Project Schedule must meet the specified Job Order Completion Time.
5. The accepted Project Schedule shall consider and include all time durations associated with UCC Inspection criteria by the PA Department of Labor and Industry, along with all other testing and inspections required by contract. It must take into account the advance notice needed for L&I Inspectors as defined by the UCC Building Permit criteria.

F. MILESTONES:

1. The Project Schedule shall identify Construction Progress Milestones for the Project. A Milestone is to signify the start and/or completion date of a specific activity that is significant to completing the Project on schedule. The Lead JOC Contractor is to fully consider the sequence of operations, time estimates and other scheduling influences of all the JOC Contractors when establishing the Milestones. By signing off on the Progress Schedule, the JOC Contractors are also agreeing to the Milestones set forth on the schedule. Any and all milestones that are not completed on schedule will require a Recovery Plan from the JOC Contractors.
2. Selected Milestones shall be taken from activities that are found within the Critical Path of the Project Schedule.
3. **Failure to provide full cooperation in the preparation of the CPM Schedule and any Updated Schedules will be sufficient reason for declaring the JOC Contractor in default.**

G. SCHEDULING INFORMATION: The following information/data for the Project Schedule will be submitted to the Lead JOC Contractor. The information to be supplied by each Prime JOC Contractor to the Lead JOC Contractor shall include, but is not limited to:

1. The Prime JOC Contractor's means and methods of construction; and
2. Job sequences; and
3. Activity durations in calendar days (excluding material deliveries and approval of shop drawings);
  - a. One (1) calendar day shall be the minimum duration.
  - b. thirty (30) calendar days shall be the maximum duration.

- c. upon written request from the Lead JOC Contractor and written approval of the Client Agency or Construction Manager, the maximum duration may be extended beyond 30 calendar days.
  4. Construction activities for display of all salient features of the Work of each JOC Contractor, including but not limited to:
    - a. placing of orders for materials; and
    - b. submission of shop drawings for approval; and
    - c. approval of shop drawings; and
    - d. delivery of material; and
    - e. all work activities to be performed by each JOC Contractor; and
    - f. priority submittal schedule.
- H. FORMATION OF FINAL PROJECT SCHEDULE: Once the Project Schedule information has been compiled, the Lead JOC Contractor will generate a fully integrated Project Schedule for the Project in draft form. If the completion date indicated on the schedule exceeds the Contract Completion Date or if there appears to be a defect in the construction sequences, duration, or logic, the information used to develop the arrow network diagram or precedence diagram will be reviewed by the Lead JOC Contractor and all other Prime JOC Contractors. After discussion and revisions of the information and data, the Lead JOC Contractor will utilize this revised data to produce a revised fully integrated Project Schedule. The procedure will be repeated as necessary to obtain a final Project Schedule that meets the Job Order Completion Date. This final Project Schedule is to be submitted to the Client Agency with the Job Order Proposal. The hard copy of the completed final Project Schedule will show:
  1. Activity identification;
  2. Activity description;
  3. Activity percentage completed;
  4. Calendar dates for early start of each activity;
  5. Calendar dates for early finish of each activity;
  6. Calendar dates for late start of each activity;
  7. Calendar dates for late finish of each activity;
  8. Individual activity float;
  9. Activities critical to completion (i.e., identify all items on the critical path) of the project on schedule;
  10. Milestones; and
  11. That the Schedule is within the contract completion duration.

All Prime JOC Contractors will sign the Project Schedule and each update to the schedule. A JOC Contractor's signature constitutes approval of the Schedule. The Lead JOC Contractor will distribute the signed Project

Schedule to all Prime JOC Contractors, the Professional, and submit the same to the Client Agency for review.

- 8.7 **WORK DURING FORMATION OF PROJECT SCHEDULE.** Until the final Project Schedule is signed by all JOC Contractors and accepted by the Client Agency, each JOC Contractor must proceed with the Work utilizing all the information available to them, including but not limited to coordination meetings with other JOC Contractors, attendance at Job Conferences, two week look ahead activities, weekly superintendent's meetings, draft CPM schedules used in the development of the final Project Schedule, and any other means necessary to maintain work progress until such time as the Project Schedule is complete and accepted. As such, no JOC Contractor shall assert any claim whatsoever for any delay or additional cost incurred with the development of the Project Schedule.
- 8.8 **THE CLIENT AGENCY SHALL OWN THE FLOAT.** No float shall be used by the JOC Contractor without written directive from the Client Agency. Total float is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every activity in the Project Schedule. Extensions of time to interim milestone dates or the Job Order Completion Time will be granted only to the extent that equitable time adjustments to the activity or activities affected by the changes in the Work or delay exceeds the total float of the affected or subsequent paths and extends any interim milestone date or the Job Order Completion Time. Such determination shall be made at the sole discretion of the Client Agency.
- 8.9 **SCHEDULING DISPUTES:** The Lead JOC Contractor and other JOC Contractors are responsible for coordination of the Work. Disputes between the Lead JOC Contractor and one (1) or more other JOC Contractors or disputes between two (2) or more JOC Contractors pertaining to the creation of the Project Schedule, Schedule Updates or any Recovery Schedule, the furnishing of additional resources to meet the project schedule and/or the administration of the construction shall be submitted promptly to the Client Agency or Construction Manager for a decision. The decision of the Client Agency or Construction Manager will be observed, accepted, and fully followed by all JOC Contractors and their subcontractors on the Project, subject only to the commencement of a dispute or arbitration proceeding pursuant to Disputes Article of these General Conditions. The progress of the Work, as determined by the decision, shall not be delayed while awaiting the outcome of any such dispute proceeding.
- 8.10 **MAINTAINING THE PROJECT SCHEDULE.**
- A. Each JOC Contractor shall ensure that such manpower, materials, facilities, and equipment is applied to the Work, and shall work such hours as approved, including night shifts, overtime operations, Sundays, and holidays, as may be necessary, to maintain its progress in accordance with the Project Schedule so that no delays are caused to other Prime JOC Contractors engaged in the Project and to insure the progress and completion of the Work within the time allowed by the Job Order and as permitted by the Client Agency.

- B. If any JOC Contractor fails to maintain progress according to the schedule or causes delay to another Prime JOC Contractor, the delaying JOC Contractor shall furnish such additional manpower, equipment, additional shifts or other measures that are necessary, or as the Lead JOC Contractor directs, to bring its operations up to schedule without any additional cost or expense to the Client Agency.
- C. If the JOC Contractor refuses or fails to keep up with the Project Schedule or fails to proceed as directed by the Client Agency, the Client Agency will note this refusal/failure in the JOC Contractor Responsibility Program and will consider suspension of the JOC Contractor in accordance with Section 531 of the Commonwealth Procurement Code. The Client Agency may also, in its sole discretion, find the JOC Contractor in breach of its Job Order and/or declare the JOC Contractor in default of its Job Order in accordance with the Termination Article of these General Conditions.

8.11 **PROJECT SCHEDULE UPDATING**. As required for a Project, the Project Schedule will be updated and issued at least once per month by the Lead JOC Contractor.

- A. **MANDATORY MONTHLY SCHEDULE UPDATE MEETING**. The Lead JOC Contractor will provide, at least once per month, updates of the Project Schedule. All JOC Contractors shall attend a Monthly Schedule Update Meeting. It is mandatory that all JOC Contractors provide their updated information to the Lead JOC Contractor seven (7) calendar days prior to the Monthly Update Meeting. The Client Agency or Construction Manager reserves the right to request additional updates, at no cost to the Client Agency, from any JOC Contractor. The Lead JOC Contractor shall provide documentation confirming the Monthly Update Meetings, stating the date, time, and attendance.
- B. At the conclusion of the Monthly Schedule Update Meeting, all information collected will be checked by the Lead JOC Contractor against the current Project Schedule. After all revisions in logic and time estimates have been noted, a hardcopy of the schedule (including all drafts necessary to reach agreement) will be generated, reviewed, and signed by all JOC Contractors to indicate their concurrence. The Updated Project Schedule will be distributed by the Lead JOC Contractor to the other JOC Contractors, the Design Professional, the Construction Manager, and the Client Agency within five (5) calendar days after the Monthly Update Meeting. The submission of Updated Project Schedule to the Client Agency and Construction Manager shall be done by hard copy (including all requested sorts and arrangements; utilizing color print), and in electronic format (computer disk or file) containing all data files in the Primavera scheduling system used to develop the schedule.
- C. Upon request, the Lead JOC Contractor shall provide to the Construction Manager or the Client Agency, in hardcopy and electronic format (format to be determined by DGS), its planning data used to develop the updates of the Schedule. This planning data includes, but is not limited to:

1. Job Sequences;



2. Activity Logic;
  3. Man loading;
  4. Crew sizes;
  5. Number of shifts planned per working day;
  6. Number of crews per shift; and
  7. Equipment loading.
- D. As part of the Job Conference, all activities scheduled to begin in the projected work for the next two weeks will be reviewed in a schedule look- ahead.

8.12 **RECOVERY PLAN.**

- A. EVENTS THAT TRIGGER THE NEED FOR A RECOVERY PLAN: The Construction Manager or Client Agency may issue a Recovery Schedule Notice demanding that the Lead JOC Contractor, after coordinating with the other JOC Contractors, submit a Progress Recovery Plan upon the occurrence of any of the following events:'
1. The progress of the Work or a single activity falls behind the contract time as shown in a currently updated and approved Project Schedule by more than fifteen (15) calendar days; or
  2. A missed milestone; or
  3. When an updated Project Schedule provides a completion date past the Job Order Completion Date; or
  4. When a late finish for any activity does not come within the time allowed by the current Project Schedule.
  5. When, in the sole opinion of the Client Agency or Construction Manager, it appears likely that the Work will not be completed within the Job Order Completion Time.
- B. The JOC Contractor(s) responsible for the occurrence will work with the Lead JOC Contractor to prepare a Recovery Plan indicating that all future activities, Project completion and occupancy dates will be met within the Job Order Completion Time. The Recovery Plan shall be developed by the JOC Contractor and received by the Client Agency or Construction Manager within three (3) calendar days of receipt of the Recovery Schedule Notice. The Recovery Schedule shall be implemented immediately unless otherwise directed by the Client Agency or Construction Manager.
- C. In order to create and maintain the Recovery Plan, the JOC Contractor(s) agree(s) to undertake, but not be limited to, some or all of the following actions at no additional cost to the Client Agency: increase the manpower, the number of working hours per shift, the number of shifts per day, the number of working days per week, the quantity of equipment, or any combination of the foregoing, and reschedule such activities to bring the project back on schedule.

- D. Failure of any JOC Contractor to comply with these requirements shall be considered grounds for a determination by the Client Agency that the JOC Contractor is failing to prosecute the Work with sufficient diligence to ensure its completion within the Job Order Completion Time and is failing to comply with the Job Order Completion Time provisions of the Contract. Such determination may result in default and/or suspension and/or debarment of the JOC Contractor.
  - E. The Client Agency's acceptance of the Recovery Plan does not relieve the JOC Contractors of the responsibility for the accuracy of the schedule and for the JOC Contractors' obligations to meet the Contract Completion Date. The Client Agency's acceptance of the Recovery Plan does not constitute approval or warranty of the JOC Contractors' means, methods, and techniques of construction. The Client Agency reserves the right to review any Recovery Plan to determine if it satisfies the Project Schedule. If the Recovery Plan does not satisfy the Project Schedule, the Client Agency may elect to prepare a Recovery Plan, to which the JOC Contractors must adhere. The costs incurred by the Client Agency in preparing the Recovery Plan will be assessed against the JOC Contractors on a *pro rata* basis (based upon individual contract price/all contracts awarded on the Project) credited through a Supplemental Job Order.
  - F. If an updated monthly Project schedule provides a completion date past the Job Order Completion Time, then a Recovery Plan is required, not an Extension of Time.
- 8.13 **REQUESTS FOR EXTENSIONS OF TIME.** All requests for Extensions of Time shall be submitted to the Client Agency in writing on the form provided by the Administrative Procedures. Reasons substantiating the request shall be included or the request may be denied. All such requests must be filed within ten (10) calendar days of the end of the event or issue that caused the alleged delay.
- 8.14 **EFFECT OF GRANT OF EXTENSIONS OF TIME TO OTHER JOC CONTRACTORS.** Activity time delays shall not automatically merit an extension of the Job Order Completion Time of this or any other Contract. The granting of an Extension of Time to one JOC Contractor does not automatically entitle any other JOC Contractor to an Extension of Time.
- 8.15 **EXTENSIONS OF TIME AND IMPACT ON SCHEDULE.**
- A. **A Supplemental Job Order, field order or delay may not affect existing critical activities or cause non-critical activities to become critical. Supplemental Job Orders, field orders or delays may result in the Client Agency giving the JOC Contractor part of or the entire available total float that may exist within an activity chain on the Network, thereby not causing any effect on any interim milestone date or the Job Order Completion Time. The Project Schedule shall not excuse the performance of the JOC Contractor from activities not indicated on the Project Schedule.**

- B.** If the Client Agency, for any period after the commencement of On-Site Work, grants an Extension of Time to any JOC Contractor, the Lead JOC Contractor may be required by the Client Agency to prepare a revised Project Schedule and provide copies to all JOC Contractors. All JOC Contractors are required to provide the Lead JOC Contractor with information necessary to create the revised Project Schedule within seven (7) calendar days upon notice of approval of an Extension of Time. If a revised Project Schedule is requested, the Lead JOC Contractor must send the revised Project Schedule, signed by all JOC Contractors, to the Professional and the Client Agency within fourteen (14) calendar days of the approval of the Extension of Time. If the time limits set out in this Paragraph are not met, or the JOC Contractors are unable to reach agreement on the Project Schedule, the Client Agency reserves the right to prepare the schedule which will be adhered to by all JOC Contractors. All costs incurred by the Client Agency in preparing the schedule will be assessed to the JOC Contractors on a *pro rata* share (based upon individual Contracts awarded on the Project) by credit through Supplemental Job Order or at the Client Agency's discretion.
- C.** Upon the granting of an Extension of Time, the monthly updating of the Project Schedule may result in changes in the dates on which activities and the Project itself are expected to be completed. The process of updating the Project Schedule does not constitute Client Agency approval of requests for Extensions of Time and does not replace the process of seeking extensions in accordance with both the applicable provisions of the General Conditions of the Contract and the Administrative Procedures, both of which will be strictly enforced. To substantiate and support any timely filed requests for Extensions of Time, the JOC Contractor(s) must submit, through the Lead JOC Contractor, CPM Schedules (based upon the current Project Schedule in effect at the time the Extension of Time is submitted) with and without the asserted delay. The JOC Contractor(s) must also establish that the delay is justifiable in accordance with the Requests for Extensions of Time paragraph of these General Conditions. Data drawn from the Project Schedule will also be used by the Client Agency in assessing responsibility for liquidated damages if any JOC Contractor causes an unjustified delay.
- D.** The Milestones shall be updated and adjusted within ten (10) calendar days of the Client Agency granting any JOC Contractor an Extension of Time. If a Recovery Plan that was accepted by the Client Agency requires modification of any future Milestone, the Project Schedule and Milestones must be revised accordingly. The Milestones shall be updated and adjusted each time the Project Schedule is revised so that the two instruments remain coordinated.
- E.** Adjusting the Project Schedule through the use of a Recovery Plan does not constitute approval by the Client Agency of any request for an Extension of Time Extension of Time and does not replace the process of seeking Extensions of Time in accordance with the Extension of Time Extension of Time paragraph in this Article of these General Conditions and the Administrative Procedures, which provisions will be strictly enforced. If a Prime JOC Contractor submits a timely filed request for an Extension of Time Extension of Time, that JOC Contractor must also submit, through the Lead

JOC Contractor, a proposed Milestone schedule with and without the asserted delay.

**The remaining paragraphs in Article 8 apply to every Project.**

- 8.16 **DELAYS AND EXTENSIONS OF TIME.** If the JOC Contractor is delayed by:
1. A Critical Activity on the current Progress Schedule that is beyond the control or responsibility of the JOC Contractor; or
  2. Labor disputes; or
  3. Fire; or
  4. Unavoidable casualties; or
  5. Delay due to suspension of work, as provided in Article 15 of these General Conditions; or
  6. Any cause that the Client Agency determines may justify the delay;

then the Job Order Completion Time may be extended by the approval of the Client Agency, through an Extension of Time, for such reasonable time as the Client Agency may determine. The Client Agency will respond to a JOC Contractor's timely request for Extension of Time within thirty (30) calendar days of the Client Agency's receipt of such request.

- 8.17 **UNFAVORABLE WEATHER.** Unfavorable weather, including but not limited to rain, snow, and cold or freezing weather, is not an excuse for stopping Work under the Contract. The Prime JOC Contractor shall use such methods of protection as may be necessary to continue the Work throughout the period of unfavorable weather. Any Extension of Time due to unfavorable weather conditions shall be excusable and non-compensable.

- 8.18 **EXTENSIONS OF TIME NOT AN ADMISSION OF LIABILITY FOR DELAY.** The approval of an Extension of Time only constitutes a release by the Client Agency of the Client Agency's ability to assess liquidated damages against the JOC Contractor for the number of days granted by the Extension of Time. The Client Agency's approval of an Extension of Time **shall not** be construed or interpreted by any JOC Contractor as an admission that the Client Agency is liable for delay damages. The JOC Contractor agrees that the Client Agency's grant of an Extension of Time will not be used as an admission by the Client Agency of any liability for delay in any subsequent dispute regarding delays. This Paragraph does not preclude either the JOC Contractor's rights or the Client Agency's rights to pursue a claim for damages under other provisions of the Contract Documents.

## **ARTICLE 9: SUBMITTALS**

## 9.1 Submittals.

- A. The JOC Contractor shall submit a submittal schedule to the Design Professional for review and approval. The Design Professional shall then distribute (in accordance with the Administrative Procedures) all approved submittals to the Client Agency and consultants in accordance with the Submittal Schedule (See Paragraph 9.2). The Submittal Schedule shall be provided at the Joint Scope Meeting, or earlier with the initiation of a Job Order. If no submission schedule is provided, the Client Agency may create one for the JOC Contractor. If the Client Agency is required to create this schedule, the preparation will be assessed as a credit Supplemental Job Order against the JOC Contractor's Contract.
- B. Submittals shall be in accordance with the Contract Documents and include, but not be limited to, such items as:
1. JOC Contractor's, Subcontractor's, manufacturers or fabricator's shop drawings.
  2. Descriptive literature including, but not limited to:
    - a. Catalog cuts
    - b. Diagrams
    - c. Operation charts or curves
    - d. Test reports
    - e. Samples
    - f. Operations and maintenance manual, including parts lists
    - g. Certifications
    - h. Warranties
    - i. Manufacturer
  3. Coordination Drawings as required.
    - a. The Design Professional's approval of submittals does not relieve the JOC Contractor of the responsibility for any deviation from the requirements of the Detailed Scope of Work and Contract Documents, unless:
  4. The JOC Contractor has informed the Client Agency or Construction Manager of such deviation in writing in its letter of submission at the time of submission and the Client Agency or Construction Manager accepted such deviation; and
  5. The JOC Contractor has noted the deviation on the shop drawings; and
  6. The Design Professional has given written approval of the specific deviation. The Design Professional's approval also does not relieve the JOC Contractor from responsibility for errors or omissions in the submittals.

**If each of these three steps is not performed, the JOC Contractor will not be relieved of the responsibility for executing the Work in**

**complete conformity with the Detailed Scope of Work and Contract Documents, even though the submittals have been approved by the Design Professional and the Client Agency.**

Failure to mention a deviation shall be construed as a non-conformance with the Detailed Scope of Work and Contract Documents. The JOC Contractor shall be responsible for all costs associated with bringing the Work back into conformance with the Detailed Scope of Work and Contract Documents, including costs incurred by the JOC Contractor, the Design Professional and the Client Agency as a result of such non-conformance.

- C. The JOC Contractor shall review, stamp its approval and submit all submittals required by the Job Order or required subsequently by the Client Agency or Design Professional in accordance with the Submittal Schedule in an orderly sequence so as to cause no delay in its Work. Submittals shall be properly identified as specified in the Administrative Procedures and in such manner as the Client Agency may require.
- D. By approving and submitting submittals, the JOC Contractor represents that such submittals are sufficient for review purposes and that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data and that it has checked and coordinated each submittal with the requirements of the Work and of the Detailed Scope of Work and Contract Documents. Where field measurements and field construction criteria are not verifiable at the date of the submittal, the JOC Contractor shall ensure that dimensions will be held when constructed.
- E. The Design Professional shall review and approve the JOC Contractor's submittals within ten (10) calendar days of the submission dates established by the submittal schedule, unless the Client Agency or Construction Manager approves a different period of time in writing. The ten (10) calendar day period is the time from receipt of the submittal from the JOC Contractor to the time of the Client Agency' or Construction Manager receipt of the submittal. The Client Agency or Construction Manager shall have seven (7) business days to review and return the submittal to the Design Professional for distribution. The Design Professional's review and approval is for conformance with the design concept of the project and with the information given in the Job Order and Detailed Scope of Work. The Client Agency or Construction Manager review and acceptance is for conformance with the Detailed Scope of Work and Contract Documents. The Design Professional's approval and the Client Agency or Construction Manager acceptance of a separate item does not indicate approval of an assembly in which the item functions. The JOC Contractor shall be responsible for all costs associated with delays of the Project incurred as a result of any disapprovals and/or non- acceptance of its submittals for incompleteness.
- F. The JOC Contractor shall make any corrections required and shall resubmit the required number of corrected copies of submittals until approved. The Design Professional shall act upon the resubmission within ten (10) calendar days of its receipt. When resubmitting submittals, the JOC Contractor shall direct specific attention to any revisions made, other than

the corrections requested by the Design Professional on previous submissions, by noting such revisions on the resubmitted submittals.

- G. When resubmitting submittals, the JOC Contractor shall direct specific attention to any revisions made, other than the corrections requested by Design Professional on previous submissions, by noting such revisions on the resubmissions.
- H. The Design Professional's approval and/or the Client Agency or Construction Manager acceptance of shop drawings or samples does not relieve the JOC Contractor of responsibility for any deviation from the requirements of the Detailed Scope of Work and Contract Documents, unless the JOC Contractor has informed the Client Agency or Construction Manager in writing of such deviation at the time of submission, has noted the deviation on the submittals, and Design Professional has given written approval of the specific deviation. The Professional's approval also does not relieve the JOC Contractor from responsibility for errors or omissions in the submittals. Failure to mention a variation shall be construed as a non-conformance with the Detailed Scope of Work and Contract Documents. The JOC Contractor shall be responsible for all costs associated with bringing the Work back into conformance with the Detailed Scope of Work and Contract Documents, including costs incurred by any other Prime JOC Contractor, Design Professional and the Client Agency as a result of such non-conformance.
- I. No portion of the Work requiring a submittal shall be commenced until the submittal has been approved by the Design Professional and the Client Agency or Construction Manager. Any Work commenced by the JOC Contractor prior to final approval of the submittal is performed by the JOC Contractor at its own risk.

## **9.2 Submittal Schedule.**

- A. The JOC Contractor shall prepare and submit to the Design Professional and the Client Agency or Construction Manager a Submittal Schedule organized by related specification section number sequences, showing all items requiring submission. The Submittal Schedule shall be submitted in a format acceptable to the Design Professional and the Client Agency or Construction Manager. Design Professional and the Client Agency or Construction Manager may require the JOC Contractor to add and/or delete items on the Submittal Schedule at any time.
- B. The JOC Contractor's Submittal Schedule shall, at a minimum, include the following:
  - 1. Submittal breakdown by Specification Section number and division;  
and
  - 2. Scheduled date for initial submittal of item; and
  - 3. Days required after return of an approved submittal to order, fabricate and deliver the specific item to the site.

- C. The Submittal Schedule shall be integrated and tied to the logic of activities in the Project Schedule by the JOC Contractor to ensure adequate review time is included in the activity durations for all items on the Submittal Schedule.
- D. The JOC Contractor shall comply with the Submittal Schedule and submit items within the order and dates established therein. The JOC Contractor shall not be permitted to stack the submittals in a manner that would inundate Design Professional in such a manner that the submittals cannot be reviewed and decided upon in a timely manner.
- E. Submittals relating to materials and equipment that require advanced approval shall be scheduled and submitted before the JOC Contractor issues a purchase order or otherwise acquires the materials or equipment.
- F. Drawings of component items forming a system or that are interrelated shall be organized and submitted concurrently. Certifications to be submitted with the drawings shall be so scheduled. The Submittal Schedule, if applicable, shall be coordinated with the Contract Breakdown Sheet to ensure delivery and payment requests are projected accurately.
- G. Neither the Client Agency nor its designee will be responsible for the failure of the JOC Contractor to properly schedule the process of material/product design, submittal, review, fabrication, delivery and storage/installation.
- H. The Client Agency may reasonably require the JOC Contractor to add and/or delete items on the Submittal Schedule at any time.
- I. The accepted Submittal Schedule will become a part of the Job Order and the JOC Contractor must comply with it. The JOC Contractor shall revise and update the Submittal Schedule monthly to take into account all changes and coordinate this Submittal Schedule with the Project Schedule. Each such revised edition and/or revision to the Submittal Schedule shall be resubmitted to the Client Agency or Construction Manager for acceptance.

### **9.3 Coordination and Sequencing of Submittals.**

- A. The JOC Contractor shall coordinate preparation and processing of submittals with the performance of the Work and the Project Schedule so the Work will not be delayed by the submittal process.
- B. The JOC Contractor shall coordinate and sequence different categories of submittals for the same Work and for interfacing units of Work, so that one will not be delayed by the coordination of Design Professional's review with another.
- C. No delay damages or time extensions will be granted for time lost due to late, inadequate or uncoordinated submittals nor for the time required to resubmit late, inadequate or uncoordinated submittals.



- D. The JOC Contractor shall be responsible to determine items that will require long lead time to procure. Adequate time shall be allowed for long lead items that require submittals to be made early during the course of the Work in the Submittal Schedule and Project Schedule.
- E. No delay damages or time extensions will be granted for lack of consideration being given to long lead items.

**9.4 Acceptance of Source of Material and Subcontractors.**

- A. If the JOC Contractor's Job Order Price is up to and including \$1,000,000, then the JOC Contractor shall submit, within fifteen (15) days of the Effective Date of the Contract, on Client Agency form, the names and addresses of all manufacturers, producers, and subcontractors or other sources of each item of material or equipment to be used on the Project, except those specifically excluded in the specifications, and shall indicate on the form the quality of such material and equipment.

**9.5 Coordination Drawings (ONLY IF REQUIRED BY THE DETAILED SCOPE OF WORK).**

- A. The JOC Contractor shall create and update one complete composite set of Coordination Drawings to pre-plan the installation of General, HVAC, Electrical, Fire Protection, Plumbing and other Work as required.
- B. The Client Agency may consider the completion of Coordination Drawings as a condition of approval for any Application for Payment involving any material or equipment delivered or for any Work by the JOC Contractor or its subcontractors.
- C. The purpose of these Coordination Drawings is to identify coordination problems and interferences prior to installation. The JOC Contractor shall prepare and submit Coordination Drawings for any Work where close coordination is required for installation of products and materials fabricated off-site by separate subcontractors, and where limited space availability necessitates maximum utilization of space for efficient installation of different components. Coordination Drawings are required for all equipment rooms, floors, spaces and other areas in which the Work of two or more trades is to be installed and in which the potential for conflict or interference exists, or as determined by the Client Agency.
- D. The JOC Contractor shall identify a subcontractor, person or entity to facilitate the Coordination Drawing Process between impacted subcontractors and, upon acceptance by the Client Agency, such subcontractor, person or entity shall become the designated Coordination Drawing Subcontractor.
- E. The Coordination Drawing Subcontractor will prepare background drawings that will be distributed to all of the other impacted subcontractors for them to mark-up and return to the Coordination Drawing Subcontractor.

- F. At a minimum, the Coordination Drawings shall:
1. Show the Work of all subcontractors impacted; and
  2. Be drawn to a scale not smaller than 1/4" = 1'-0" (30" x 42" sheet size); and
  3. Show clearly in both plan and elevation that all Work can be installed without interference; and
  4. Show the interrelationship of equipment and systems to indicate coordination among trades; and
  5. Indicate required installation sequences; and
  6. Be based on submitted shop drawings, data files and Contract Documents, and include equipment foundations, all equipment, piping, conduit, ductwork, panels, control centers and related appurtenances.
- G. The JOC Contractor is responsible to resolve any conflicts or disputes with locations of Work items found during the preparation of the Coordination Drawings.
- H. The Coordination Drawing Subcontractor will incorporate items indicated on the marked-up drawings onto the background drawings, print and/or distribute the final Coordination Drawings or data files as the JOC Contractor may elect. One set of reproducible record prints, electronic data files (in format and media acceptable to the Client Agency) and, if requested, four sets of prints of the Coordination Drawings are to be issued to the Client Agency.
- I. Since the preparation of Coordination Drawings acceptable to the Client Agency is a contract requirement, the cost is to be included in the JOC Contractor's Adjustment Factor.

**Any Work installed prior to approval of Coordination Drawings shall be at the JOC Contractor's risk.** Subsequent relocation required to avoid interferences shall be made without additional expense or time extensions to the Client Agency.

- 9.6 Standards of Quality.** Where trade names, catalog number and manufacturers of material or equipment are specified, they are mentioned for the purpose of establishing a standard of quality, performance, and appearance, and for establishing a standard of competitive bidding. If the JOC Contractor wishes to utilize material or equipment that is of the same type, but manufactured by others than those named in the specifications, the JOC Contractor shall certify that the material or the equipment is equal in quality, performance and appearance to that mentioned in the specifications. **The list of proprietary items (if any) may not be considered for "or equals."** The JOC Contractor shall submit to the Design Professional and the Client Agency, subsequent to the award of a Job Order, a request to install such material or equipment. The JOC Contractor's request shall include a comprehensive description of the material or equipment proposed to be utilized as an equal, including engineering, construction, and dimension and performance data. The Design Professional will render a written determination to the JOC Contractor and to the Client Agency. The Client Agency must be allowed

at least fourteen (14) calendar days to review and retains the right to reject the determination. If the JOC Contractor disagrees with the Client Agency's decision, the JOC Contractor may file a dispute, but must proceed with the Work as decided by the Client Agency.

- 9.7 **Substitution of Materials. The list of proprietary items (if any) may not be considered for substitutions.** If the JOC Contractor desires to furnish materials or equipment other than that which is specified, the JOC Contractor shall submit to the Design Professional and to the Client Agency a comprehensive description of the material or equipment proposed for substitution, including engineering, construction, dimension, performance and appearance data, along with a statement of the cost involved. The Design Professional shall render a written determination to the JOC Contractor. The Client Agency must be allowed to at least fourteen (14) calendar days for review and retains the right to reject the determination. If the substituted material or equipment is accepted, the JOC Contractor is responsible for any and all costs incurred and shall work to eliminate any additional time needed as a result of the substitution. If the cost of the substituted item is less than the specified item, the Client Agency is entitled to a credit for the difference between the cost of the substituted item and the item specified.

## **ARTICLE 10: PROTECTION OF PROPERTY, INSURANCE AND INDEMNIFICATION**

- 10.1 **SAFETY PRECAUTIONS AND PROGRAMS.** The JOC Contractor shall recognize that it is important to business to prevent the occurrence of incidents that lead to occupational injuries or illnesses. The JOC Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs required under its portion of the Work.
- 10.2 **SAFETY OVERVIEW.** The JOC Contractor and its subcontractor of all tiers will be responsible for the safety and security of its employees under their control and as to its area of Work.
- A. The JOC Contractor and its Subcontractor(s) of any tier shall be required to have its company Safety Program in place and implemented throughout the duration of the Contract.
  - B. The JOC Contractor will provide a written Site Safety Program, maintain injury records as required by OSHA, keep the Client Agency informed of all serious and/or lost time injuries, and make available , upon request by the Client Agency, information on injury logs, safety meetings and their topics, inspection reports and other items concerning Project safety.
  - C. The JOC Contractor will inform the Client Agency of any Federal or State inspection, and the Department will receive copies of all Federal and State inspection reports, citations, penalties, abatement dates, etc.

- D. All JOC Contractors will give full cooperation to all authorized Inspectors, who may periodically inspect the Project without notice.
- 10.3 **SAFETY OF PERSONS AND PROPERTY.** The JOC Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:
- A. All employees involved in the Work and all other persons who may be affected thereby; and
  - B. All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the JOC Contractor or any of its subcontractors or sub-subcontractors; and
  - C. Other property within the Contract Limits or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
  - D. All areas of the Project site where unauthorized entry or presence would present a potential hazard to the health and safety of trespassers shall be adequately posted to prevent access by unauthorized personnel.
- 10.4 **COMPLIANCE WITH SAFETY LAWS.** The JOC Contractor shall comply at all times with all applicable Federal, Commonwealth, and local laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property and to protect them from damage, injury or loss. The JOC Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities until the acceptance of all on-site physical work, Supplemental Job Order work, and/or demobilization. All areas of the Project shall be hardhat areas. All persons within the Contract Limits are required to be protected by protective helmets in compliance with Occupational Safety & Health Administration (OSHA) requirements.
- 10.5 **EMPLOYEE SAFETY ORIENTATION AND SAFETY MEETINGS.**
- A. Each JOC Contractor and its Subcontractor(s) of any tier shall follow OSHA requirements regarding the recognition and avoidance of unsafe conditions and the regulations applicable to the work environment.
  - B. The JOC Contractor and each Subcontractor shall also provide a company-specific basic site and safety orientation to each individual before they begin Work on the Project. This orientation shall cover general safety rules, potential hazards, site work rules, wearing of protective equipment, etc. The JOC Contractor and each Subcontractor shall keep a record of all attendees and topics discussed.
  - C. The JOC Contractor and each of its subcontractors shall hold weekly Toolbox Meetings at the Project site.

10.6 **FIRST AID TREATMENT.**

- A. The JOC Contractor shall keep on site a first aid kit supplied according to current regulations and shall have a certified person trained in first aid and CPR to cover those periods outside of normal project working hours.

10.7 **PROJECT EQUIPMENT.**

- A. Each JOC Contractor and its Subcontractor(s) will supply all necessary equipment and take the required precautions to maintain the equipment according to the current regulations and Contract Documents. The JOC Contractor shall accept the responsibility to assure that all of the necessary safety equipment is supplied and used as required.
- B. Each JOC Contractor shall clearly mark its name on each and every piece of its equipment on-site. The name shall be marked in a place on the equipment that is clearly visible.
- C. All tools, saws and mechanical equipment utilized by the JOC Contractor shall have protective safety devices in operating order when Client the equipment.

10.8 **EMPLOYEE AND VISITOR DRESS REQUIREMENTS.**

- A. All Projects shall be a hardhat Projects and, all supervisors, employees and visitors shall be required to wear a suitable hardhat while on the Project site.
- B. Other appropriate personal protective equipment shall be provided and worn as required for personal safety and protection.

10.9 **EMERGENCY NOTIFICATION.** A procedure will be established by each JOC Contractor to provide emergency communications to all individuals on the site. This procedure will not be used to handle routine calls to individuals.

10.10 **FAILURE TO COMPLY WITH SAFETY REGULATIONS.**

- A. Failure to comply with the Contract safety requirements will be considered as non-compliance with the Contract and may result in remedial action provided by the Contract.
- B. If the Client Agency notifies any JOC Contractor of any non-compliance with the provisions of this program, the JOC Contractor shall make all reasonable efforts to correct the unsafe conditions or acts. Satisfactory corrective action shall be taken within the time specified by the Department.
- C. If a JOC Contractor or Subcontractor refuses to correct unsafe or unhealthy conditions or acts, the Client Agency may take one or more of the following steps:
  - 1. Cease the operation or a portion thereof until the condition is brought into compliance with the Site Safety Procedures;
  - 2. Stop payment for the Work being performed; and

3. Correct the situation Client other employees and backcharge the JOC Contractor for expenses incurred.

All costs, including but not limited to those above, associated with ensuring a safe and health conscious work environment shall be borne by the non-complying JOC Contractor and costs will be backcharged to the non-conforming JOC Contractor.

- D. Each JOC Contractor shall be responsible for payment of all fines and/or claims for damages levied for deficiencies relating to conduct of JOC Contractor's Work.

- 10.11 **EXPLOSIVES.** Unless permitted in the specifications, the use of explosives and other hazardous materials or equipment is not permitted for the execution of the Work. If explosives are permitted, the JOC Contractor shall observe the utmost care, performing such Work with experienced personnel and in accordance with all Federal, Commonwealth, local, Departmental, and institutional regulations, so as not to endanger life or property. Rock encountered within five (5) feet of pipelines or buildings shall be removed without blasting. All explosives shall be stored in a secure and safe manner, in strict conformity with all Federal, Commonwealth and municipal regulations and all such storage shall be clearly marked "Dangerous-Explosives" and shall be in the care of competent watchmen at all times. The JOC Contractor shall provide insurance in accordance with the special insurance provision in these General Conditions relating to "Blasting". The JOC Contractor shall be responsible for all damages caused by the use of explosives, hazardous materials and/or equipment, and blasting and shall notify the Department of any claims of damage associated with this Paragraph at the time of claim.
- 10.12 **REMEDICATION OF DAMAGES.** The JOC Contractor shall remedy all damages or loss to any property caused in whole or in part by the JOC Contractor, any Subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them. If damage or loss is attributable to faulty drawings or specifications or to the acts or omissions of the Department or Professional, and the damage or loss is not attributable to any fault or negligence of the JOC Contractor, then the JOC Contractor shall not provide remediation.
- 10.13 **LOADS.** The JOC Contractor shall not load or permit any part of the Work to be loaded so as to endanger the safety of persons or property.
- 10.14 **JOC Contractor's Liability Insurance.** The JOC Contractor, during the progress of the Work and until completion of the entire Contract, shall purchase and maintain from a company or companies lawfully authorized to do business in the Commonwealth of Pennsylvania, such insurance as will protect the Client Agency and the JOC Contractor from claims set forth below which may directly or indirectly arise out of or result from operations under the Job Order Contract or by a subcontractor of the JOC Contractor, or by anyone directly or indirectly employed by or a representative of any of them, or by anyone for whose acts any of them may be liable:
  - A. Claims under workers' compensation, disability benefit and other similar employee benefit laws;

- B. Claims for damages due to bodily injury, occupational sickness, sickness or disease, or death of the JOC Contractor's employees, and claims insured by usual personal injury liability coverage;
- C. Claims for damages because of bodily injury, sickness or disease, or death, of any person other than its employees, and claims insured by usual personal injury liability coverage;
- D. Claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

10.15 **Insurance Limits.** The insurance required by this Article shall be written for not less than any limits of liability specified in this Article or required by Law. Coverage, whether written on an occurrence or claims made basis, shall be maintained without interruption from date of commencement of the Work until date of final Closeout Inspection and/or termination of any coverage required to be maintained after final Closeout Inspection, whichever event occurs later.

**10.16 CERTIFICATES OF INSURANCE.**

- A. The JOC Contractor must submit to the Client Agency, prior to the Job Order being executed, Certificates of Insurance acceptable to the Client Agency. These certificates shall contain a provision that coverages afforded under the policies shall not be canceled or changed until at least sixty (60) calendar days written notice has been given to the Client Agency. Renewal certificates must be provided to the Client Agency prior to the expiration of the prior policy as stated on the certificate. The insurance certificate shall also name the Commonwealth of Pennsylvania and the Construction Manager (if there is one on the Project) as additional insureds.
- B. Where any Sub-consultant, Subcontractor and/or Retained Professional provides insurance in amounts in any way less than the minimum amounts indicated here, they shall be listed as an Additional Insured under the JOC Contractor's insurance(s)

10.17 **COMPREHENSIVE GENERAL LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCES.** The JOC Contractor's comprehensive general liability insurance shall be in an amount not less than \$1,000,000 per occurrence, including accidental death, to any person and subject to the same limit for each occurrence, and in an amount not less than \$2,000,000 in the aggregate. This policy must list general aggregate and completed operations aggregate. This policy shall not have any exclusion for explosion, underground, or collapse (XC&U). The JOC Contractor's property damage liability insurance shall be in an amount not less than \$2,000,000 for each occurrence.

- A. For Subcontractors, the JOC Contractor shall either:
  - 1. Require each of its Subcontractors to procure and to maintain Subcontractors' comprehensive general liability, automobile liability, and property damage liability insurance of the type and in the same amounts

as specified in this subsection for the life of its subcontract and/or until the acceptance of all of its on-site physical work, Supplemental Job Order work, and/or demobilization;

**OR**

2. Insure the activity of its Subcontractors in its own policy.

B. If required by a Special Condition, by law, or the JOC Contractor deems necessary, the JOC Contractor's and its Subcontractors' liability insurance shall include additional riders providing for adequate protection against the indicated special hazards (e.g., blasting, flooding, underpinnings, etc.).

A. The JOC Contractor must submit to the Client Agency, prior to the beginning of on-site work, the subcontractor's and sub-subcontractor's certificates of insurance which name the Commonwealth of Pennsylvania and Commonwealth Agency as an additional insured.

10.18 **PROPERTY INSURANCE.** The JOC Contractor shall, until all physical on-site work is complete, including Supplemental Job Order work, punch list work, demobilization or seasonal work, maintain insurance on all insurable work included in the Job Order against loss or damage by fire and lightning and those perils covered by the extended coverage endorsement. Insurable work includes work both interior and exterior of any building being constructed. The insurance (which must include Builder's Risk Insurance or an installation floater that covers all risks) must have policy limits which meet the full insurable value of the interests of the Commonwealth of Pennsylvania and the Client Agency. The JOC Contractor and all subcontractors are required to produce certificates of insurance, naming the Commonwealth of Pennsylvania and Commonwealth Agency as an additional insured.

10.19 **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** The JOC Contractor's Commercial Automobile Liability Insurance shall be in an amount not less than a \$1,000,000 Combined Single Limit (CSL) or in the alternative, provided that there is not Commercial Automobile Policy, then a separate limit under the General Liability Policy providing for \$1,000,000 Hired and Non-owned liability.

10.20 **Risk to Construction Work.** The risk of damage to the construction work is that of the JOC Contractor and surety. No claims for such loss or damage will be recognized by the Client Agency, nor will such loss or damage excuse the complete and satisfactory performance of the Job Order(s) by the JOC Contractor.

10.21 **Professional Liability Insurance.** The Retained Professional and any consultants of the Retained Professional or the JOC Contractor required to provide sealed documents shall secure and maintain Professional Liability Insurance to insure its activities in connection with each Job Order requiring design services, and shall obtain, keep in force, and maintain it as required. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of this Job Order and shall include, without limitation coverage for professional services as called for in this Contract. However, if the insurance under this Article is written on a claims-made basis, it shall be maintained continuously for a period no less than three (3) years following



termination of each specific Job Order. The Retained Professional and any consultants shall secure and maintain Professional Liability Insurance with a minimum coverage of \$1,000,000, or otherwise acceptable to the Client Agency.

10.22 **Unacceptable Surety or Insurance Company.** If the surety on the bonds or the insurance company providing the required coverage becomes unsatisfactory to the Client Agency, the JOC Contractor must promptly furnish such additional security or insurance coverage as may be required to protect the interest of the Client Agency. The JOC Contractor shall, from time to time, furnish the Client Agency, when requested, satisfactory proof of coverage of each type of Bond and/or insurance required. Failure to comply with this provision shall result in the cessation of the Work, and shall be sufficient grounds to withhold any further payments due the JOC Contractor and/or to declare the JOC Contractor in default. The Client Agency will not consider any claim for an Extension of Time, costs, or damages because of time lost due to such instance brought by the noncompliant JOC Contractor. The noncompliant JOC Contractor shall be responsible for damages incurred by other Prime JOC Contractors in accordance with these General Conditions.

10.23 **Indemnification.** The JOC Contractor shall indemnify and hold harmless the Commonwealth, the Client Agency, the Construction Manager (if there is one on the Project) and their agents and employees from and against all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is:

- A. Attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and
- B. Caused in whole or in part by any negligent act or omission of the JOC Contractor or any Subcontractor, regardless of whether or not it is caused in part by a party indemnified hereunder.

10.24 **Indemnification Not Limited by Employee Benefits Acts.** In any and all claims against the Commonwealth, the Client Agency, the Construction Manager (if there is one on the Project) or the Professional or any of their agents or employees, by any employee of the JOC Contractor or any Subcontractor, the indemnification obligations under this Article shall not be limited on the amount or type of damages, compensation, or benefits payable by or for the JOC Contractor or any Subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit Acts.

10.25 **Indemnification Does Not Cover the Construction Manager's Actions.** The obligations of the JOC Contractor under this Article shall not extend to the liability of the Construction Manager (if there is one on the Project) or the Construction Manager's consultants, agents, or employees arising out of:

- A. The preparation or approval of maps, drawings, opinions, reports, surveys, Supplemental Job Orders, designs or specifications; or

- B. The giving of, or the failure to give, directions or instructions by the Construction Manager, its agents or employees, provided such giving, or failure to give, is the primary cause of the injury or damages.

10.26 **Workplace Drug and Alcohol Policy.** The Department is committed to providing a safe workplace for the workers assigned to each Job Order and Project, promoting high standards of employee health and fostering productivity. JOC Contractor shall establish a drug and alcohol policy for the project with the goal of maintaining a work environment that is free from the effects of the use of illegal drugs and alcohol. Anyone employed at the Project site will comply with the contractor's drug and alcohol policy.

The Department reserves the right to amend this specification upon written notice to the Prime JOC Contractor.

- A. **COMPLIANCE PROCEDURE:** The Department reserves the right to audit any drug and alcohol policy program required by this specification to verify compliance results within twenty-four (24) hours of the Department's notification of intent to audit. The Department shall have free right of access to all relevant records of the Prime JOC Contractor and their subcontractors for this purpose, provided such record disclosures are within the scope of the Commonwealth of Pennsylvania's Department of Health and Human Services guidelines pertaining to confidentiality of employee records.

The JOC Contractor's pre-engagement employees who receive a positive test result shall immediately leave the project site. Transportation of employees receiving a positive test result is the direct responsibility of the employing Prime JOC Contractor. Furthermore, pre-engagement employees receiving a positive test result shall not be permitted to return to the project site earlier than ninety (90) days from the date of the positive test. At that time, the employee must be tested again in accordance with the procedures specified in this Policy.

## **ARTICLE 11: CHANGES IN THE WORK**

**11.1 Changes to the Detailed Scope of Work.** The Client Agency, without invalidating the Job Order, may direct changes in the Work within the general scope of the Job Order, consisting of additions, deletions or other revisions. All such changes in the Work will be authorized by Supplemental Job Order or Field Order. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

- A. **The JOC Contractor agrees that payment under any method noted within this Article will be the exclusive compensation for such addition, deletion, or other revision to the original Job Order, including any and all costs associated with acceleration, stacking and re-**

**sequencing of forces required by the change in order to maintain the Project Schedule.**

- B. If it is not possible to complete the Work in accordance with the Project Schedule by acceleration, stacking or re-sequencing, the JOC Contractor may request an Extension of Time. Adequate information and proper form submission must be provided to validate this request. The Client Agency reserves the right to deny requests not accompanied by adequate information and proper form submissions.

**11.2 Unclassified Excavation.**

- A. Excavation, if required for this Project, will be unclassified and will include all types of earth and soil, any pebbles, boulders, and bedrock, municipal trash, rubbish and garbage, and all types of debris of the construction industry such as wood, stone, concrete, plaster, brick, mortar, steel and iron shapes, pipe, wire asphaltic materials, paper and glass. Unclassified excavation does not include unforeseen concrete foundations, walls, or slabs. Unclassified excavation also does not include unforeseen buried hazardous materials.
- B. All materials encountered which are identified as described in the previous paragraph as unclassified shall be removed to the required widths and depths to create a finished product as shown and/or noted on the drawings and as written in the specifications. No additional compensation or time shall be given to the JOC Contractor for this unclassified excavation.
- C. Any unclassified items described in paragraphs A and B above that are discovered during any excavation are not concealed conditions or unknown physical conditions below the surface for purposes of the Concealed Conditions paragraph of these General Conditions.

**11.3 Concealed Conditions.**

- A. the Client Agency recognizes two types of concealed conditions which might be encountered during the performance of the Work, namely:
  - 1. Concealed conditions which are unascertainable from the plans, Contract Documents, visits to the site, or reasonable investigation, and which are at variance with the conditions indicated by the Contract Documents; or
  - 2. Unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
- B. The JOC Contractor has seven (7) calendar days after the first observance of the concealed condition to provide written notice to the Client Agency. The Client Agency shall investigate the concealed conditions and determine

if there is a concealed condition.

- C. If the Client Agency decides that either of the two concealed conditions described above in (A) has occurred during construction, then the Job Order Price shall be equitably adjusted by Supplemental Job Order. No adjustment shall be made to the Job Order Price under this paragraph, however, for concealed conditions encountered during cutting and patching of Work.
- D. In the event that concealed or unknown conditions described above in (A) preclude either the JOC Contractor or the Client Agency from establishing either a methodology or a quantity of work to be priced into a Supplemental Job Order before commencement and performance of Work, the Client Agency reserves the right to do any of the following:
  - 1. If only the quantity of Work is unknown, the Client Agency may issue a Supplemental Job Order to perform work in a quantity established by the Client Agency. The Client Agency will monitor the actual quantities and, upon completion of the Work, issue a second Supplemental Job Order to adjust the original quantity.
  - 2. If the Client Agency deems that either the methodology and/or scope of the Supplemental Job Order are indeterminable, the Client Agency may issue an exploratory Supplemental Job Order to determine the appropriate methodology and scope before issuing a follow-up Supplemental Job Order to complete the Work. If the Client Agency determines, after review of the results of the exploratory Supplemental Job Order, that this Supplemental Job Order was not successful in establishing the methodology or scope of work, the Client Agency may opt for performing and monitoring the entire Supplemental Job Order on a time and material force account basis. If the Client Agency decides to proceed in this manner, the JOC Contractor will be required to show proof of incurred cost as stipulated under the provisions of JOC Administrative Procedure.

**11.4 No Claims for Additional Cost or Time.** No claims for increased costs, charges, expenses, or damages of any kind, except as provided in the General Conditions, shall be made by the JOC Contractor against the Client Agency for any delays or hindrances from any cause whatsoever, including, but not limited to, strikes, walkouts or work stoppages during the progress of any portion of the Work. The Client Agency may, however, address such non-compensable delays by extending the time for completion of the Work, as provided in the Contract, which extensions shall constitute the exclusive remedy between the parties.

**11.5 Minor Changes in the Work.** the Client Agency may direct minor changes in the Work (such as minor relocations or field revisions) that the Client Agency and the JOC Contractor mutually agree do not involve an adjustment in the Job Order Price or an extension of the Job Order Completion Time and which are not inconsistent with the intent of the Detailed Scope of Work. Such changes may only be enacted by written Field Order, as provided, or by other written order. Such changes are binding on the Client Agency and the JOC Contractor. The JOC Contractor shall carry out such Field Orders promptly.

## **ARTICLE 12: NON-CONFORMING WORK AND CORRECTIONS**

**12.1 Work Covered Contrary to Request.** If any Work is covered contrary to the reasonable request of the Client Agency, the Work must, if required by the Client Agency, be uncovered for observation and replaced, at the JOC Contractor's expense with no Extension of Time.

A. **Uncovering of Work.** If any Work has been covered which the Client Agency or its designee has not specifically requested to observe prior to being covered, the Client Agency may request to see such Work and the Work shall be promptly uncovered by the JOC Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the Client Agency by appropriate Supplemental Job Order.

B. If such Work is found to be not in accordance with the Detailed Scope of Work and Contract Documents, the JOC Contractor shall pay costs to make the Work conform and the cost of uncovering and replacement.

**12.2 Correction of Work Rejected by the Client Agency.** The JOC Contractor shall promptly correct all Work rejected by the Client Agency or its designee as defective or as failing to conform to the Detailed Scope of Work and Contract Documents. The correction must be implemented regardless of when such Work is observed and whether or not the Work was fabricated, installed or completed or whether such Work had been paid for by the Client Agency. The JOC Contractor shall bear all costs of correcting such rejected Work, including the cost of the Design Professional's additional services and any additional cost incurred by the Client Agency and/or any other agency.

**12.3 Correction of Work after Acceptance.** If, after the date of Final Inspection and acceptance of all Work performed under the Job Order and until the expiration of warranty on the Work, any of the Work is found to be defective or nonconforming, the JOC Contractor shall correct such Work promptly after receipt of a written notice from the Client Agency, unless the Client Agency has previously given the JOC Contractor a written acceptance of this specific condition. The Client Agency should give such notice of rejection promptly after discovery of the condition. Acceptance or payment of an Application for Payment by the Client Agency shall not constitute acceptance.

**12.4 Correction at No Cost to the Client Agency.** All defective or nonconforming Work shall be promptly removed from the site, and the Work shall be corrected to comply with the Detailed Scope of Work and Contract Documents without cost to the Client Agency.

**12.5 Cost of Damage to Other JOC Contractors' Work.** The JOC Contractor shall bear the cost of replacing all Work of any other contractor that is destroyed or damaged

by the removal and/or correction of the JOC Contractor's defective or non-conforming Work.

- 12.6 Failure to Correct Defective or Non-Conforming Work.** If the JOC Contractor does not remove such defective or nonconforming Work within the time set forth by the written notice from the Client Agency, the Client Agency, in accordance with Article 12.10, may remove the defective or nonconforming Work and may store the materials or equipment at the expense of the JOC Contractor. If the JOC Contractor does not pay the cost of such removal and storage within ten (10) days from the Client Agency's request for payment, the Client Agency may, upon ten (10) additional days written notice to the JOC Contractor, sell such materials and/or equipment at auction or at private sale and, after deducting all the costs that should have been borne by the JOC Contractor pursuant to the provisions of this paragraph, shall account for the net proceeds of the sale. If such proceeds of sale do not cover all costs that the JOC Contractor should have borne, the difference shall be charged to the JOC Contractor and an appropriate Supplemental Job Order shall be issued. If the payments then or thereafter due the JOC Contractor are not sufficient to cover such amount, the JOC Contractor and/or the JOC Contractor's surety shall pay the difference to the Client Agency.
- 12.7 Investigation by the Client Agency.** The Client Agency reserves the right, upon investigation of installation of defective and/or nonconforming Work, to note this situation in the JOC Contractor Responsibility Program and may consider suspension of the JOC Contractor in accordance with Section 531 of the Commonwealth Procurement Code. The Client Agency may also, in its sole discretion, find the JOC Contractor in breach of its Job Order and/or declare the JOC Contractor in default of its Job Order in accordance with the Termination Article of these General Conditions.
- 12.8 Acceptance of Nonconforming Work.** If the Client Agency knowingly elects to accept nonconforming work, it may do so instead of requiring its removal and correction. If nonconforming work is accepted, a Supplemental Job Order for the credit shall be issued to reflect an appropriate reduction in the Job Order Price, or, if the amount is determined after final payment, it shall be paid by the JOC Contractor and/or the JOC Contractor's surety.
- 12.9 The Client Agency's Right to Carry Out the Work.** If the JOC Contractor fails to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Client Agency may, after **seven (7) days** written notice to the JOC Contractor, and without prejudice to any other remedy the Client Agency may have, correct such failures. In such case, an appropriate Supplemental Job Order shall be issued deducting from the payments then or thereafter due the JOC Contractor the cost of correcting such failures, including the cost of the Client Agency's designee's additional services made necessary by such failure. If the payments then or thereafter due the JOC Contractor are not sufficient to cover such amount, the JOC Contractor and/or the JOC Contractor's Surety shall pay the difference to the Client Agency.
- 12.10 Obligations of JOC Contractor Not Limited by this Article.** The obligations of the JOC Contractor under this Article are in addition to, and not in limitation of, any obligations imposed upon the JOC Contractor by the Contract Documents or

otherwise prescribed by Law.

## **ARTICLE 13: PAYMENTS AND COMPLETION**

### **13.1 Payments**

- A. The Client Agency will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less, upon the completion of the Job Order. For all other Job Orders, the Client Agency may make partial, monthly payments based on a percentage of the work completed. Before submitting an Application for Payment (Final or Partial) the JOC Contractor shall reach an agreement with the Project Manager concerning the percentage complete of the Detailed Scope of Work as it relates to the agreed upon schedule of values and the dollar value for which the Application for Payment may be submitted.
- B. If required for a Job Order above \$25,000 and having a Job Order Completion Time greater than 45 days, the Client Agency reserves the right to require payments in accordance with Article 13.2 through 13.13.

### **13.2 Job Order Schedule of Values.**

- A. The language in this Article must be construed in conjunction with the detailed language of the applicable Administrative Procedure.
- B. Within ten (10) days of the Project Start Date and prior to the submission of the JOC Contractor's first Application for Payment, the JOC Contractor shall submit for the Client Agency's approval, a schedule of values in the agreed upon format, indicating values for various elements of the Work. The schedule of values must provide the aggregate total Job Order Price, divided to facilitate payments for all phases of the Project described in the Detailed Scope of Work. The Job Order schedule of values shall be prepared on AIA Form G702 & G703 – Application and Certification for Payment and supported by such data required by the Client Agency to substantiate its correctness in accordance with the following:
- C. The agreed upon schedule of values, when accepted by the Client Agency or the Construction Manager, will be used as a basis for the JOC Contractor's Application for Payments.

### **13.3 Application for Progress Payments.**

- A. During the progress of the Work, the JOC Contractor shall prepare periodic estimates of the value of the Work performed and shall submit to the Client Agency or the Construction Manager Applications for Progress Payment on the form specified by the Client Agency in the Administrative Procedures.

The applications shall be supported by data contained in the Project Schedule update substantiating the JOC Contractor's right to payment. The Client Agency or the Construction Manager will review and accept the application for validity.

- B. Stored Materials: If upon the determination of the Client Agency or the Construction Manager as to reasonableness, payments are to be made to the JOC Contractor on account of materials or equipment which are not incorporated in the Work, but are delivered and suitably stored at the site, or at some other location agreed to in writing, such payments shall be conditioned upon submission by the JOC Contractor of Bills of Sale forms provided by the Client Agency to establish the Client Agency's title to such materials or equipment as well as the compliance with the requirements in the Administrative Procedures. The JOC Contractor shall remain responsible for all losses of materials and equipment that remain under its custody and control, regardless of the exclusions in insurance policies. Warranties do not begin until the date of Final Inspection.

**13.4 JOC Contractor Warrants Title to all Work Passes Free of Liens.** The JOC Contractor warrants and guarantees that title to all work, materials and equipment covered by an Application for Progress Payment, whether incorporated in the Project or not, will pass to the Client Agency upon Final Payment by the Client Agency. The title shall be free and clear of all liens, claims, security interests or encumbrances (hereinafter referred to in this Paragraph as "liens"). The JOC Contractor further guarantees that no work, materials or equipment covered by an Application for Progress Payment was acquired by the JOC Contractor, its employees, its Suppliers or its Subcontractors subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the JOC Contractor, its employees, its Suppliers or its Subcontractors.

**13.5 Neither Payment Nor Occupancy Constitutes Acceptance of Work not in Conformance with Contract Documents.** Under no circumstances will any of the following occurrences constitute an acceptance of any Work not in accordance with the Contract Documents:

1. An acceptance of an Application for Progress Payment; or
2. Full or partial payment to the JOC Contractor of any progress payment;  
or
3. Partial or entire use or occupancy of the Project by the Client Agency.

**13.6 Payments Withheld.**

- A. The Client Agency or the Construction Manager may decline to accept an Application for Progress Payment in whole or in part if the Work has not progressed to the point indicated, or the quality and quantity of the Work is not in accordance with the Detailed Scope of Work and the Contract Documents. The Client Agency or the Construction Manager may also decline to accept any Applications for Payment, because of subsequently discovered evidence or subsequent inspections, which may nullify the whole or any part of any Application for Payment previously issued to such extent as may be necessary in their opinion to protect the Client Agency from loss



because of deficiency items, including but not limited to:

1. Defective work not remedied; or
2. Reasonable doubt that the Work can be completed for the unpaid balance of the Job Order Price; or
3. Reasonable indication that the Work will not be completed within the Job Order Completion Time; or
4. Unsatisfactory prosecution of the Work by the JOC Contractor; or
5. Failure of the JOC Contractor to maintain insurance; or
6. Failure of the JOC Contractor to properly submit the required submittals and forms, as required in the Administrative Procedures.

- B. If the Client Agency withholds payment from the JOC Contractor for any of the aforementioned reasons, the Client Agency will provide written notification to the JOC Contractor of the reason for withholding payment within ten (10) days of the Client Agency's receipt of the Application for Progress Payment.

The JOC Contractor may withhold payment from a Subcontractor, Supplier, or Manufacturer for a deficiency item. If payment is withheld from the Subcontractor, Supplier, or Manufacturer for such item, the JOC Contractor must notify the Subcontractor, Supplier, or Manufacturer and the Client Agency (including the Construction Manager if there is one retained on the Project) of the reason for the withholding within 10 days of the date after the JOC Contractor receives the notice of deficiency item from the Client Agency.

**13.7 Payment Made when Grounds are Resolved.** When issues for withholding payments are resolved to the Client Agency's satisfaction, payment shall be made to the JOC Contractor for the amounts withheld. The grounds for withholding payment shall be considered resolved upon the Client Agency's issuance of a letter indicating that the issue has been resolved.

**13.8 Retainage.** Prior to the issuance of each Job Order, the Client Agency must state and include in the Job Order if they intend to retain a portion of the amount due the JOC Contractor to ensure the proper performance of the Detailed Scope of Work in accordance with the Contract Documents. In computing the amount payable in accordance with this Article on any current Application for Payment:

- A. The Client Agency shall deduct and retain three percent (3%) of the then total Applications for Progress Payments until the Work has been satisfactorily completed as determined by the Client Agency. Satisfactory completion includes compliance with the Contract Documents, and meeting all Contract and Job Order obligations.**

**13.9 The Client Agency Does Not Make Payment.** If the Client Agency fails to make payment to the JOC Contractor within forty-five (45) days after receipt of an acceptable Application for Progress Payment, the JOC Contractor may file a claim for interest. No interest penalty payment shall be paid, however, if payment is made on or before the fifteenth (15<sup>th</sup>) calendar day after the payment due date. The JOC Contractor is not entitled to stop work in any event, unless the Client Agency

exercises its right to suspend the work, as provided in these General Conditions. According to 62 Pa. C.S. §3938, as amended, this failure to pay provision shall not apply if:

- A. The General Assembly failed to enact a budget for the fiscal year of payment; or
- B. The Federal or State Government failed to pay funds due and payable to the local government unit; or
- C. The General Assembly failed to enact an operating budget for the fiscal year of payment or a capital budget for the capital project; or The Federal, State, or local government failed to pay funds designated or to be designated for the specific project.

**13.10 Work Cannot be Completed Through No Fault of JOC Contractor.** If, after Final Inspection, items of Work cannot be completed because of any of the following conditions:

- A. Unseasonable considerations, such as bituminous paving, landscaping, etc.; or
- B. the Client Agency agrees that particular items need not be completed until a subsequent date; or
- C. the Client Agency delays the acceptance of the Final Application for Payment for any unreasonable length of time, (reasonableness shall be determined by the Client Agency)

The Client Agency may agree to release payment to the JOC Contractor. The payment may be reduced by one and one-half (1-1/2) times the dollar value of uncompleted items.

**13.11 Final Payment Not Due Until Conditions Met.** Neither the final payment nor any remaining retained percentage becomes due until the JOC Contractor submits to the Client Agency:

- A. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Client Agency might in any way be responsible, have been paid or otherwise satisfied by the JOC Contractor; and
- B. Statements from the JOC Contractor's Surety Company and the JOC Contractor's certificate on forms satisfactory to the Client Agency as to JOC Contractor's payment of all claims for labor, materials, equipment rentals and public utility services; and
- C. If required by the Client Agency, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract or a Job Order, to the extent and in such form as is designated by the Client Agency.

If any Subcontractor refuses to furnish a release or waiver, as required by the Client Agency, the JOC Contractor may furnish a Bond satisfactory to the Client Agency to indemnify the Client Agency against any such lien. If any such lien remains unsatisfied after all payments are made, the JOC Contractor shall refund to the Client Agency all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

**13.12 Release of Funds If Delay in Final Inspection Not Due to the Fault of the JOC Contractor.** If Final Inspection is materially delayed through no fault of the JOC Contractor, the Client Agency shall, upon certification by the Design Professional, make payment of the balance due for that portion of the Work fully completed and accepted by the Client Agency. Such payment will not terminate the Job Order. If the remaining balance of Work not fully completed or corrected is less than the retainage, and, if performance and payment bonds have been furnished as required, the JOC Contractor must submit to the Client Agency, prior to certification of the payment, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted by the Client Agency. Such payment shall be made under the terms and conditions governing final payment, except that it does not constitute a waiver of any of the Client Agency's claims against the JOC Contractor.

**13.13 Final Payment as Waiver of Claims.** The making of final payment constitutes a waiver of all claims by the Client Agency, **except** those arising from:

- A. Unsettled claims;
- B. Faulty, nonconforming or defective work or material;
- C. Failure of the work or material to comply with the requirements of the Contract Documents; or
- D. Terms of any warranties, special warranties and/or special guarantees required by the Detailed Scope of Work.

**13.14 Acceptance of Final Payment as Waiver of Claims.** The acceptance of final payment by the JOC Contractor constitutes a waiver of all claims by the JOC Contractor against the Client Agency.

## **ARTICLE 14: PROJECT CLOSEOUT**

**14.1. CLOSEOUT GENERALLY.** Project closeout consists of a Final Inspection which is deemed to be a significant activity considered to be a Project Milestone. During the Final Inspection, a Punch List of incomplete Work will be generated as discussed at length below. The JOC Contractor must complete all Punch List items within 30 calendar days after Final Inspection. It is the JOC Contractor's responsibility to request Final Inspection.

## **14.2. FINAL INSPECTION.**

- A. Final Inspection occurs within fifteen (15) days from the receipt of a written request by the JOC Contractor to the Client Agency or Construction Manager for a Final Inspection and an application for final payment. Final Inspection shall be conducted by the Client Agency or Construction Manager and the Professional. The JOC Contractor or its authorized representative must be present throughout the duration of the Final Inspection.
  - 1. The Client Agency or Construction Manager has the sole authority, in light of the Project's Scope of Work, to determine whether parts or the whole of the Project are ready for a Final Inspection.
  
- B. If the Client Agency or Construction Manager and the Professional concur that the Work is at substantial completion, the Professional shall issue a certificate of completion and a final certificate for payment. In such case, the Professional shall produce and deliver to the JOC Contractor, at Final Inspection, a list of uncompleted items and a reasonable cost of completion (Punch List).
  - 1. The JOC Contractor shall complete all Punch List items within thirty (30) calendar days of Final Inspection.
  
  - 2. The Client Agency will make payment in full within 45 days of the submission of the accepted final application except as set out in this Article, less one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the Professional. Payment of any amount withheld for the completion of the Punch List shall be paid upon completion of the items in the Certificate.

## **ARTICLE 15: SUSPENSION**

- 15.1 Suspension of Work Due to Unfavorable Conditions or Weather.** If, in the judgment of the Client Agency, the JOC Contractor takes undue risk of damage to any part of a the Project, including, but not limited to, soil compaction, foundation excavation, concrete placement or any exterior building construction, by proceeding with the Work during unfavorable weather or other conditions (not relating to the fault of the JOC Contractor or the convenience of the Client Agency), the Client Agency or Construction Manager may issue a written notice of a temporary suspension of the Detailed Scope Work for either the whole Job Order or any part of the Detailed Scope of Work, for such temporary period as the Client Agency or Construction Manager deems necessary. If the temporary suspension is due to unfavorable weather, the suspension may span the time period (days, weeks or months) encompassed by the unfavorable weather. In case of such suspension under this paragraph, a proper Extension of Time will be allowed for this excusable,

non-compensatory delay, but the JOC Contractor may not, submit any claim for any expense or damages resulting from the suspension. The failure of the Client Agency or Construction Manager to suspend the Work does not relieve the JOC Contractor of its responsibility to perform the Work in accordance with the Contract Documents.

**15.2 Suspension of Work due to Fault of JOC Contractor.** If the JOC Contractor fails to comply with the orders of the Client Agency or the Construction Manager relative to any particular parts of the Work, the Client Agency may issue a written notice of a temporary suspension of the Work for either the whole Job Order or any part of the Detailed Scope of Work until the orders respecting the particular parts are complied with by the JOC Contractor. In case of this type of suspension, which shall be considered due to the fault of the JOC Contractor, no Extension of Time shall be given and the JOC Contractor may not submit any claim for any expenses incurred by the JOC Contractor during the suspension period. Further, the JOC Contractor may be liable for any and all damages incurred by the Client Agency due to the JOC Contractor's actions.

**15.3 Suspension of Work for the Convenience of the Client Agency.** The Client Agency may issue a written notice of a temporary suspension of the Detailed Scope of Work for the convenience of the Client Agency for either the whole Job Order or any part of the Detailed Scope of Work for such period of time as the Client Agency may determine to be appropriate. This Paragraph does not apply to suspensions due to unfavorable weather or to suspensions due to JOC Contractor's fault.

A. If the performance of all or any part of the Work is suspended by the Client Agency for an excessive period of time under this paragraph, an adjustment shall be made for any increase in the cost of performance of this Job Order (excluding profit) necessarily caused by such excessive suspension. The Job Order Price shall be modified in writing accordingly. The Client Agency will not pay any costs under this paragraph to the extent:

1. Performance would have been concurrently suspended by any other cause, including weather, or the fault or negligence of the JOC Contractor; or
2. An equitable adjustment for the time period encompassed within the suspension has been provided for or excluded under any other provision of this Contract.

B. No claim for damages allegedly incurred under this paragraph shall be submitted under the Dispute Resolution Article unless the claim, in an amount stated, is asserted in writing within six months after the date of the Client Agency's letter terminating the suspension.

**15.4 Resumption of Work.** When the Client Agency directs resumption of the Work under this Article, the JOC Contractor shall resume full operations within ten (10) days after the date of the Client Agency's letter terminating the suspension. The Client Agency is not liable for any damages or anticipated profits on account of the Work being suspended, except as described in the Paragraph entitled Suspension of Work for Convenience of the Client Agency. Suspensions of Work as outlined in this Article shall not automatically extend the Job Order Completion Date. A request for an Extension of Time may be submitted by the JOC Contractor, setting forth its

reasons for the extension, which the Client Agency will review in accordance with the Administrative Procedures governing Extensions of Time.

## **ARTICLE 16: TERMINATION OF CONTRACT and JOB ORDERS**

- 16.1 Termination for the Convenience of the Department or Client Agency.** The Department may, at any time and for any reason, terminate the Contract. The Client Agency may, at any time and for any reason, terminate a Job Order. In either case, the JOC Contractor shall be paid (and shall accept payment) for that portion of the Detailed Scope of Work actually performed satisfactorily as of the date of termination. Termination costs shall not include any loss of anticipated profits. Disputes as to the sum payable to the JOC Contractor shall be settled in accordance with the provisions of the Dispute Article of these General Conditions of the Contract.
- 16.2 Effect of Termination for the Convenience of the Client Agency.** A termination for the convenience of the Department (as to the Contract) or the Client Agency (as to the Job Order) shall be effective in the manner and at the time specified in such notice and shall be without prejudice to any claims which the Client Agency may have against the JOC Contractor. Upon receipt of such notice from the Department or Client Agency the JOC Contractor shall immediately discontinue all Work and the placing of all orders for materials and equipment, facilities and supplies in connection with the performance of this Contract. The JOC Contractor shall promptly cancel all existing orders and terminate Work under all subcontracts so far as such orders and Work are chargeable to the Job Order. The JOC Contractor shall take such measures for the protection of the property of the Client Agency, as may be directed by the Client Agency. Upon termination of the Job Order, as provided by this paragraph, full and complete adjustment and payment of all amounts due the JOC Contractor arising out of the Job Order as determined by an audit conducted by or for the Client Agency, as soon as practicable after such termination shall be made as follows:
- A. The Client Agency shall reimburse the JOC Contractor for all costs incurred to date of termination, including reasonable overhead and expense for plant, made in the performance of the Job Order, less amounts previously paid.
  - B. The Client Agency shall also reimburse the JOC Contractor for all costs to which the JOC Contractor has been subjected or is legally liable due to the termination of the Job Order, including reasonable costs related to cancellation of orders, termination of subcontracts, etc.
  - C. The Client Agency shall also reimburse the JOC Contractor for the reasonable cost of providing protection of the property of the Client Agency as directed by the termination letter.
  - D. The sum total of the payments made under this paragraph shall not exceed the Job Order Price, less payment previously made.

- E. Title to all property accruing to the Client Agency by reason of the termination of the Job Order shall immediately vest in the Client Agency and the JOC Contractor will execute and deliver all papers necessary to transfer title to the Client Agency.
- F. Coincident with making final payment, the JOC Contractor shall furnish the Client Agency with a final release.
- G. The Client Agency shall be afforded full access to all books, correspondence, data and papers of the JOC Contractor relating to the Job Order in order to determine the amount due.

**16.3 JOC Contractor's Default.** If the JOC Contractor:

- A. Persistently or repeatedly refuses or fails to supply sufficient properly skilled workmen or proper materials; or
- B. Persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project; or
- C. Fails to proceed as directed by the Client Agency; or
- D. Performs the Work unsuitably; or
- E. Neglects or refuses to remove materials or replace rejected Work; or
- F. Discontinues the prosecution of the Work without approval of the Client Agency; or
- G. Otherwise breaches any material provision of this Contract,

then the Client Agency may, without prejudice to any of its other rights or remedies, give the JOC Contractor and its Surety written notice that the JOC Contractor has seven (7) days from the date of the Client Agency's letter to cure the default. If the JOC Contractor fails to cure the default within the specified time, the Client Agency may terminate the Job Order, between the Client Agency and the JOC Contractor, and may take possession of the site and of all materials and equipment, which has been paid for by the Client Agency as of the date of termination. The Client Agency may finish the Work by whatever method the Client Agency may deem expedient. Upon termination, the JOC Contractor is not entitled to receive any further payment until the Work is finished, at which time the JOC Contractor shall be paid any excess remaining, in accordance with the Unpaid Job Order Price Balance Paragraph below. The discretion to declare the JOC Contractor in default rests solely with the Client Agency. No party, whether bound by Contract to the Client Agency or attempting to raise a third party relationship, which this Contract specifically precludes, may state a cause of action against the Client Agency alleging the failure of the Client Agency to exercise its discretion to terminate the JOC Contractor. The Department, Client the above criteria and all information provided by the Client Agency, will determine if the JOC Contractor is to be defaulted from the Design Build JOC Contract.



- 16.4 Unpaid Job Order Price Balance.** If the unpaid balance of the Job Order Price exceeds the cost of finishing the Work, including compensation for any Construction Manager's Additional Services (if one is on the Project) and any other damages that the Client Agency has incurred in accordance with the Job Order, such excess shall be paid to the Surety. If such costs exceed the unpaid balance, the JOC Contractor or the surety or both shall pay the difference to the Client Agency.
- 16.5 Surety Replacement of JOC Contractor.** If the Client Agency terminates the JOC Contractor on the Job Order, the surety will have thirty (30) days from the date of the termination letter to replace the terminated JOC Contractor with a completion contractor that is acceptable to the Client Agency.
- 16.6 Surety's Failure to Provide Replacement JOC Contractor.** If the surety fails to provide an acceptable JOC Contractor within thirty (30) days (or a mutually agreeable time period) from the date of the termination letter, the Client Agency may contract with another contractor to complete the Work in accordance with the Contract Documents.
- 16.7 The Client Agency's Right of Recovery.** the Client Agency will hold the Surety responsible for any additional cost incurred by the Client Agency as a result of the JOC Contractor's termination from the Job Order, including but not limited to, delay cost, acceleration cost, direct cost and consequential and incidental cost incurred by the Client Agency or any other contractor.

## **ARTICLE 17: DISPUTES**

- 17.1 JOC Contractor Must Carry on Work During the Dispute Process.** The JOC Contractor may note that they are performing the Work under protest and may keep records of costs during the dispute resolution process but the JOC Contractor shall not refuse to perform as directed by the Client Agency. The JOC Contractor must maintain the Project Schedule unless otherwise agreed to by the Client Agency. If the JOC Contractor fails or refuses to perform as directed, this action will constitute a breach of contract and the Client Agency may default the JOC Contractor from the Job Order and/or proceed to suspend and/or debar the JOC Contractor.
- 17.2 Dispute Resolution is a 3-Step Process.** The JOC Contractor and the Client Agency agree that any and all disputes arising out of this Contract and Job Order(s) are subject to a 3-step resolution process. The JOC Contractor and the Client Agency agree that participation in each preceding step is a condition precedent to the JOC Contractor's right to pursue any and all unresolved disputes to the next step.
- 17.3 Step 1: Field Dispute Review Meeting.** The Field Dispute Review Meeting is the initial step in identifying and attempting to reach a timely and equitable resolution of the variety of issues that arise on any construction project. The nature and

structure of each Field Dispute Review Meeting shall be flexible and consist of an informal, good-faith discussion of the current status of the Project, and identification of potential and actual disputes.

- A. Project Intervals: A Field Dispute Review Meeting (“FDR Meeting”) will be scheduled by the Client Agency or the Construction Manager to discuss issues arising as of the following intervals of the Project:
  - 1. 50% of the Job Order Completion Time has elapsed; and
  - 2. 75% of the Job Order Completion Time has elapsed; and
  - 3. 100% of the Job Order Completion Time has elapsed; or
  - 4. At any other time deemed necessary by the Client Agency.
  
- B. Location: the Client Agency will schedule a mutually convenient date and time for each FDR Meeting. If possible, the FDR Meeting should be convened at the Project site.
  
- C. Attendees: The JOC Contractor shall attend each Field Dispute Review Meeting. The Design Professional shall attend each Field Dispute Review Meeting. The Construction Inspectors shall also attend the Field Dispute Review Meeting. The Client Agency or the Construction Manager (if one is on the Project) will chair the Meeting.
  
- D. Procedure: As the Project progresses and the time for a FDR Meeting approaches, the Client Agency should establish the date for the meeting during the discussion at a bi-weekly Job Conference.
  - 1. The JOC Contractor must fill out a Field Dispute Review Meeting Form, a sample of which appears in the Disputes Administrative Procedure. This Form should be submitted to the Client Agency and provided to the Design Professional approximately 1 week prior to the FDR meeting. The information on this Form should provide sufficient information to allow attendees to research potential disputes, review the Contract Documents, review the Project Schedule and examine site conditions prior to the Meeting. In all cases of misunderstanding and disputes, allegations that verbal instruction was given will not be considered. The JOC Contractor must produce written documentation in support of its contentions and shall advance no claim in the absence of such written documentation, or use or attempt to use any conversation with any parties against the Client Agency, or in prosecuting any claim against the Client Agency.
  - 2. The Client Agency or the Construction Manager (if one is on the Project) shall convene the Field Dispute Review Meeting and, if necessary, ensure that attendees are introduced to each other.
    - a. The FDR Meeting shall not be subject to 2 Pa. C.S. (relating to administrative law and procedure).
    - b. Neither audio recording nor videotaping will be allowed during the FDR Meeting.

- c. No transcripts will be taken but attendees are free to take their own notes.
  - d. The Meeting may be moved out to the field for visual inspection of the condition if necessary to understand and resolve the issue.
  - e. The Client Agency will allow all parties a reasonable time to present and discuss the disputes raised in the JOC Contractor's FDR Meeting Form.
3. The JOC Contractor's representative (who should be an employee in the field who is familiar with the day-to-day work on the Contract) shall present a description of:
- a. The Work performed since the last Field Dispute Review Meeting; and
  - b. The Work to be performed in the near future; and
  - c. The status of disputes raised at the previous FDR Meeting; and
  - d. New disputes that have arisen since the previous FDR Meeting. For each new dispute:
    - i. Set forth the schedule impacts, which may only be presented Client the current Project Schedule; and
    - ii. Set forth a proposed solution to the dispute, including:
      - 1. Days needed in any Extension of Time; and/or
      - 2. Damages attributed to the dispute; and'
      - 3. Identify the party the JOC Contractor believes is responsible for creating the dispute.
4. the Client Agency's representative shall present a description of:
- a. their understanding of the Work performed since the last FDR Meetings; and
  - b. the Work to be performed in the near future; and
  - c. status of disputes raised at the previous FDR Meeting; and
  - d. a response to the new dispute(s) raised by the JOC Contractor, including:
    - i. the Client Agency's view of the schedule impact, which may only be presented Client the current Project Schedule; and
    - ii. the Client Agency's response to the JOC Contractor's proposed solution; and
    - iii. the identity of the party the Client Agency believes is responsible for creating the dispute.
5. Within two weeks of the FDR Meeting, the Client Agency will render a written decision on the issues raised during the FDR

Meeting. The decision will be issued to all attendees. The decision is not binding upon any party.

6. If any party is dissatisfied with the decision reached at the FDR Meeting, they may appeal the decision to the second step in the dispute process.
7. **Any issue or dispute arising on the Project must be presented at the first FDR Meeting after the dispute arose. If a JOC Contractor fails to raise an issue at the appropriate FDR Meeting (i.e., an issue arising during first 50% of the Job order Completion Time must be presented at the 50% FDR Meeting and may not be presented later at the 75% FDR Meeting) then the JOC Contractor is deemed to have waived the issue.**
8. **Only claims raised during an FDR Meeting may be appealed to the Claim Settlement Conference stage.**

**17.4 Step 2: Claim Settlement Conference.** The second step in the dispute resolution process is a Claim Settlement Conference, which is a more formal step in the process and is described in general in §1712.1 of the Commonwealth Procurement Code. To the extent that this language conflicts with §1712.1, the statutory language controls.

- A. Time to File A Claim: Under this second step of the process, the JOC Contractor may appeal the FDR Meeting decision by submitting a written claim to the Client Agency's contracting officer.
  1. **Any issue or dispute arising on the Project that is not mutually resolved at the FDR Meeting stage may only be appealed to the Claim Settlement Conference stage. If the JOC Contractor fails to pursue any unresolved FDR Meeting issue to a Claim Settlement Conference within the 6-month time frame set forth below, then the JOC Contractor is deemed to have waived the issue.**
  2. **A claim accrues under this Step upon the date of the Client Agency's written decision. If the JOC Contractor decides to appeal the decision reached at the FDR Meeting, the JOC Contractor must file an appeal of the decision to the Client Agency's contracting officer within six months of the date of the Client Agency's decision. If the JOC Contractor fails to file a written request within this time period, the JOC Contractor is deemed to have waived its right to assert the claim in any forum. The Client Agency's contracting officer will disregard untimely claims.**
- B. Contents of the Claim: The claim filed by the JOC Contractor with the Client Agency's contracting officer shall state **all grounds** upon which the JOC Contractor asserts a controversy exists. The claim must contain, at a minimum:
  1. The Claim Settlement Conference request form set forth in the Disputes Administrative Procedure; and

2. The documentation submitted by the JOC Contractor to the Client Agency during the FDR Meeting to substantiate the JOC Contractor's view of the issue; and
  3. The Client Agency's decision.
- C. Date of the Claim Settlement Conference: The Client Agency's contracting officer or a designee will schedule a mutually convenient date and time for the Claim Settlement Conference.
- D. Attendees: All parties identified in the Claim Packet or deemed necessary by the Client Agency shall attend the Claim Settlement Conference. At a minimum, the JOC Contractor, the Design Professional and a representative from the Client Agency shall attend the Claim Settlement Conference.
- E. Procedure: The Client Agency's contracting officer or a designee will convene the Claim Settlement Conference.
1. The Claim Settlement Conference shall not be subject to 2 Pa. C.S. (relating to administrative law and procedure).
  2. Neither audio recording nor videotaping will be allowed during the Claim Settlement Conference.
  3. No transcripts will be taken but attendees are free to take their own notes.
  4. The Client Agency's contracting officer or a designee will allow all parties a reasonable time to present and discuss the issues.
  5. The JOC Contractor's representative shall present a description of the issue, including:
    - a. the factual background of the issue;
    - b. the schedule impacts, which may only be presented Client the current Project Schedule; and
    - c. the proposed solution to the dispute, including:
      - i. days needed in any Extension of Time; and/or
      - ii. damages attributed to the dispute; and
      - iii. identify the party the JOC Contractor believes is responsible for creating the dispute.
  6. the Client Agency's representative shall present a description of:
    - a. a response to the dispute(s) raised by the JOC Contractor, including:
    - b. the Client Agency's view of the schedule impact, which may only be presented Client the current Project Schedule; and
    - c. the Client Agency's response to the JOC Contractor's proposed solution; and

- d. the identity of the party the Client Agency believes is responsible for creating the dispute.
7. The Client Agency's contracting officer may render a final determination on the issue(s) raised during the Claim Settlement Conference within 120 days of the receipt of the claim by the Client Agency's contracting officer. The parties may, during the 120 day period, mutually agree to extend the 120-day deadline. The Department will confirm all agreements to extend the 120-day deadline in writing. If no decision is rendered within the 120 days of the receipt of the claim by the Deputy Secretary, and the Department has not confirmed in writing the parties agreement to extend the 120-day deadline, the claim is deemed to be denied on the 120<sup>th</sup> day. If extended, the Client Agency will issue written confirmation of the extension. If no decision is rendered within the 120 days, the claim is deemed to be denied on the 120<sup>th</sup> day. The determination of the Client Agency's contracting officer shall be the final order of the Client Agency with regard to the issue(s).

**17.5 Step 3: Filing a Claim at the Board of Claims.** The third step in the dispute resolution process is filing a Statement of Claim with the Board of Claims, which is a more formal step in the process and is described in general in §1712.1 and §1721 et seq. of the Commonwealth Procurement Code. To the extent that this language conflicts with §1712.1, the statutory language controls.

A. Time to File a Statement of Claim.

1. Within fifteen (15) days of the mailing date of the Client Agency's contracting officer's final determination denying a claim; or
2. Within 135 days of the date the JOC Contractor files a claim with the Client Agency's contracting officer if no final determination has been rendered and no extension has been agreed to,

whichever occurs first, the JOC Contractor may proceed to the third stage of the dispute resolution process by filing a claim with the Board of Claims in Harrisburg.

## **ARTICLE 18: COMMISSIONING**

**18.1 Scope of Work.** If deemed necessary by the Client Agency during design, commissioning shall consist of the coordination of activities to verify that all building systems (mechanical, electrical, security, fire alarm, etc.) have been installed and are operating in accordance with the requirements specified in the Contract Documents. This scope shall also include approved installation, start-up training, testing and performance of all building equipment and systems.

**18.2 Procedure.**

- A. The specifications shall contain the commissioning specifications for each

system.

- B. Within 30 days after the Job Order is issued, the JOC Contractor's Commissioning Agent (CA) will provide the Commissioning Plan to the Client Agency. This plan shall clarify in detail the schedule and responsibilities for Work to be completed during commissioning of the Project.
- C. The schedule set forth in the Commissioning Plan shall then be integrated into the Project Schedule by the first monthly update.
- D. Final commissioning will begin upon written notice from the JOC Contractor to the Commissioning Agent (with a copy sent to the Client Agency) that the system to be commissioned has been completed and is operational.

### **18.3 Payment for Commissioning.**

- A. The JOC Contractor shall have a lump sum of 2% of the awarded Job Order Price (or other percentage set forth by the Client Agency in the specifications or the Detailed Scope of Work) retained as a schedule of value item on the Application for Payment (AIA G703) for Final Commissioning.
- B. Progress payments can be submitted for systems that have been commissioned and approved by the Commissioning Agent. The total of these progress payments shall not exceed ½ of the total percentage retained for Final Commissioning.
- C. Progress payments for commissioning shall be apportioned *pro rata* based on the scheduled values of the systems or equipment to be commissioned. All Applications for Payment that request release of any amount of the total percentage retainage for Final Commissioning must be submitted for review by the Commissioning Agent.
- D. The remaining ½ of the total percentage for the Final Commissioning retainage is payable upon completion of seasonal testing results approved by the Commissioning Agent. Seasonal testing will span two seasons, to assure that commissioning addresses peak heating and cooling operation.

## **ARTICLE 19: MISCELLANEOUS CONDITIONS**

- 19.1 Foundations for Mechanical Equipment.** The JOC Contractor shall furnish and install foundations and supports for all equipment. Foundations and supports shall include isolation mounting for noisy and vibrating equipment. The JOC Contractor shall provide sufficient dowels or anchors in bases as required for equipment supplied under this Contract. These foundations and support shall not be those concrete slabs or that integral concrete construction noted and dimensioned on the

architectural and structural drawings, which are also considered the JOC Contractor's responsibility.

**19.2 Sanitary Facilities.** The JOC Contractor shall, at its cost, provide and maintain in a clean and sanitary condition adequate and approved sanitary facilities in accordance with O.S.H.A. requirements. All facilities shall be screened against insects. When directed by the Client Agency, the JOC Contractor shall dismantle and remove these facilities and disinfect as required. Portable chemical toilets approved by the Pennsylvania Department of Health are acceptable. Under temporary field conditions, provisions shall be made to assure not less than one toilet facility is available at all times.

**19.3 Sanitary Facilities After Lines Installed.** As soon as soil lines and water lines have been installed inside the building and tested successfully, the JOC Contractor shall, at its cost, install two (2) lavatories and sufficient number of toilets according to the following table:

| NUMBER OF WORKERS   | MINIMUM NUMBER OF FACILITIES      |
|---------------------|-----------------------------------|
| 20 or Less Workers  | 1                                 |
| 21 or More Workers  | 1 toilet seat and 1 urinal per 40 |
| 200 or More Workers | 1 toilet seat and 1 urinal per 50 |

These shall be kept in working order by the JOC Contractor and in a clean and sanitary condition by the JOC Contractor. All supplies for these facilities shall be provided and restocked by the JOC Contractor.

**19.4 Hoisting Facilities.** The JOC Contractor shall, at its cost, erect, maintain, and operate hoisting facilities. All hoisting facilities must comply with the safety regulations of the Department of Labor and Industry.

**19.5 Temporary Ventilation.** The JOC Contractor shall provide temporary ventilation to remove from the structure any excessive heat and/or humidity in enclosed portions of the Work, resulting from its construction operations so that the Work may be carried on without interruption and under correct conditions, including required dryness for installation of the various materials. Removing any dangerous or noxious fumes or particles suspended in the air is the responsibility of the JOC Contractor. Temporary equipment used for this temporary ventilation shall produce no hazard to the Work or to any person in or near it. The JOC Contractor shall furnish all such temporary equipment; pay all costs for it and for its operation, including fuel and power supplies during operation both in and out of normal working hours. The JOC Contractor shall remove the equipment when it is no longer required, or when so directed by the Client Agency.

**19.6 Work Beyond Limit of Detailed Scope of Work.** For purposes of performing the Work, the site is defined by the limit of the Job Order lines shown on the drawings or identified on the Detailed Scope of Work. The JOC Contractor is responsible for any work performed beyond the limit of the Job Order.

**19.7 Advertising.** No advertising is permitted within the Work area or adjacent area. This



does not apply to corporate vehicles or attire.

- 19.8 Federal and A.S.T.M. and Other Specifications.** Reference to Federal, A.S.T.M. and other standard specifications references and designations means those in effect at the date of bid. Basic codes and regulations incorporated by reference, standard regulations and codes refer to editions in effect at the date of proposals, including current addenda or errata. The most stringent section of each code applies.
- 19.9 Storage and Stockpiling on Roofs.** No materials of any type may be stored or stockpiled overnight on roofs.
- 19.10 Audit of Records.** The Department and/or Client Agency may, at reasonable times and places, audit the books and records of the JOC Contractor. The JOC Contractor shall maintain books and records related to the Contract for a period of three (3) years from the date of final payment. The JOC Contractor shall include a requirement in contracts with subcontractors or suppliers that requires the Subcontractor or Supplier to maintain its records for the same length of time.
- 19.11 Temporary Traffic Control.** The Project site may have active pedestrian, bike or automobile traffic adjacent to site for the entire duration of the Project. If applicable, the JOC Contractor shall, incorporate, furnish and implement the following work as part of this Project.
- A. Traffic Control – Temporary Traffic Control Guidelines (PennDOT Publication 213): The needs and control of all road users (motorists, bicyclists, and pedestrians within the highway, including persons with disabilities in accordance with the Americans with Disabilities Act of 1990 (ADA), Title II, Paragraph 35.130 and Temporary Traffic Control Guidelines (PennDOT Publication 213) through a Temporary Traffic Control (TTC) zone shall be an essential part of highway construction, utility work, maintenance operations, and the management of traffic incidents.
- Publication 213 applies to JOC Contractors; utilities; Federal, State, County, township and municipal governments; and others performing applicable construction, maintenance, emergency or utility/permit work on highways or so closely adjacent to a highway that workers, equipment or materials encroach on the highway or interfere with the normal movement of traffic.
- 19.12 Reduction of Noise.** The JOC Contractor must take reasonable steps to minimize noise and shall perform work in accordance with local noise ordinances. The JOC Contractor shall perform noise-producing work in less sensitive hours of the day or week as directed by the Client Agency. The JOC Contractor shall maintain noise-producing work at or below the decibel levels and within the time periods specified and shall perform construction activities involving repetitive, high-level impact noise only between 8:00 a.m. and 6:00 p.m. unless otherwise permitted by the Client Agency and permissible by local ordinance.
- 19.13 Visible Dust Emissions.** No person shall perform any construction, demolition, excavation, extraction, or other earthmoving activities unless appropriate measures

are sufficiently implemented to limit Visible Dust Emissions (VDE) to 20% opacity and comply with the conditions for a stabilized surface area when applicable. The JOC Contractor shall apply sufficient water to building exterior surfaces, and/or unpaved surface areas where equipment will operate to limit VDE to 20% opacity throughout the duration of razing and demolition activities or handling, storage, and transport of bulk materials on-site or off-site. The JOC Contractor shall apply sufficient dust suppressants to unpaved surface areas within 100 feet where materials from razing or demolition activities will fall in order to limit VDE to 20% opacity. The JOC Contractor shall also apply sufficient dust suppressants to unpaved surface areas where wrecking or hauling equipment will be operated in order to limit VDE to 20% opacity.

## **ARTICLE 20: LEGAL MATTERS**

- 20.1 No Estoppel or Waiver of Legal Rights.** Neither the Client Agency or its designee is precluded or estopped by the measurements or accepted Applications for Payment made or given by the Client Agency from showing the true and correct amount and character of the Work performed and materials and equipment furnished by the JOC Contractor. The Client Agency may show, at any time, that any such measurements or accepted Applications for Payment are untrue or incorrectly made in any particular, or that the Work or materials, equipment or any parts thereof do not conform to the specifications and the Contract. The Client Agency may reject the whole or any part of the aforesaid Work or materials and equipment if the measurements or accepted Applications for Payment are found or become known to be inconsistent with the terms of the Contract, or otherwise improperly given. The Client Agency may, notwithstanding any such measurements or accepted Applications for Payment, demand and recover from the JOC Contractor, its surety, or both, such damages as the Client Agency may sustain by reason of the JOC Contractor's failure to comply with the terms of the specifications and the Contract, or on account of any overpayments made on any accepted Applications for Payment. Neither the acceptance by the Client Agency nor any certificate accepted for payment of money, nor any payments for, nor acceptance of the whole or any part of the Work by the Client Agency nor any Extension of Time, nor any position taken by the Client Agency operates as a waiver of any portion of the Contract or any power herein reserved by the Client Agency or any right to damages. A waiver of any breach of the Contract will not be held to be a waiver of any other or subsequent breach.
- 20.2 Law of the Place.** The Contract and all Job Orders shall be governed by the Laws of the Commonwealth of Pennsylvania.
- 20.3 Successors and Assigns.** This Contract shall be binding on the parties hereto, their heirs, executors, administrators, successors and assigns. No part of this Contract may be assigned by the JOC Contractor without the prior written consent of the Department.
- 20.4 Written Notice.** Written notice is duly served if delivered in person to the individual

or member of the firm or to an officer of the corporation for whom it was intended, or mailed to its post office box address, if any, or addressed to the JOC Contractor at its place of business as set forth in the Contract. Wherever the term "notice" is used, such notices, to be effective, shall be in writing and, if to the Department, shall be mailed by Certified or Registered mail, postage and fees prepaid, or shall be delivered, in person, to the Deputy Secretary for Public Works, Department of General Services, 18th & Herr Streets, Harrisburg, Pennsylvania 17125.

- 20.5 Claims for Damages: Legal Relations and Responsibilities.** Contracts and Job Orders covered by these General Conditions are not to be construed as being made for the benefit of any person or political subdivision not a party to this Contract, nor shall this Contract or Job Orders be construed to authorize any person or political subdivision, not a party to this Contract or Job Orders, to maintain any lawsuit hereunder, nor shall this Contract or Job Orders be construed to constitute the basis for the maintenance of any lawsuit by any person, or political subdivision not a party hereto.
- 20.6 Royalties and Patents.** The JOC Contractor shall pay all royalties and license fees. The JOC Contractor shall defend all suits or claims for infringement of any patent rights and shall hold the Client Agency harmless from loss on account thereof.
- 20.7 Personal Responsibility and Work Opportunity Reconciliation Act.** Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, all employers are required to report information on newly-hired employees to a designated state agency. The Commonwealth of Pennsylvania has designated the Department of Labor and Industry as that agency. For information concerning this requirement call 1-888-PAHIREs.
- 20.8 Public Works Employment Verification Act.** The JOC Contractor is hereby notified that this contract and all Job Orders are for a public work and the JOC Contractor is therefore subject to the provisions, duties, obligations, remedies and penalties of the Public Works Employment Verification Act, 43 P.S. §§167.1- 167.11, which is incorporated herein by reference as if fully set forth herein. JOC Contractors subject to said Public Works Employment Verification Act are required to utilize the Federal E-Verify program to verify the employment eligibility of each new employee hired after January 1, 2013 and to submit to the Client Agency a Commonwealth Public Works Employment Verification Form available on the Client Agency's web site at [www.dgs.state.pa.gov](http://www.dgs.state.pa.gov).
- 20.9 Prevailing Minimum Wage Predetermination.** The JOC Contractor is hereby notified that this Contract and all Job Orders are subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. §165-1 et seq., as amended, which is incorporated herein by reference as if fully set forth herein. In compliance with said Pennsylvania Prevailing Wage Act, the Prevailing Minimum Wage Predetermination is hereto attached and made part hereof as approved by the Secretary of Labor and Industry. If a job classification is not covered by the Prevailing Wage Predetermination, the JOC Contractor may not pay individuals in that classification less than the lowest rate for laborers, as set out in the predetermination.

**20.10 Tobacco Use on Project Site.** Use of tobacco products (smoke and smokeless) shall be restricted on site after the building has been enclosed (with permanent or temporary enclosures). Personnel found in noncompliance with this directive may be removed from the site upon discovery of this noncompliance.

**20.11 Right-to-Know Law.**

- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract and all Job Orders.
- B. Unless the JOC Contractor provides the Commonwealth, in writing, with the name and contact information of another person, the agency shall notify the JOC Contractor Client the JOC Contractor information provided by the JOC Contractor in Proposal if the agency needs the JOC Contractor's assistance in any matter arising out of the Right to Know Law ("RTKL"). The JOC Contractor shall notify the agency in writing of any change in the name or the contact information within a reasonable time prior to the change.
- C. Upon notification from the Commonwealth that the Commonwealth requires the JOC Contractor's assistance in responding to a RTKL request for records in the JOC Contractor's possession, the JOC Contractor shall provide the Commonwealth, within fourteen (14) calendar days after receipt of such notification, access to, and copies of, any document or information in the JOC Contractor's possession which arises out of the Contract that the Commonwealth requests ("Requested Information") and provide such other assistance as the Commonwealth may request in order to comply with the RTKL. If the JOC Contractor fails to provide the Requested Information within fourteen (14) calendar days after receipt of such request, the JOC Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the JOC Contractor's failure, including any statutory damages assessed against the Commonwealth.
- D. The Commonwealth's determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. JOC Contractor agrees not to challenge the Commonwealth's decision to deem the Requested Information a Public Record. If the JOC 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, the JOC Contractor will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the JOC Contractor explaining why the requested material is exempt from public disclosure under the RTKL within seven (7) calendar days of receiving the request. If, upon review of the JOC Contractor's written statement, the Commonwealth still decides to provide the Requested Information, JOC Contractor will not challenge or in any way hold the Commonwealth liable for such a decision.

- E. The Commonwealth will reimburse the JOC Contractor for any costs associated with complying with this provision 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.
- F. JOC Contractor agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania Courts. The JOC 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. JOC Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the JOC Contractor has Requested Information in its possession.

#### **20.12 Non-Appropriation Clause.**

- A. 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. The JOC 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 for any appropriations available for that purpose.

#### **20.13 Contractor Integrity Provisions.**

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

A. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

1. **"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.

2. **"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.

3. **“Contractor”** means the individual or entity, that has entered into this contract with the Commonwealth.

4. **“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.

5. **“Financial Interest”** means either:

- a. Ownership of more than a five percent interest in any business; or
- b. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

6. **“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.

7. **“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:

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

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

3. 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.

4. 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.

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

- a. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- b. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- c. had any business license or professional license suspended or revoked;
- d. 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
- e. 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.

6. 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)*.

7. 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.

8. 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.

9. 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 paragraph 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.

10. 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.

#### **20.14 Contractor Responsibility Provisions.**



A. 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.

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

**END**



**pennsylvania**  
DEPARTMENT OF GENERAL SERVICES

# **ADMINISTRATIVE PROCEDURES**

FOR THE

# **JOB ORDER CONTRACT**

**DEPARTMENT OF GENERAL SERVICES**  
**HARRISBURG, PENNSYLVANIA**

**2019 EDITION**

# **JOB ORDER CONTRACT ADMINISTRATIVE PROCEDURES**

## **ADMINISTRATIVE PROCEDURE NO. 1**

**Correspondence**

## **ADMINISTRATIVE PROCEDURE NO. 2**

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## **ADMINISTRATIVE PROCEDURE NO. 3**

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## **ADMINISTRATIVE PROCEDURE NO. 4**

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**JOC Contractor's (JOC Contractor's) Application for  
Payment Prevailing Minimum Wage Certificate Form  
GSC-16 Application and Certification for Payment - AIA  
G702 Continuation Sheet – AIA G703  
Stored Materials – Form GSC-43  
Payroll Affidavit, JOC Contractor's Certificate and Statement of Surety, Power of Attorney – Form  
GSC- 24  
Small Diverse Business and Veteran Business Enterprise Utilization Report**

**ADMINISTRATIVE PROCEDURE NO. 11**

**Changes in Contract Work (Field Orders/Supplemental Job Orders)  
Construction Supplemental Job Order Form**

**ADMINISTRATIVE PROCEDURE NO. 12**

**Request for Extension of Time Supplemental Job Order – Form GSC-5**

**ADMINISTRATIVE PROCEDURE NO. 13**

**Submission Guidelines for Steel Certificates  
Steel Origin Certification: JOC Contractor – Form  
ST-1 Steel Origin Certification: Fabricator – Form  
ST-2  
75% U.S. Manufacture Certification: Fabricator – Form  
ST-3 Not Domestically Manufactured: JOC Contractor –  
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**ADMINISTRATIVE PROCEDURE NO. 14**

**Field Dispute Resolution Form**

**ADMINISTRATIVE PROCEDURE NO. 15**

**Utilization/Occupancy Inspection  
Certificate of Occupancy/Utilization – Form GSC-46  
Final Inspection  
Certificate of Completion and Final Payment – Form GSC-47  
Closeout Inspection**

**ADMINISTRATIVE PROCEDURES NO. 16**

**Small Diverse Business / Veteran Business Enterprise Participation**

## 1-1 ADMINISTRATIVE PROCEDURE NO. 1

### CORRESPONDENCE

#### A. Identification of Correspondence

1. Correspondence includes letters, transmittals and memoranda, any of which may have forms attached to them.
2. If possible, any correspondence more than 1 page in length should be printed on both sides of the paper.
3. All correspondence shall include along with the Project Number, the appropriate Client Agency. Following is an example of proper identification for paper correspondence and letter format electronic attachments to emails:

Project No. 23-4 Phase (if applicable) Part (if applicable) (WR)  
Contract No. DGS A-2019-0001-JOC-NWT/SWT/CSE/CSW/CAP/SET/NET-K-1/2/3/4  
JOC Contractor

#### B. Addressing and Distribution of Correspondence

1. Letters and transmittals shall be addressed in the following manner with the distribution to at include, at a minimum, as indicated. If a Construction Manager is retained by Client Agency, the CM should be cc'd on all correspondence:

If to Client Agency:

Appropriate Contact Name (varies per Job Order)  
Appropriate Client Agency Address (varies per Job Order)

cc: Design Professional Construction  
Manager

If to Project Site:

Construction Manager  
Appropriate Project Address

cc: Design Professional  
Client Agency  
Construction Manager

If to the Design Professional:

cc: Client Agency  
Construction Manager

If to the JOC Contractor:

cc: Design Professional  
Client Agency  
Construction Manager

If to the Construction Manager: (if one is retained for the project):

cc: Design Professional  
Client Agency

C. Interdepartmental/Agency Memoranda

1. Correspondence that is written to or includes distribution to parties that are not Commonwealth agencies will be in the form of letters. Memoranda shall only be utilized in corresponding within Commonwealth Agencies.
2. Correspondence generated by the Client Agency staff in the memo form shall include, at a minimum, the distribution indicated.

From Client Agency Office:

cc: Construction Manager Other Agencies, as required

3. Correspondence in memo form generated by other Commonwealth Agencies regarding construction activities or other relevant construction related issues shall include, at a minimum, the distribution indicated:

cc: Other Agencies, as  
required  
Design Professional  
Construction Manager

## 2-1 ADMINISTRATIVE PROCEDURE NO.2

### ORIENTATION MEETING

#### A. Orientation Meeting

1. The JOC Consultant will set the time, date and place for the Orientation Meeting, which will be no later than the thirty (30) days following the Effective Date of the Contract.
2. The JOC Contractor is required to attend the scheduled Orientation Meeting. All Forms may be available on the eGordian website or provided to the Contractor. Notification of the meeting date, time and place will be confirmed by letter. Personnel from the JOC Contractor's office, such as the principal of the firm, project manager and project superintendent must attend the meeting.
3. The Notice initiating the Meeting shall be addressed to the JOC Contractor, with copies of the notice to the following:
  - Construction Manager
  - Client Agencies
  - Client Agency, or designee
  - Contract File
4. During the Orientation Meeting, the Commonwealth, in concert with the JOC Consultant, shall conduct the order of business and discuss specific requirements of the Contract.
5. Agenda for the Orientation Meeting
  - a. Introduction of attendees.
  - b. Explanation of Administrative Procedures and associated forms. The JOC Contractor shall refer to the Commonwealth website for a copy of all required Forms. For all forms not on the Commonwealth website, the JOC Consultant will train the JOC Contractor individually on access to the eGordian® management software.
  - c. Review of Procedure for Ordering Work and Procuring Individual Job Orders
    - (1) Project Notification and Assignment
    - (2) Joint Scope Meeting
    - (3) Preparation of the Design (if required)
    - (4) Preparation of the Job Order Proposal
    - (5) Review of the Job Order Proposal
    - (6) Issuance of the Job Order
  - d. Review of the Construction Task Catalog®
    - (1) Guidelines to Client the Construction Task Catalog®
    - (2) Commonly Used Items and Section Notes
  - e. Design Guidelines
    - (1) Issuance of the Design Job Order



- (2) Preliminary Design Submission
- (3) Final Design Submission
- f. Question and Answer Period & Open Discussion

### 3-1 ADMINISTRATIVE PROCEDURE NO. 3

#### JOB CONFERENCES

##### A. General Information Concerning Job Conferences

1. The following representatives must attend Initial, Regular and any Special Job Conferences\*:
  - Client Agency
  - Construction Manager
  - The JOC Contractor (Project Manager or equivalent)
  - Design Professional Representative
  - JOC Contractor's Subcontractors as required

\* Special Job Conferences are scheduled by the Client Agency or designee.

2. The following representatives may attend any Job Conference, but are not required to be present unless warranted by circumstance:
  - Facility
  - Testing Laboratory Technicians
  - Other representatives, as appropriate (determined by Client Agency)
3. The Construction Manager will keep a record and distribute the proceedings of Job Conferences. The meeting record – Job Conference Report – shall be distributed to each addressee listed on the record before the next Job Conference.
4. Failure to attend any Job Conference is a violation of the Contract as indicated in the General Conditions of Contract. If the JOC Contractor does not attend the Job Conference, they may be subject to termination, unless absence is excused by the Client Agency or its designee.

##### B. Regular Job Conference

1. Job Conferences may be held as often as necessary, however, in no case less than bi-weekly.
2. The Construction Manager, or designee, may conduct Job Conferences. The number of Job Conferences and interval between each conference will depend on the complexity of the Detailed Scope of Work. These Job Conferences shall be attended by those described above.
3. The agenda of a Regular Job Conference shall include, at a minimum, the following:
  - a. General Review of Previous Report
    - i. Unsatisfactory conditions and/or workmanship, as noted on previous Job Conference Reports, must be noted when corrected by the JOC Contractor in the minutes of the first report following the correction. The manner in which the correction was made should also be noted in the minutes. The unsatisfactory item will be included as an item in each report until the issue is corrected.

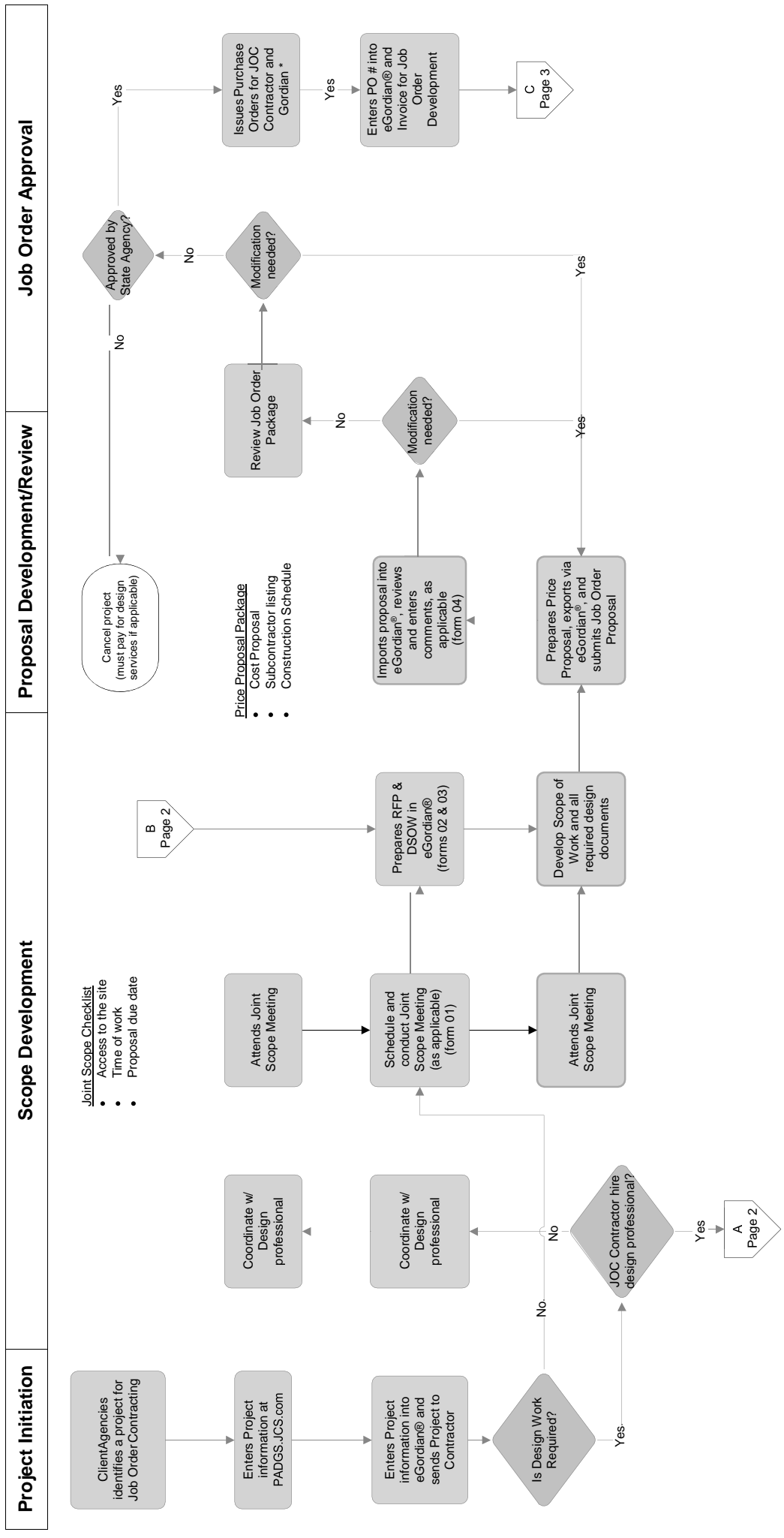
- b. General discussion of Job Conditions
- c. Review of past due Shop Drawings
- d. Review of outstanding Changes in the Work requiring Supplemental Job Orders
- e. Review of Progress Schedule
  - i. Special attention will be given to items that are behind schedule.
- f. Projected work for the next bi-weekly period
- g. Delays
  - i. The JOC Contractor should pay special attention to ensure that delays are documented on the Job Conference Reports since the Client Agency or its designee will review the minutes of the Job Conferences in reviewing the JOC Contractor's request for any Extension of Time.
- h. General Information will be inserted onto the written Job Conference Reports, such as percentage of elapsed time for project, percentage of payment for project, percentage of job completion for project (based upon physical inspection), date, time and place of next job conference and name of person who prepared the Report.

- 4. Job Conference Reports will be distributed by the Client Agency or designee to the following:
  - Construction Manager
  - Design Professional
  - JOC Contractor
  - Project Site
  - Client Agency

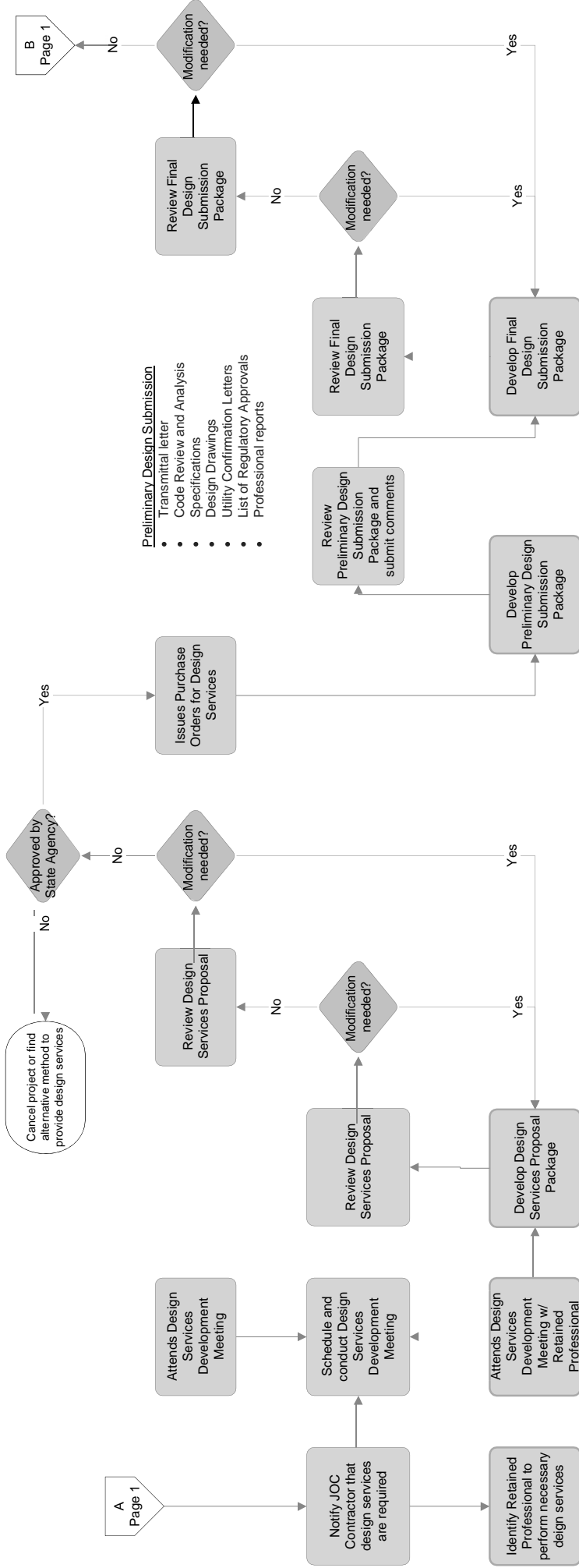
#### C. Special Job Conferences

- 1. The Client Agency or Construction Manager may call a Special Job Conference to consider any emergency or unusual job condition. Only the subject(s) mentioned in the request for the Special Job Conference shall be discussed.

**4-1 ADMINISTRATIVE PROCEDURE NO. 4**  
**PROCEDURE FOR ORDERING WORK**



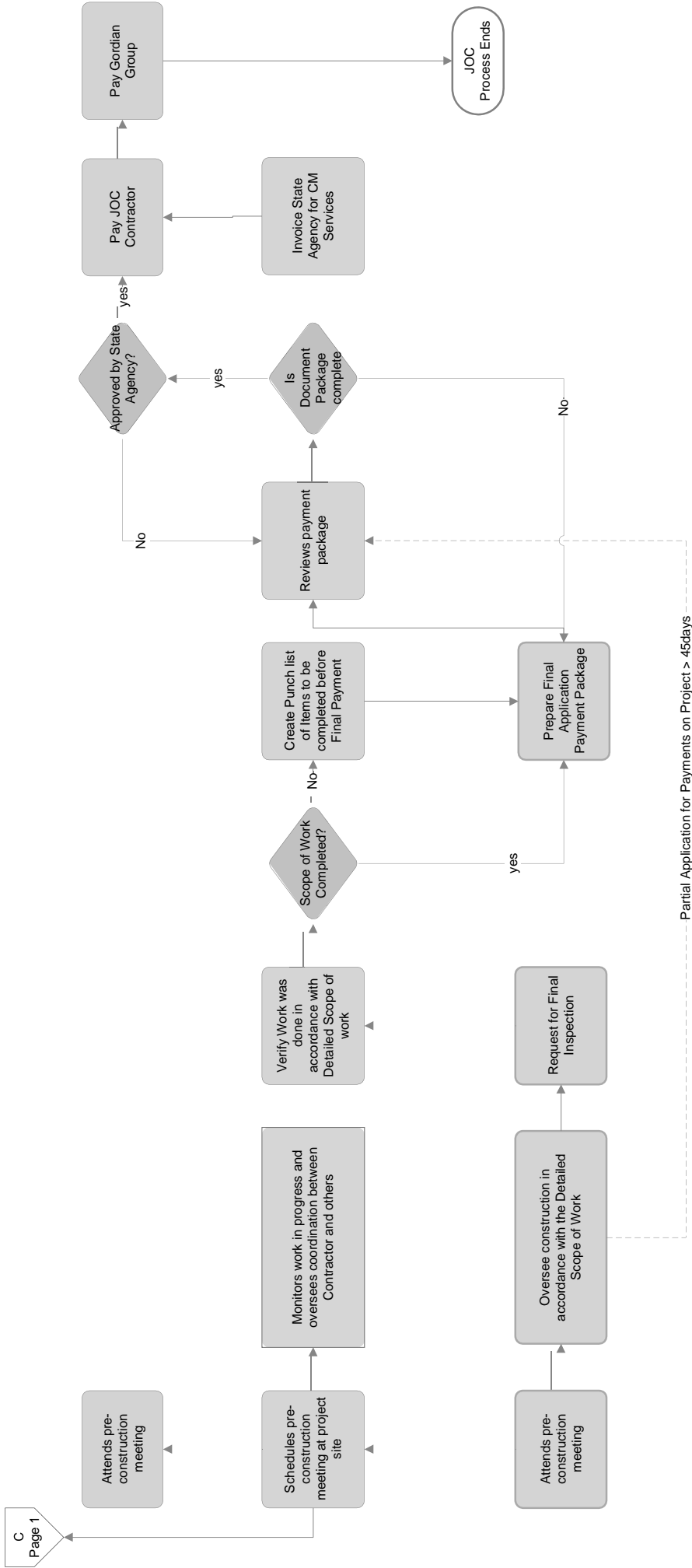
**Design Services Development**



**Construction**

**Payment**

**Close Out**



## **1. Initiation of a Job Order.**

- 1.1. As the need exists, the Client Agency will initiate a Job Order through the JOC Consultant's web site. The JOC Consultant will contact the Client Agency to discuss the parameters of the Work.
- 1.2. The JOC Consultant will notify the appropriate JOC Contractor and schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- 1.3. The JOC Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
  - 1.3.1. the general scope of the work;
  - 1.3.2. whether or not the JOC Contractor will be required to hire a Design Professional for the purpose of preparing Design Documents;
  - 1.3.3. alternatives for performing the work and value engineering;
  - 1.3.4. access to the site and protocol for admission;
  - 1.3.5. hours of operation;
  - 1.3.6. staging area;
  - 1.3.7. requirements for catalog cuts, technical data, samples and shop drawings;
  - 1.3.8. requirements for professional services, sketches, drawings, and specifications;
  - 1.3.9. construction duration;
  - 1.3.10. liquidated damages;
  - 1.3.11. the presence of hazardous materials;
  - 1.3.12. if applicable, date on which the Design Documents are due;
  - 1.3.13. date on which the Job Order Proposal is due.
- 1.4. If no design is required from the JOC Contractor, and upon completion of the joint scoping process, the JOC Consultant will prepare a draft Detailed Scope of Work referencing any sketches, Design Documents, photographs, and specifications required to document accurately the work to be accomplished. The JOC Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the JOC Consultant will issue a Request for Job Order Proposal that will require the JOC Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the JOC Contractor and the Client Agency, will be the basis on which the JOC Contractor will develop its Job Order Proposal and the JOC Consultant will evaluate the same. The JOC Contractor does not have the right to refuse to perform any task or any work in connection with a particular Job Order.



## **2. Preparation of the Design**

- 2.1. If the Lead JOC Contractor is required to hire a Design Professional, a Request for Design Cost Proposal will be issued to the Lead Contractor. The Lead JOC Contractor will engage the services of a Design Professional and submit the Design Cost Proposal on or before the due date and in accordance with the Design Guidelines.
- 2.2. Upon approval of the Design Cost Proposal, the JOC Contractor will provide the Design Professional's Liability Insurance in accordance with the General Conditions and then the Client Agency will issue a Design Job Order to the Lead JOC Contractor requiring the Design Professional to prepare the Preliminary Design Submission in accordance with the Design Guidelines.
- 2.3. Upon approval of the Preliminary Design Submission, a Request for Final Design Submission will be issued to the Lead JOC Contractor. The Lead JOC Contractor's Design Professional shall prepare the Final Design Submission in accordance with the Design Guidelines.
- 2.4. Upon approval of the Final Design Submission, the JOC Consultant / Client Agency will issue a Request for Job Order Proposal to the Lead JOC Contractor, and as applicable, the other JOC Contractor(s) along with the PA Prevailing Wage Predetermination. The JOC Contractor(s) shall prepare a Job Order Proposal.

## **3. Preparation of the Job Order Proposal.**

- 3.1. The JOC Contractor's Job Order Proposal shall include, at a minimum:
  - 3.1.1. Job Order Price Proposal;
  - 3.1.2. Required drawings or sketches;
  - 3.1.3. List of anticipated Subcontractors from eGordian<sup>®</sup> and SB/SDBStatus;
  - 3.1.4. Construction duration schedule;
  - 3.1.5. Employment Verification Act Form (E-Verify Form)
  - 3.1.6. Certificate of Insurance
  - 3.1.7. Other requested documents.
- 3.2. When the Client Agency accepts the Job Order Proposal, the JOC Contractor shall submit its Contract Bond in the amount of the Job Order Price prior to the Client Agency issuing the Job Order.
- 3.3. The Job Order Price shall be the value of the approved Job Order Price Proposal.

- 3.4. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 3.5. The JOC Contractor will prepare Job Order Price Proposals in accordance with the following:
  - 3.5.1. Pre-priced Task: A task described in, and for which a unit price is set forth in, the Construction Task Catalog®.
  - 3.5.2. Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog®.
  - 3.5.3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
    - 3.5.3.1. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
    - 3.5.3.2. If the JOC Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed, unless otherwise agreed to by the Client Agency, and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the JOC Contractor must submit three independent quotes, unless otherwise agreed to by the Client Agency, from subcontractors. The JOC Contractor shall not submit a quote from any supplier or subcontractor that the JOC Contractor is not prepared to use. The Client Agency may require additional quotes if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. If three quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the Client Agency's approval. If approved, less than three quotes or bids will be allowed.
    - 3.5.3.3. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

**For Non Pre-priced Tasks Performed with JOC Contractor's Own Forces:**

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

Total for a Non Pre-priced Tasks performed with JOC Contractor's Own Forces = (A+B+C) x Non Pre-Priced Task Adjustment Factor

**For Non Pre-priced Tasks Performed by Subcontractors:**

If the Non Pre-priced Task is to be subcontracted, the JOC Contractor must submit three independent quotes for the work.

D = Lowest of three Subcontractor Quotes

Total Cost for Non Pre-priced Tasks performed by Subcontractors = D x Non Pre-Priced Task Adjustment Factor

- 3.5.3.4. After a Non Pre-priced Task has been approved by the JOC Consultant, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.
  - 3.5.3.5. The JOC Consultant's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the JOC Contractor.
- 3.6. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Client Agency and JOC Consultant may permit the JOC Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
- 3.7. JOC Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the JOC Contractor is required to pay an application fee for filing a project or any other permit fee to a municipality, State or some other governmental or regulatory agency, then the amount of such fee paid by the JOC Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The JOC Contractor shall submit written documentation of such fees. The cost of expediting services or equipment use fees are not reimbursable.
- 3.8. The JOC Contractor shall provide all incidental engineering and architectural services using a Small Business Design Professional.
- 3.9. The JOC Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Job Order Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the JOC Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents. Failure to submit the Job Order Proposal by the required date may result in the JOC Contractor being entered into the Contractor Responsibility Program (CRP) which may affect all future contracting opportunities for the JOC Contractor.

- 3.10. By submitting a Job Order Proposal, the JOC Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal at the price submitted. It is the JOC Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Client Agency.
- 3.11. If the JOC Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

#### **4. Review of the Job Order Proposal and Issuance of the Job Order**

- 4.1. The JOC Consultant will evaluate the entire Job Order Price Proposal and compare these with the Client Agency's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- 4.2. The JOC Consultant may request changes to the Job Order Proposal. If requesting changes, the JOC Consultant will notify the JOC Contractor of the proposed changes, at which point, the JOC Consultant and JOC Contractor will discuss the proposed revisions and agree on the changes to the Job Order Proposal. If a revised Job Order Proposal is required, and unless otherwise stated by the JOC Consultant, the revised Job Order Proposal shall be due no later than forty-eight (48) hours after the agreement on the changes. The JOC Contractor shall revise the Job Order Proposal and resubmit on or before the due date.
- 4.3. The Client Agency and/or the JOC Consultant reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The Client Agency also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Client Agency. The Client Agency may perform such work by other means. The JOC Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Client Agency.
- 4.4. By submitting a Job Order Proposal, the JOC Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal at the lump sum price submitted. It is the JOC Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the Client Agency.
- 4.5. Each Job Order provided to the JOC Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order and/or Purchase Order, delivered to the JOC Contractor constitutes the Client Agency's acceptance of the JOC Contractor's Job Order Proposal.
- 4.6. In the event that an immediate time sensitive response is necessary, the JOC Contractor shall be required to follow alternative procedures as established by the Client Agency. The JOC Contractor shall begin work as directed by the Client Agency notwithstanding the absence of

a fully developed Request for Job Order Proposal, Detailed Scope of Work, or Job Order. The JOC Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

## **5. Annual Update of the Construction Task Catalog®**

- 5.1. The Construction Task Catalog® issued with the Request for Proposal will be in effect for the first year of the Job Order Contract.
- 5.2. On or about October 1, a new Construction Task Catalog® will be furnished. The new Construction Task Catalog® will be effective for the twelve (12) month period after the anniversary of the Effective Date of the Contract. The Construction Task Catalog® that accompanies each anniversary shall only apply to Job Orders issued after the effective date of that specific renewal option and shall have no impact on Job Orders issued prior to the effective date of that specific renewal option.
- 5.3. The Adjustment Factors submitted with the Cost Submission Form shall be used for the full term of the Job Order Contract.
- 5.4. The JOC Contractor shall use the Construction Task Catalog® in effect on the date that the Job Order is initiated.

## **6. Job Order Contracting License**

- 6.1. The Department of General Services (Department) selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") Solution (Gordian JOC Solution®) for their JOC program. The Gordian JOC Solution includes Gordian's proprietary eGordian® and Bid Safe® JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the JOC Contractor to prepare and submit Job Order Price Proposals, subcontractor lists, and other requirements specified by the Owner. The JOC Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a JOC System License Fee to obtain access to Gordian's JOC Solution. The JOC Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Department and Client Agencies is strictly prohibited unless otherwise approved in writing by Gordian. By executing the JOC System License and Fee Agreement, the JOC Contractor will agree to abide by its terms, some of which are as follows:
- 6.2. Gordian will grant to the JOC Contractor, and the JOC Contractor will accept from Gordian for the term of this Contract or Gordian's Contract with the Department, whichever is shorter, a non-exclusive right, privilege, and license to Gordian's proprietary JOC System and related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing JOC Contractor's responsibilities to the Department or Client Agency under this Contract. The JOC Contractor will agree that Proprietary Information shall include, but will not be limited to, Gordian's JOC Applications and support documentation, Construction Task Catalog, training materials and other Gordian provided proprietary materials. In the event this Contract expires or terminates as provided herein, or Gordian's Contract with the Department expires or terminates, or the JOC Contractor fails to pay the JOC System License Fee specified in this Contract and the JOC System License and Fee Agreement, the JOC System License shall terminate and the JOC Contractor shall return all

Proprietary Information in its possession to Gordian.

- 6.3. In consideration for a non-exclusive, non-transferable, license to the Gordian JOC Solution, **the JOC Contractor shall pay Gordian a license fee (“Contractor License Fee”) equal to one percent (1%) of the value of each Job Order, Purchase Order or other similar purchasing document (“Purchase Order”) issued to the Contractor by the Client Agency.** The JOC Contractor License Fee shall be included in the JOC Contractor’s overhead costs, shall not be included as an additional line item cost in Job Order Price Proposals, and shall be payable to Gordian within ten (10) days of JOC Contractor’s receipt of each Purchase Order issued to the JOC Contractor by the Client Agency. Gordian is hereby declared to be an intended third-party beneficiary of this Agreement. In the event any court action is brought to enforce payment of the Contractor License Fee by any party or third-party beneficiary of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys’ fees and collection costs. The JOC Contractor shall remit the Contractor License Fees as follows:

**Payments Made Payable to:** The Gordian Group, Inc.

**Mail Checks to:** P.O. Box 751959  
Charlotte, NC 28275-1959

- 6.4. Gordian may terminate the License Agreement in the event of: (1) any breach of a material term of this Agreement by the JOC Contractor which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party’s making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.
- 6.5. The JOC Contractor will acknowledge in the JOC System License and Fee Agreement that disclosure of Proprietary Information will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy and will agree that no such disclosure shall be made to anyone without first receiving the written consent of Gordian. The Contractor will further acknowledge and agree to respect the copyrights, registrations, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract and the JOC System License and Fee Agreement and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the JOC Contractor.
- 6.6. In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Contract or any Job Order, Purchase Order or similar purchasing document issued to the Contractor by the Owner, the JOC System License and Fee Agreement shall take precedence.

## Joint Scope Invitation

**Date:** 4/14/2016  
**Work Order #:** 037075.00  
**Title:** New Shed / Building  
**Contractor:** MMM Contracting

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**To:** Chris Smith  
Project Manager  
MMM Contracting  
140 Manchester Ave.  
Pittsburgh, PA

**From:** William Cunningham  
The Gordian Group

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Please be advised that a Joint Scope has been scheduled for the above identified project as follows:

**Location:** Office Building 302  
901 Pennsylvania Ave  
Prospect Park, PA 19076

**Brief Scope:** Looking to have a new storage shed/building on a concrete slab installed next to Adjacent Office Building, with electric and electric heater. Need to enlarge a doorway in a concrete block wall.

**Meeting Location:** Office Building 302

**Date/Time:** 11/17/2015 8:00 AM

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The following individuals are invited to attend:

| Name                  | Company Name            | Phone          | Fax            |
|-----------------------|-------------------------|----------------|----------------|
| PM Name 1             | MMM Contracting         |                |                |
| Superintendent 1      | MMM Contracting         | 610-461-6345   |                |
| Client Agency 1       | Client Agency Name      | (800) 874-2345 | (864) 233-9345 |
| Andrew Notarfrancesco | JEM Group               |                |                |
| William Cunningham    | The Gordian Group, Inc. | (646) 296-6345 | 215-683-44345  |

**Comments:**

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## Detailed Scope of Work

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**Date:** 4/14/2016  
**Work Order #:** 037075.00  
**Title:** New Shed/Building  
**Contractor:** MMM Contracting

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**Location:** Office Building 302

### Brief Scope:

Looking to have a new storage shed/building on a concrete slab installed at our Prospect Park School, with electric and electric heater. Need to enlarge a doorway in a concrete block wall.

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Dear Mr. MMM,

The following items detail the scope of work as discussed at the site. All requirements necessary to accomplish the items set forth below shall be considered part of this scope of work:

### Detailed Scope:

The contractor is responsible for the following scope of work: Install Storage Shed @ Cafeteria Remove all trees, bushes, and grind stumps below grade to allow for concrete apron Excavate earth as necessary to accommodate new structure Dig footers and prepare for concrete apron Pour approx. 60 SF of 3000 PSI concrete with footers Remove existing window frames and glass to prepare for new exterior door Cut existing mason base below removed window to accommodate new storefront / door frame. Install new storefront with door complete with glass and heavy duty door closer Provide lighting to new structure Install new storage shed. Shed will arrive as a prebuilt structure that has been disassembled on a truck. Carpenters will unload structure and re assemble structure in place on concrete slab This must be carried through single door due to the unaccessability of a crane at building location New structure will include louver vents and exhaust FANS.

### Requirements:

N/a. Any permits necessary shall be obtained by school officials.

N/A. Any shop or as built drawings needed shall be turned over to the owners project manager upon request.

Contractor shall use every precaution to avoid disturbing the lunchroom and classes if work is performed during school operational hours

All submittals shall be turned over to the owners project manager for approval prior to the start of construction or the ordering of any materials. Any unforeseen conditions or added work shall be approved utilizing a supplemental job order and all proposals shall be built Client the Construction Task Catalog

Should you have any questions, please do not hesitate to contact me at 610-461-6345.

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## Request for Proposal

**Date:** 4/14/2016  
**Work Order #:** 037075.00  
**Title:** New Shed/Building  
**Contractor:** MMM Contracting

To: Mr. MMM  
Project Manager  
MMM Contracting  
140 Manchester Ave.  
Pittsburgh, PA 19050

From: William Cunningham  
The Gordian Group, Inc.

Dear Mr. MMM,

The <Client Agency Name> requests that you provide a Proposal Package for the above referenced project.

The scope of work, detailed on the following page, was discussed at the site on 11/17/2015 8:00:00 AM with the following individuals:

| Name                  | Company Name            | Phone          | Fax            |
|-----------------------|-------------------------|----------------|----------------|
| PM Name 1             | MMM Contracting         |                |                |
| Superintendent 1      | MMM Contracting         | 610-461-6345   |                |
| Client Agency 1       | Client Agency Name      | (800) 874-2345 | (864) 233-9345 |
| Andrew Notarfrancesco | JEM Group               |                |                |
| William Cunningham    | The Gordian Group, Inc. | (646) 296-6345 | 215-683-44345  |

### Requirements:

N/a. Any permits necessary shall be obtained by school officials.

N/A. Any shop or as built drawings needed shall be turned over to the owners project manager upon request.

Contractor shall use every precaution to avoid disturbing the lunchroom and classes if work is performed during school operational hours

All submittals shall be turned over to the owners project manager for approval prior to the start of construction or the ordering of any materials. Any unforeseen conditions or added work shall be approved utilizing a supplemental job order and all proposals shall be built Client the Construction Task Catalog

**Proposed Schedule: 5 Months**

**Liquidated damages will not apply**

Your proposal is due on or before 12/14/2015. Should you have any questions, please do not hesitate to contact me at 610-461-6345.

**Date:** 4/14/2016  
**Work Order #:** 037075.00  
**Title:** New Shed/Building  
**Contractor:** MMM Contracting  
**Job Order Value:** \$41,826.82

**Proposal Name:** New Shed/Building v2  
**Proposal Value:** \$41,826.82

| CSI Number | Mod | UOM | Description | LineTotal |
|------------|-----|-----|-------------|-----------|
|------------|-----|-----|-------------|-----------|

|                       |  |  |  |  |
|-----------------------|--|--|--|--|
| <b>concrete apron</b> |  |  |  |  |
|-----------------------|--|--|--|--|

|   |                  |  |    |   |          |
|---|------------------|--|----|---|----------|
| 1 | 03 31 13 00-0005 |  | SF | 6" 3,000 PSI Slab On Grade Concrete Slabs Assembly              | \$570.36 |
|   |                  |  |    | Qty      Unit Price      Factor      Total                      |          |
|   |                  |  |    | Installation    60.00   X      \$7.23    X 1.3148      \$570.36 |          |

|   |                  |      |     |   |          |
|---|------------------|------|-----|---|----------|
| 2 | 03 31 13 00-0005 | 0080 | MOD | For Up To 500, Add  | \$209.05 |
|   |                  |      |     | Qty      Unit Price      Factor      Total                      |          |
|   |                  |      |     | Installation    60.00   X      \$2.65    X 1.3148      \$209.05 |          |

**Subtotal for concrete apron : \$779.41**

|                 |  |  |  |  |
|-----------------|--|--|--|--|
| <b>Electric</b> |  |  |  |  |
|-----------------|--|--|--|--|

|   |                  |  |     |  |          |
|---|------------------|--|-----|--|----------|
| 3 | 26 05 19 16-0213 |  | MLF | #12 AWG Cable - Type MC, 3 Conductors, Solid Or Stranded, Aluminum Armor | \$456.12 |
|   |                  |  |     | Qty      Unit Factor Price      Total                                    |          |
|   |                  |  |     | Installation    0.10   X    \$3,469.14    X 1.3148      \$456.12         |          |

|   |                  |  |     |   |            |
|---|------------------|--|-----|---|------------|
| 4 | 26 05 33 13-0008 |  | CLF | 3/4" EMT With 4 #12 THHN/THWN Assembly Includes conduit, set screw connectors, set screw couplings, straps, wire as indicated. Not for use where detail is available. | \$1,280.59 |
|---|------------------|--|-----|---|------------|

|              | Qty  |   | Unit<br>Price |   | Factor | Total      |
|--------------|------|---|---------------|---|--------|------------|
| Installation | 1.40 | X | \$695.70      | X | 1.3148 | \$1,280.59 |

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## Contractor Price Proposal Details - Category

|   |                  |    |   |         |
|---|------------------|----|---|---------|
| 5 | 26 24 16 00-0368 | EA | 1 Pole, 120/240 Volt, 15-30 Amp, Branch Circuit Breaker, 10,000 Amp Interrupting Capacity | \$53.70 |
|---|------------------|----|---|---------|

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|              | Qty  |   | Unit Price |   | Factor | Total   |
|--------------|------|---|------------|---|--------|---------|
| Installation | 1.00 | X | \$40.84    | X | 1.3148 | \$53.70 |

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## Contractor Price Proposal Details - Category

|   |                  |    |   |          |
|---|------------------|----|---|----------|
| 6 | 26 51 13 00-0007 | EA | 4-3/8" x 4", 2 32W T8 Lamps, Surface Mounted, Slimline Corridor Wraparound Fluorescent Fixture (Lightron W44) | \$405.54 |
|---|------------------|----|---|----------|

|              | Qty  |   | Unit Price | Factor   | Total    |
|--------------|------|---|------------|----------|----------|
| Installation | 2.00 | X | \$154.22   | X 1.3148 | \$405.54 |

**Subtotal for Electric: \$2,195.95**

### exterior door

|   |                  |    |  |          |
|---|------------------|----|--|----------|
| 7 | 01 22 20 00-0005 | HR | Brick LayerTasks in the CTC include appropriate costs to cover labor. These tasks will be requested specifically by the owner for miscellaneous work not covered in the CTC. | \$789.62 |
|---|------------------|----|--|----------|

|              | Qty  |   | Unit Price | Factor   | Total    |
|--------------|------|---|------------|----------|----------|
| Installation | 8.00 | X | \$75.07    | X 1.3148 | \$789.62 |

Contractor Notes: *Tooth in brick at new exterior door location.*

**Subtotal for exterior door: \$789.62**

### exterior door

|   |                  |    |  |          |
|---|------------------|----|--|----------|
| 8 | 02 41 16 13-0058 | CF | Demo Stone Building Footing Or Foundation Wall | \$192.49 |
|---|------------------|----|--|----------|

|              | Qty   |   | Unit Price | Factor   | Total    |
|--------------|-------|---|------------|----------|----------|
| Installation | 12.00 | X | \$12.20    | X 1.3148 | \$192.49 |

|   |                  |    |  |          |
|---|------------------|----|--|----------|
| 9 | 07 62 00 00-0042 | LF | 12-14" Wide (Stretch-out), 0.08" Thick, Mill Finish, Aluminum Coping System With Galvanized Steel Anchor Plate | \$296.30 |
|---|------------------|----|--|----------|

|              | Qty   |   | Unit Price | Factor   | Total    |
|--------------|-------|---|------------|----------|----------|
| Installation | 12.00 | X | \$18.78    | X 1.3148 | \$296.30 |

10 08 41 13 00-0007

EA 3'-6" x 7' x 1-3/4" Wide Stile, Aluminum Framed Entrance Doors  
Including Glazing, Trim And Hardware (Special-Lite SL-15) \$3,879.30

---

|              | Qty  |   | Unit<br>Factor Price |          | Total      |
|--------------|------|---|----------------------|----------|------------|
| Installation | 1.00 | X | \$2,950.49           | X 1.3148 | \$3,879.30 |

---

|    |                  |      |     |                               |      |            |          |         |         |
|----|------------------|------|-----|-------------------------------|------|------------|----------|---------|---------|
| 11 | 08 41 13 00-0007 | 0347 | MOD | For 1" Insulated Glazing, Add |      |            |          |         | \$51.70 |
|    |                  |      |     |                               | Qty  | Unit Price | Factor   | Total   |         |
|    |                  |      |     | Installation                  | 1.00 | X \$39.32  | X 1.3148 | \$51.70 |         |

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## Contractor Price Proposal Details - Category

|    |                  |    |                             |            |
|----|------------------|----|-----------------------------|------------|
| 12 | 08 43 13 00-0002 | SF | Aluminum Storefront Framing | \$1,246.17 |
|----|------------------|----|-----------------------------|------------|

|  | Qty |  | Unit Price | Factor | Total |
|--|-----|--|------------|--------|-------|
|--|-----|--|------------|--------|-------|

|              |       |   |         |          |          |
|--------------|-------|---|---------|----------|----------|
| Installation | 40.00 | X | \$16.33 | X 1.3148 | \$858.83 |
|--------------|-------|---|---------|----------|----------|

|            |       |   |      |          |          |
|------------|-------|---|------|----------|----------|
| Demolition | 60.00 | X | 4.91 | X 1.3148 | \$387.34 |
|------------|-------|---|------|----------|----------|

|    |                  |          |  |         |
|----|------------------|----------|--|---------|
| 13 | 08 43 13 00-0002 | 0080 MOD | For 70% Fluoropolymer Exterior Finish (Duranar), Add | \$81.91 |
|----|------------------|----------|--|---------|

|  | Qty |  | Unit Price | Factor | Total |
|--|-----|--|------------|--------|-------|
|--|-----|--|------------|--------|-------|

|              |       |   |        |          |         |
|--------------|-------|---|--------|----------|---------|
| Installation | 70.00 | X | \$0.89 | X 1.3148 | \$81.91 |
|--------------|-------|---|--------|----------|---------|

|    |                  |    |   |          |
|----|------------------|----|---|----------|
| 14 | 08 71 16 00-2132 | EA | Surface Mounted Heavy Duty Door Closer (LCN 4040XP/4041 Series) | \$475.69 |
|----|------------------|----|---|----------|

|  | Qty |  | Unit Factor Price | Total |
|--|-----|--|-------------------|-------|
|--|-----|--|-------------------|-------|

|              |      |   |          |          |          |
|--------------|------|---|----------|----------|----------|
| Installation | 1.00 | X | \$361.80 | X 1.3148 | \$475.69 |
|--------------|------|---|----------|----------|----------|

|                                   |                   |
|-----------------------------------|-------------------|
| <b>Subtotal for exterior door</b> | <b>\$6,223.56</b> |
|-----------------------------------|-------------------|

### footers

|    |                  |    |   |            |
|----|------------------|----|---|------------|
| 15 | 01 22 20 00-0016 | HR | Laborer Tasks in the CTC include appropriate costs to cover labor. These tasks will be requested specifically by the owner for miscellaneous work not covered in the CTC. | \$1,869.33 |
|----|------------------|----|---|------------|

|  | Qty |  | Unit Price | Factor | Total |
|--|-----|--|------------|--------|-------|
|--|-----|--|------------|--------|-------|

|              |       |   |         |          |            |
|--------------|-------|---|---------|----------|------------|
| Installation | 24.00 | X | \$59.24 | X 1.3148 | \$1,869.33 |
|--------------|-------|---|---------|----------|------------|

Contractor Notes: *Additional labor required to hand dig footers and remove debris. Location of work is an interior courtyard accessible only through man doors.*

|                              |                   |
|------------------------------|-------------------|
| <b>Subtotal for footers:</b> | <b>\$1,869.33</b> |
|------------------------------|-------------------|



**footers**

---

|    |                  |    |   |            |
|----|------------------|----|---|------------|
| 16 | 01 22 20 00-0008 | HR | Cement MasonTasks in the CTC include appropriate costs to cover labor. These tasks will be requested specifically by the owner for miscellaneous work not covered in the CTC. | \$2,251.15 |
|----|------------------|----|---|------------|

---

|              | Qty   |   | Unit Price |   | Factor | Total      |
|--------------|-------|---|------------|---|--------|------------|
| Installation | 24.00 | X | \$71.34    | X | 1.3148 | \$2,251.15 |

Contractor Notes: *Additional labor required to hand dig footers and remove debris.  
Location of work is an interior courtyard accessible only through  
man doors.*

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|    |                  |    |  |            |
|----|------------------|----|--|------------|
| 17 | 03 11 13 00-0069 | LF | 12" Diameter Round Fiber Tube Formwork | \$1,454.69 |
|----|------------------|----|--|------------|

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## Contractor Price Proposal Details - Category

|   |                  |    | Qty   | Unit Price | Factor       | Total               |            |
|---|------------------|----|---|------------|--------------|---------------------|------------|
|   |                  |    | Installation  | 60.00      | X \$18.44    | X 1.3148 \$1,454.69 |            |
| 18  | 03 31 13 00-0014 | CY | Concrete Pump, Place 3,000 PSI Concrete Pile Caps Excludes pumping equipment.   |            |              |                     | \$1,414.23 |
|   |                  |    | Qty   | Unit Price | Factor       | Total               |            |
|   |                  |    | Installation  | 6.00       | X \$179.27   | X 1.3148 \$1,414.23 |            |
| 19  | 03 31 13 00-0076 | HR | 75' Boom Truck For Concrete Placement (70 CY Per Hour Rating)   |            |              |                     | \$1,809.38 |
|   |                  |    | Qty   | Unit Price | Factor       | Total               |            |
|   |                  |    | Installation  | 8.00       | X \$172.02   | X 1.3148 \$1,809.38 |            |
| <b>Subtotal for footers</b>                                 |                  |    |   |            |              | <b>\$6,929.45</b>   |            |
| :   |                  |    |   |            |              |                     |            |
| <b>footers, concrete, demolition transport</b>              |                  |    |   |            |              |                     |            |
| 20  | 01 22 23 00-0969 | WK | 13 CY Rear Dump Truck With Full-Time Truck Driver   |            |              |                     | \$5,856.65 |
|   |                  |    | Qty   | Unit Price | Factor       | Total               |            |
|   |                  |    | Installation  | 1.00       | X \$4,454.40 | X 1.3148 \$5,856.65 |            |
| <b>Subtotal for footers, concrete, demolition transport</b> |                  |    |   |            |              | <b>\$5,856.65</b>   |            |
| :   |                  |    |   |            |              |                     |            |
| <b>shed</b>   |                  |    |   |            |              |                     |            |
| 21  | 01 22 20 00-0006 | HR | Carpenter Tasks in the CTC include appropriate costs to cover labor. These tasks will be requested specifically by the owner for miscellaneous work not covered in the CTC. |            |              |                     | \$4,062.21 |

|              | Qty   |   | Unit<br>Price |   | Factor | Total      |
|--------------|-------|---|---------------|---|--------|------------|
| Installation | 40.00 | X | \$77.24       | X | 1.3148 | \$4,062.21 |

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Contractor Notes: *Pre-built shed disassemble and reassemble on site. Transport through man doors due to inaccessibility of site by crane.*

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|    |                  |    |   |  |  |  |            |
|----|------------------|----|---|--|--|--|------------|
| 22 | 06 11 16 00-0019 | LF | 2" x 8" Pressure Treated Wood Floor Joist |  |  |  | \$1,005.82 |
|----|------------------|----|---|--|--|--|------------|

---

|  | Qty |  | Unit Price |  | Factor | Total |
|--|-----|--|------------|--|--------|-------|
|--|-----|--|------------|--|--------|-------|

|              |        |   |        |   |        |            |
|--------------|--------|---|--------|---|--------|------------|
| Installation | 340.00 | X | \$2.25 | X | 1.3148 | \$1,005.82 |
|--------------|--------|---|--------|---|--------|------------|

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|    |                  |    |                                      |  |  |  |            |
|----|------------------|----|--------------------------------------|--|--|--|------------|
| 23 | 06 11 16 00-0027 | LF | 2" x 4" Pressure Treated Wood Purlin |  |  |  | \$1,178.06 |
|----|------------------|----|--------------------------------------|--|--|--|------------|

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|  | Qty |  | Unit Price |  | Factor | Total |
|--|-----|--|------------|--|--------|-------|
|--|-----|--|------------|--|--------|-------|

|  |        |   |        |   |        |            |
|--|--------|---|--------|---|--------|------------|
|  | 640.00 | X | \$1.40 | X | 1.3148 | \$1,178.06 |
|--|--------|---|--------|---|--------|------------|

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## Contractor Price Proposal Details - Category

Installation

|    |                  |    |                                     |                          |            |
|----|------------------|----|-------------------------------------|--------------------------|------------|
| 24 | 06 16 33 00-0007 | SF | 3/4" Thick CDX Plywood Roof Decking | Applied to wood rafters. | \$1,823.89 |
|----|------------------|----|-------------------------------------|--------------------------|------------|

|              | Qty    | Unit Price | Factor   | Total      |
|--------------|--------|------------|----------|------------|
| Installation | 680.00 | X \$2.04   | X 1.3148 | \$1,823.89 |

|    |                  |    |                                     |                             |            |
|----|------------------|----|-------------------------------------|-----------------------------|------------|
| 25 | 06 16 33 00-0020 | SF | 3/4" CD Grade Plywood Floor Decking | Applied to floor or joists. | \$1,401.89 |
|----|------------------|----|-------------------------------------|-----------------------------|------------|

|              | Qty    | Unit Price | Factor   | Total      |
|--------------|--------|------------|----------|------------|
| Installation | 544.00 | X \$1.96   | X 1.3148 | \$1,401.89 |

|    |                  |    |  |          |
|----|------------------|----|--|----------|
| 26 | 07 34 00 00-0003 | SQ | 30#, Asphalt Saturated Organic Felt Roofing Underlayment,<br>Mechanically Fastened | \$273.53 |
|----|------------------|----|--|----------|

|              | Qty  | Unit Factor Price | Total             |
|--------------|------|-------------------|-------------------|
| Installation | 7.00 | X \$29.72         | X 1.3148 \$273.53 |

**Subtotal for shed: \$9,745.40**

**shed**

|    |                  |    |  |            |
|----|------------------|----|--|------------|
| 27 | 06 11 16 00-0057 | SF | 2" x 4" Wood Wall Framing At 12" On Center | \$1,480.99 |
|----|------------------|----|--|------------|

|              | Qty    | Unit Price | Factor   | Total      |
|--------------|--------|------------|----------|------------|
| Installation | 640.00 | X \$1.76   | X 1.3148 | \$1,480.99 |

|    |                  |    |  |            |
|----|------------------|----|--|------------|
| 28 | 07 31 13 00-0008 | SQ | 265 LB/SQ, 5" Exposure, Two Layer Laminated Fiberglass Reinforced, Asphalt Composition Shingle (CertainTeed Landmark Plus) | \$2,913.68 |
|----|------------------|----|--|------------|

|              | Qty  | Unit Price | Factor   | Total      |
|--------------|------|------------|----------|------------|
| Installation | 7.00 | X \$316.58 | X 1.3148 | \$2,913.68 |

---

|    |                  |    |  |          |
|----|------------------|----|--|----------|
| 29 | 07 62 00 00-0032 | LF | 5" Girth, 0.019" Thick, Painted Finish, Aluminum Drip Edge | \$440.20 |
|----|------------------|----|--|----------|

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|              | Qty    |   | Unit Price |   | Factor | Total    |
|--------------|--------|---|------------|---|--------|----------|
| Installation | 108.00 | X | \$3.10     | X | 1.3148 | \$440.20 |

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|    |                  |    |  |  |  |  |          |
|----|------------------|----|--|--|--|--|----------|
| 30 | 08 91 19 00-0014 | EA | 30" x 42" Rectangular Fixed Aluminum Gable Louver Vent |  |  |  | \$819.54 |
|----|------------------|----|--|--|--|--|----------|

---

|  | Qty  |   | Unit Price |   | Factor | Total    |
|--|------|---|------------|---|--------|----------|
|  | 2.00 | X | \$311.66   | X | 1.3148 | \$819.54 |

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## Contractor Price Proposal Details - Category

Installation

Contractor Notes: *includes exhaust fan*

**Subtotal for shed**      **\$5,654.41**  
:

### site clearing

|    |                  |    |  |          |
|----|------------------|----|--|----------|
| 31 | 31 13 13 00-0008 | EA | >6" To 12" Diameter Stump Removal By Hand Where stump removal is inaccessible by machine. Includes excavation necessary to remove stump and loading. | \$715.44 |
|----|------------------|----|--|----------|

|  |              |  | Qty  |   | Unit Price |   | Factor |  | Total    |
|--|--------------|--|------|---|------------|---|--------|--|----------|
|  | Installation |  | 1.00 | X | \$544.14   | X | 1.3148 |  | \$715.44 |

|    |                  |    |  |          |
|----|------------------|----|--|----------|
| 32 | 31 13 13 00-0013 | EA | >6" To 12" D.B.H. (Diameter At Breast Height) Tree Removal Includes cutting up tree, chipping and loading. | \$838.09 |
|----|------------------|----|--|----------|

|  |              |  | Qty  |   | Unit Factor Price |   | Total  |          |
|--|--------------|--|------|---|-------------------|---|--------|----------|
|  | Installation |  | 1.00 | X | \$637.43          | X | 1.3148 | \$838.09 |

|    |                  |    |  |          |
|----|------------------|----|--|----------|
| 33 | 31 13 13 00-0035 | EA | Remove 4' To 5' Shrub, Broadleaf Evergreen | \$229.51 |
|----|------------------|----|--|----------|

|  |              |  | Qty  |   | Unit Price |   | Factor |  | Total    |
|--|--------------|--|------|---|------------|---|--------|--|----------|
|  | Installation |  | 2.00 | X | \$87.28    | X | 1.3148 |  | \$229.51 |

**Subtotal for site clearing**      **\$1,783.04**  
:

**Grand Total:**      **\$41,826.82**

This work order proposal total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding of the line totals and sub-totals.

**The Percent of NPP on this Proposal:      0.00**

## Job Order Signature Document

**Contract No.:DGS A-2016-0001-K**

**Job Work Order**

**Modify an Existing Job Order**

Job Order #: 037075.00

Job Order Date: \_\_\_\_\_

Owner PO No: \_\_\_\_\_

Title: New Shed/Building

Owner Name: <Client Agency Name>

Contractor  
Name:

MMM Contracting

Contact: William Cunningham

Contact:

Mr. MMM

Phone: 610-461-6345

Phone: \_\_\_\_\_

### Work to be Performed

Work to be performed as per the Final Detailed Scope of Work Attached and as per the terms and conditions of Contract No DGS A-2016-0001-K.

Brief Work Order Description:

Looking to have a new storage shed/building on a concrete slab installed at our Office Building, with electric and electric heater. Need to enlarge a doorway in a concrete block wall.

□

**Job Order Completion Time:**

**Liquidated damages will not apply**

**Work Order Firm Fixed Price: \$41,826.82**

Using Agency Purchase Order Number:

### Approvals

\_\_\_\_\_  
Client Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date



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## 5-1 ADMINISTRATIVE PROCEDURE NO. 5

### INITIAL JOB ORDER CONFERENCE

#### A. Scheduling of the Initial Job Order Conference

1. With the exception of an Emergency Projects, the Construction Manager will contact the JOC Contractor to schedule Initial Job Order Conference to discuss construction operations, activities, and sequence of events.
2. The JOC Contractor is required to attend the scheduled Initial Job Order Conference. Personnel from the JOC Contractor's office, such as the principal of the firm, project manager and project superintendent must attend the meeting. The Design Professional and each Subcontractor submitted with the Job Order Proposal must also attend the meeting.

#### B. Agenda for Initial Job Order Conference

1. Introduction of personnel by the Construction Manager.
2. Discussion of Design and Construction aspects of the Project.
3. Question and answer period.

#### C. Initial Job Order Conference

1. The Construction Manager will set the time, date and place for the Initial Job Order Conference, which will be scheduled prior to the Contractor mobilizing to the Project site.
2. The Notice initiating the Conference shall be addressed to the JOC Contractor, with copies of the notice to the following:
  - Design Professional
  - Client Agency
  - Facility
  - JOC Consultant (Gordian Account Manager)
  - Project File
3. The date of the Initial Job Order Conference will signify the Job Order Start Date for purposes of calculating the Job Order Completion Time.
  - a. If a Letter of Intent was issued on the project, the JOC Contractor is required to proceed with the scope of Work set forth in the letter. On-Site Work may start only when the Job Order is fully executed.
4. During the Initial Job Order Conference, the Construction Manager shall conduct the order of business and discuss construction operations, activities, and sequence of events.
5. The Construction Manager shall attach a separate sheet to the Initial Job Order Conference Report, indicating the names, addresses, and telephone numbers of the Design Professional, Client Agency Representatives, Inspection Supervisor, and any other required entities.

Distribution of the Initial Job Order Conference Meeting Report will be made by the Construction Manager or designee, as follows:

- All attendees and invitees as noted above as well as:
  - Project Site
  - Facility/Client Agency
  - Project File
6. The Submittal Schedule must be addressed at this Initial Job Order Conference (or earlier if authorized in a Letter of Intent) by the JOC Contractor and the Design Professional in accordance with the General Conditions for the JOC Contracts. The Submittal Schedule must be submitted by the Design Professional to the Construction Manager on or before the first Regular Job Conference held after the Initial Job Order Conference. The Submittal Schedule activities shall also be included, integrated and tied to the logic of other activities in the Project Schedule by the JOC Contractor.
7. **Agenda for the Initial Job Order Conference**
- a. Introduction of attendees.
- b. Review of Special Requirements, which may include:
- (1) Protection of the Environment
  - (2) Asbestos
  - (3) Parking
  - (4) Office for JOC Contractor
  - (5) Field Office for Inspection Staff
  - (6) Temporary Heat
  - (7) Existing Utilities
  - (8) Working Hours
  - (9) Operation and Maintenance Instructions/Manuals
  - (10) Small Diverse Business / Veteran Business Enterprise Participation
  - (11) Contractor Integrity Provision
  - (12) Debarment, Suspension and Other Responsibilities
  - (13) Excavation
  - (14) Roof Deck
  - (15) Product Discrimination
  - (16) Mobilization
  - (17) Steel Products Procurement Act
  - (18) Insurance Coverage
  - (19) Privity of Contract
  - (20) Public Works Employment Verification Act
  - (21) Other
- c. **General Remarks**
- (22) Safety
  - (23) Discrepancies
  - (24) Coordination

**d. General Information**

- (25) Project Sign
- (26) Progress Photographs
- (27) Roof Bond/Warranties
- (28) Concrete
- (29) As-Built Record Drawings
- (30) Project Supervision
- (31) Miscellaneous

e. Permits, Fees, Notices

f. Establishment of the date, time and location of the first Design Meeting.

g. Establishment of date, time and location of the first Regular Job Conference

h. Review of General Conditions

i. General Comments

## 6-1 ADMINISTRATIVE PROCEDURE NO.6

### PROJECT MASTER SCHEDULE

As requested for a Job Order, the JOC Contractor shall prepare and submit a construction schedule in a format requested by the Client Agency or Construction Manager, including but limited to, bar chart (Gantt chart) format, Critical Path Method (CPM), and/or in conjunction with the remainder of this Administrative Procedure. The majority of Project schedules will be in bar chart (Gantt chart) format. However, depending on the complexity of the Detailed Scope of Work, the Client Agency or Construction Manager will request the Contractor prepare a schedule Client the Critical Path Method in accordance with the remainder of this Administrative Procedure.

#### Critical Path Method Schedule (CPM)

The Critical Path Method Schedule shall be developed, prepared, and submitted in accordance with the same requirements and time frames as required by the General Conditions of the JOC Contract and the Administrative Procedures, in addition to the following:

- A. The CPM Scheduling system is to be implemented by the JOC Contractor, utilizing the services of a qualified subcontractor or its own in-house staff. If the JOC Contractor is Client in-house staff, the JOC Contractor must provide evidence of having computer hardware and software standard in the industry for CPM scheduling and must also provide evidence it, or its subcontractor, has at least five years scheduling experience with projects of the same size and nature.
- B. The JOC Contractor shall complete all work in accordance with the accepted CPM Schedule. The CPM Schedule will reflect the decisions of the JOC Contractor as to sequence, duration, construction logic and all means and methods of construction.
- C. The CPM Schedule shall be reviewed at the Pre-Construction Meeting, or earlier as required in a Letter of Intent. The Construction Manager will only review and the Client Agency will only pay (if the application is otherwise acceptable) the JOC Contractor's Application for Payment with a fully integrated Master Project Schedule being submitted and accepted by the Construction Manager. If there is no Master Project Schedule submitted and accepted, the Client Agency, at the recommendation of the Construction Manager, will withhold payments from the JOC Contractor until such time as there is an accepted Master Project Schedule. Since it is the JOC Contractor's affirmative duty to coordinate the Work and prepare the Master Project Schedule, any delay to the Project due to not having an acceptable Master Project Schedule will be attributable to the JOC Contractor.
- D. The Construction Manager will not automatically grant an extension of time due to activity time delays. As a Supplemental Job Order or delay may result in only absorbing part of the available total float that may exist within an activity or chain of activities, the modification or delay may not affect existing critical activities or interim milestone dates or cause non-critical activities to



become critical.

- E.** The Construction Manager owns the float. No float shall be used by the JOC Contractor without written directive from the Construction Manager. Total float is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every activity in the Master Project Schedule. Extensions of time to interim milestone dates or the Job Order Completion Time will be considered only to the extent that equitable time adjustments to the activity or activities affected by the change in the work or delay exceeds the total float of the affected or subsequent paths and extends any interim milestone date or the Job Order Completion Time.
- F.** If the time limits set for preparation and submission of the Master Project Schedule are not met, the Construction Manager will prepare the schedule, which must be adhered to by the JOC Contractor. The costs incurred by Construction Manager in preparing the schedule will be assessed to the JOC Contractor by credit Supplemental Job Order.

**G. General Information**

- a.** List items of construction as they will be installed. When more than one building, level or floor is included, each building, level or floor shall be listed separately. The Master Project Schedule must also include critical submittals, submissions of shop drawings for approval, approval of shop drawings, placing of orders for materials and delivery of materials.
- b.** The JOC Contractor is responsible for assuring that any/all subcontract work, as well as work performed by its own forces, is included in the schedule.
- c.** The Master Project Schedule shall reflect Early Start/Early Finish Dates, Late Start/Late Finish Dates and available float or slack time for each and every activity.
- d.** From the activities of the various contracts critical to the Job Order Completion Time, the JOC Contractor shall identify and incorporate construction progress milestones for the Project into the Master Project Schedule in accordance with the General Conditions of the Contract. The milestones are to signify the start date or completion date of a specific activity that is critical to the completion of the Project on schedule. The JOC Contractor must show at least one milestone in each month of the scheduled construction period.

## 7-1 ADMINISTRATIVE PROCEDURE NO.7

### REQUEST FOR APPROVAL OF MATERIALS AND/OR SUBCONTRACTORS

- A. The JOC Contractor shall prepare and submit Request for Approval of Materials and/or Subcontractors (“Approval Form”) as required by the General Conditions of the JOC Contract and this Administrative Procedure.
- B. For each subcontractor to the JOC Contractor (whether identified in the Proposal or not), the JOC Contractor must attach a copy of the subcontract, signed by both the JOC Contractor and the Subcontractor and which complies with the requirements of the Subcontractor Article of the JOC Contract General Conditions.
- C. The JOC Contractor shall also submit a copy of every subcontract with a Small Diverse Business or Veteran Business Enterprise to DGS’s Bureau of Diversity, Inclusion and Small Business Opportunities.
- D. For purchase orders, the JOC Contractor shall submit one original certification, on the JOC Contractor’s letterhead, with language identical to that set forth in the sample letter (which is included as part of this Administrative Procedure) certifying the JOC Contractor’s compliance with the terms set forth in the letter. The language required in this letter by this Administrative Procedure shall not be altered.
- E. This one certification letter, which shall certify compliance for all purchase orders issued on the Project, shall be submitted to the Construction Manager for the Project when the JOC Contractor submits the first Approval Form identifying Suppliers.
- F. The JOC Contractor must submit a copy of each executed purchase order that is issued to a Small Diverse Business or Veteran Business Enterprise Supplier and Small Diverse Business or Veteran Business Enterprise Manufacturer showing the dollar value of the purchase order. All purchase orders for Small Diverse Business or Veteran Business Enterprise nonstocking suppliers shall include the fee or commission charged by the Small Diverse Business or Veteran Business Enterprise nonstocking supplier for assistance in the procurement in materials and supplies.
- G. If the JOC Contractor has a financial interest in a Subcontractor, Supplier or Manufacturer, it must disclose its relationship to the Subcontractor, Supplier or Manufacturer on the Approval Form in the block “Relation to JOC Contractor” in accordance with the Subcontractor Article of the General Conditions.
- H. Prior to the commencement of work by any Subcontractor, the JOC Contractor must submit two copies of the subcontract, in accordance with the Subcontractor Article of the JOC General

Conditions, to the Construction Manager. The Construction Manager shall retain one copy for the Project file and forward one copy to the Client Agency.

- I. If the JOC Contractor wishes to provide an “equal,” it must check the appropriate block on the Approval Form. The “equal” submission shall fulfill the requirements of the JOC Contract General Conditions.
- J. If the JOC Contractor desires to provide a “substitution,” it must check the appropriate block on the Approval Form. The “substitution” submission shall fulfill the requirements of the JOC Contract General Conditions. The JOC Contractor must also attach a “Letter of Certification” identical to the sample provided in this Administrative Procedure.
- K. The JOC Contractor shall number each submission and each page within each submission consecutively and shall give resubmissions the same number as the original submission.
- L. The JOC Contractor shall attach a copy of the Certification for Welders and a copy of the License for Blasters (if blasting is permitted) to the Approval Form, when submitted.
- M. Only the types indicated on the Approval Form will be permitted in the box titled “Type of Approval.”
- N. The JOC Contractor shall submit the original and four copies of the Approval Form by letter of transmittal to the Design Professional, with a copy to the Construction Manager or designee. Only the letter of transmittal for the Approval Forms must be provided to others specified in Administrative Procedure No. 1 regarding distribution of correspondence.
- O. The Construction Manager or designee shall review the copy of the Approval Form for compliance immediately upon receipt. If any discrepancies are found, the Construction Manager shall notify the Design Professional by telephone or fax.
- P. It is the Design Professional’s responsibility to check each item for conformity with the requirements of the specifications. The Design Professional will fully acquaint itself with the submitted manufacturer, producer, fabricator, material, equipment, and other pertinent items prior to making any specific remark or recommendation.
- Q. The Design Professional will indicate on the Approval Form whether each item is approved, disapproved (with the reason), or that approval is withheld, pending submission of additional qualifying material or information (catalog cuts, engineering data, test data, etc.) from the JOC Contractor. The Design Professional must indicate which specific information is required by checking the appropriate box on the Approval Form. If information has been included with the submission, the Design Professional should check the block “W/ Approval Form.” When approval is withheld pending receipt of additional qualifying material or information from the JOC Contractor, the Design Professional shall instruct the JOC Contractor to resubmit the item of material or work on a new Approval Form, which must contain the original submission number.
- R. The Design Professional’s signature on the bottom of the Approval Form constitutes its approval, subject to final approval of sample, shop drawings or catalog data, certification, test report, or other information, when such additional information is required. The Design Professional will also ensure compliance with these Administrative Procedures in the proper execution of the form. The Design Professional shall forward the Approval Form to the Construction Manager for review.

- S. The Design Professional will make distribution of the approved Approval Form as follows:
1. Original to the Client Agency
  2. One copy to Construction Manager (if one is on the Project)
  3. One copy to the JOC Contractor

**(Must appear on JOC Contractor's Letterhead)**

Project No. \_\_\_\_\_(R)

Contract No. \_\_\_\_\_

Location of Project \_\_\_\_\_

Description of Project \_\_\_\_\_

**Certification**

I, the authorized representative of the JOC Contractor, do certify, to the best of my knowledge that, for each purchase order issued on this Project:

- a. The material and/or equipment to be supplied is accurately described in the purchase order; and
- b. The material and/or equipment to be supplied complies with the requirements of the contract documents; and
- c. The Suppliers have been notified of the payment provisions of the Prompt Payment Act.
- d. The Suppliers have been notified that nothing contained in the Contract Documents creates any contractual relationship between the Client Agency and any Manufacturer or Supplier.

I understand that by signing this document I certify that the facts contained herein are true. I further understand that this document is subject to the provisions of the Unsworn Falsification to Authorities (18 P.S. § 4904). I acknowledge that if my company does not comply with these terms, my company may be subject to suspension and/or debarment from bidding on any Commonwealth of Pennsylvania public works project for a period of three years.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type Name Here

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

(Use Company Letterhead)

LETTER OF CERTIFICATION

Project No. \_\_\_\_\_ (\_R)  
Contract NO. \_\_\_\_\_  
Location of Project \_\_\_\_\_  
Description of Project \_\_\_\_\_

The undersigned, an authorized representative of the JOC Contractor on the above referenced Contract, certifies that the substitute item(s) listed on the attached Form No. Approval Form, "Request for Approval of Materials and/or sub-JOC Contractor," Submission No. \_\_\_\_\_, dated \_\_\_\_\_, complies with the requirements of the Contract and Job Order on the above referenced Contract; and,

I further certify that the JOC Contractor will assure that all costs involved in making the substitute item(s), listed on the attached Form No. Approval Form, fit into and perform as required by the Contract Documents and that, should the cost of the substituted item be less than the cost of the specified item, the Client Agency will receive a credit for the difference between the substituted item and the cost of the specified item; and,

I further certify that I will fully document the item(s) on the attached Form No. Approval Form with regard to engineering, construction, dimension, performance and appearance.

A cost statement is included.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type Name Here

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

**8-1 ADMINISTRATIVE PROCEDURE NO.8**

**MATERIALS AND CONCRETE TESTING (ALL ITEMS-GENERAL REQUIREMENTS) FORM  
GSC-22/33**

**MATERIALS TESTING (SELECTION OF TESTING LABORATORY)  
CONCRETE TESTING (APPROVAL OF MIX COMPUTATIONS)  
FORM GSC-26**

**MANUFACTURERS' HIGH VOLTAGE CABLE TEST REPORT (BIRTH CERTIFICATE)  
HIGH VOLTAGE CABLE FIELD TEST REPORT  
HVAC SYSTEMS BALANCING**

**A. Materials and Concrete Testing (General Requirements)**

**The JOC Contractor shall:**

1. Give the Client Agency or its designee and the Design Professional timely notice of its readiness and of the date arranged, so the Design Professional may observe such inspection or testing.
2. Bear all costs of such inspections and tests, unless otherwise provided. All expenses incurred in the collecting, packing and delivering of samples of materials or equipment to or from the site or laboratory will be paid by the JOC Contractor, unless otherwise noted in the General Conditions, Specifications or Contract Drawings.
3. Request Forms GSC-22/33 from the Construction Manager. An original of Form GSC-22/33, Laboratory Sample or Field Test Identification, shall accompany each sample to be tested.
4. When Form GSC-22/33 is utilized for concrete cylinders, each cylinder shall be numbered consecutively and prefaced for design mix tests, precast concrete and pre-stressed concrete. The type of cylinder shall be noted on the form as follows:  
  
DM – Design Mix  
PC – Precast Concrete  
PS – Pre-stressed Concrete
5. Cylinders for concrete other than the above will not be prefaced. Approved samples to be incorporated into the work shall be returned to the site by the Testing Laboratory.

**The Design Professional shall:**

- a. Secure from either the Testing Laboratory an original and four copies of the test reports and distribute as follows:
  - i. The Original must be sent to the Construction Manager, with copies to the JOC Contractor, Client Agency, Project Site and Design Professional File.
- b. Any reports showing deficiencies in test results will be immediately communicated by the Design Professional to the Client Agency or designee.

**B. Materials Testing (Selection of Testing Laboratory)**

1. The JOC Contractor and its Design Professional shall advise the Client Agency or its designee of its selected testing agencies and laboratories at the Pre-Construction Meeting.

**C. Concrete Testing (Approval of Mix Computations)**

1. The JOC Contractor (or testing laboratory) shall prepare Form GSC-26, Concrete Mix Computation, in an original and four copies for each type of design mix to be used. Forms shall be forwarded to the Design Professional for review and approval. All information required by the form must be provided.
2. The Design Professional shall review the Form GSC-26 for compliance with the Contract Documents, and approve/disapprove as appropriate. The Design Professional shall forward all copies to the Construction Manager for review and distribution.
3. Upon receipt of approved GSC-26 from the Construction Manager, the JOC Contractor or its Design Professional (as appropriate) shall instruct the testing laboratory to pick up samples for mix design testing from either the batch plant or the site. An original Form GSC-22/23, Laboratory Sample or Field Test Identification, must accompany each sample to be tested. A separate form must be submitted with each test. These forms may be obtained from the Construction Inspection Supervisor.

**D. Manufacturer's High Voltage Cable Test Report (Birth Certificate)**

1. The JOC Contractor will ensure the Cable Test Report (Birth Certificate) is in compliance with the Contract Documents. The JOC Contractor must submit six copies of the report to the Design Professional. The JOC Contractor must a copy the Client Agency, the Construction Manager and Construction Manager (if there is one on the Project) on the transmittal letter to the Design Professional.
2. The Design Professional will review the report for compliance with the Contract Documents, affix its stamp of approval directly to each copy of the report, and forward original and electronic copy to the Client Agency or its designee. Only a stamp as indicated in the sample provided in Administrative Procedure No. 8 will be accepted.
3. High Voltage Cable may not be installed until the Manufacturer's Cable Test Reports are accepted by the Client Agency or its designee .
4. If the report is disapproved by the Design Professional, it shall be returned to the JOC Contractor with a letter of explanation. Copies of this correspondence must be sent to the Client Agency and the Construction Manager.
5. If the report is not accepted by the Client Agency or its designee, it shall be returned to the JOC Contractor with a letter of explanation. Copies of this correspondence must be sent to the Design Professional.

**E. High Voltage Cable Field Test Report**

1. The JOC Contractor shall submit one original and five copies of the report to the Design Professional, by letter of transmittal. The JOC Contractor must provide a copy to the Client Agency, the Construction Manager and Construction Manager (if there is one on the Project).
2. The Design Professional shall, upon receipt of the Field Test Report from the JOC Contractor, review it for compliance with testing procedures and Contract Documents. If approved, the Design Professional will affix its stamp of approval directly to each copy of the report, and forward all copies to the



Construction Manager. Only a stamp as indicated in the sample provided in Administrative Procedure No. 8 will be accepted.

3. Payment for High Voltage Cable will be made only after the Manufacturer's Test Report is approved, cable is installed and the Field Test Report is approved by the Design Professional and reviewed by the Client Agency or its designee.
4. If the report is disapproved, the Design Professional shall advise the JOC Contractor of the appropriate corrective action to assure compliance with the Contract Documents. When the Field Test Report is approved, the Design Professional will distribute it in accordance with Paragraph "2" above.
5. If the report is not accepted by the Client Agency or its designee, it shall be returned to the JOC Contractor with a letter of explanation. Copies of this correspondence must be sent to the Design Professional.

**F. HVAC Systems Balancing Report**

1. The JOC Contractor shall submit one original and five copies of the HVAC Systems Balancing Report to the Design Professional. The Client Agency or its designee must be copied on the transmittal letter.
2. The Design Professional shall, upon receipt of the copies of the Balancing Report from the JOC Contractor, review it for compliance with balancing procedures and the Contract Documents. If approved, the Design Professional shall affix its stamp of approval directly to each copy of the report, and forward all copies to the Construction Manager, who after review, will forward the copies to the Client Agency. Only a stamp as indicated in the sample provided in Administrative Procedure No. 8 will be accepted. The Client Agency or its designee must be included on the transmittal letter.
3. If the report is disapproved, the Design Professional shall advise the JOC Contractor of the appropriate corrective action to assure compliance with the Contract Documents. The Design Professional must notify the Client Agency that the report has been disapproved, and state the proposed method of correction. When the report is approved, the Design Professional shall proceed in accordance with Paragraph "2" above.
4. If the Client Agency does not accept any report or concurs with a "qualified" approval by the Design Professional, the Design Professional shall verify that the remedial action has been completed by the JOC Contractor. The Design Professional shall also notify the Client Agency or its designee that the remedial action has been completed. The notice must be in writing. The JOC Contractor shall be responsible for the re-testing and re-balancing of any and all zones affected by the corrective action. The JOC Contractor shall then re-submit, to the Design Professional, a Balancing Report for these areas in accordance with paragraph "1" above. The Design Professional shall review, approve and distribute this Balancing Report in accordance with paragraph "2" above.
5. Payment for test and balancing activity(ies) will not be made until the report(s) are accepted by the Client Agency or its designee.





SUBMITTALS

- A. The JOC Contractor shall prepare and submit to the Design Professional a Submittal Schedule showing all items requiring submission. The Submittal Schedule shall be prepared in accordance with Article 9 of the General Conditions: Submittals. This Submittal Schedule shall be integrated by the JOC Contractor and tied to the logic of activities in the Project Schedule.**
- B. The JOC Contractor’s Submittal Schedule shall include the items required in the Schedule and Article 9 of the General Conditions: Submittals.**
- C. The JOC Contractor shall submit one (1) original Submittal Schedule to the Design Professional and one (1) copy to the Construction Manager.**
- D. If the development of the Submittal Schedule affects the construction sequencing, durations, logic or any other aspect of the Project Schedule, including established milestones, the JOC Contractor shall make any necessary revisions. The Job Order Completion Time will not be adjusted as a result of these revisions. An original and copy of the revised Submittal Schedule, signed by the JOC Contractor, shall be submitted to the Design Professional within the time frame agreed to at the Pre-Construction Meeting. Review and acceptance of this revised Project Submittal Schedule by the Construction Manager shall follow the procedures established in Project Schedule Administrative Procedure. If a previous schedule has been submitted and accepted by the Construction Manager, the JOC Contractor shall indicate the “Revised Date” in the appropriate area of the Form GSC-35. The JOC Contractor shall also provide an explanation detailing the reasons for the revision and the activities affected in the letter of transmittal.**
- E. The JOC Contractor shall comply with the Submittal Schedule and submit items within the order and dates established therein. The JOC Contractor shall not be permitted to stack the submittals in a manner that would inundate Design Professional in such a manner that the submittals cannot be reviewed and decided upon in a timely manner.**
- F. A detailed, updated log shall be maintained by the Design Professional as to the time of receipt of the Submittals and the time of return to the JOC Contractor, with adequate notes as to their disposition. The Design Professional shall submit one copy of the log to the Construction Manager at each Job Conference subsequent to the first Job Conference following the Pre-Construction Meeting. The Design Professional shall also mail one copy to the Construction Manager (if there is one on the Project).**
- G. The Design Professional will review and approve all submittals in accordance with Article 9 of the General Conditions of Contract: Submittals, and approve by stamping with an approval stamp. Only a stamp as indicated in the sample provided at the end of this section will be accepted.**
- H. The Design Professional shall review and approve the JOC Contractor’s submittals within ten (10) calendar days of the submission dates established by the submittal schedule, unless Construction Manager approves a different period of time in writing. The ten (10) calendar day**

period is the time from receipt of the submittal from the JOC Contractor to the time of the Construction Manager's receipt of the submittal. The Construction Manager shall have seven (7) business days to review and return the submittal to the Design Professional for distribution. The Design Professional's review and approval is for conformance with the design concept of the project and with the information given in the Job Order and Detailed Scope of Work. The Construction Manager review and acceptance is for conformance with the Detailed Scope of Work and Contract Documents. The Design Professional's approval and the Construction Manager's acceptance of a separate item does not indicate approval of an assembly in which the item functions. The JOC Contractor shall be responsible for all costs associated with delays of the Project incurred as a result of any disapprovals and/or non- acceptance of its submittals for incompleteness.

- I. The JOC Contractor shall make any corrections required by the Design Professional and shall resubmit the required number of corrected copies of shop drawings or new samples until approved. The resubmission shall be acted upon by the Design Professional within ten (10) days of its receipt, unless the Client Agency or Construction Manager approves a different period of time. The resubmission of submittals by the JOC Contractor and subsequent review by the Design Professional shall be in accordance with Article 9 of the General Conditions of the JOC Contract: Submittals.
  - J. When resubmitting submittals, the JOC Contractor shall direct specific attention to any revisions made, other than the corrections requested by Design Professional on previous submissions, by noting such revisions on the resubmissions.
  - K. Distribution by the Design Professional of the Final Accepted Shop Drawings or Catalog Data shall be as follows.
    - JOC Contractor – three sets
    - Design Professional - one set
    - Construction Manager (if any) – one set
    - Commissioning Agent (if any) – one set
    - Project File– one set \*
- \* The set for Project File shall be mailed to the Construction Manager and placed in the Project File.
- L. The JOC Contractor must maintain at the site one copy of all drawings, etc. Drawings shall be updated daily to indicate As-Built Record Drawing conditions in accordance with the General Conditions.
  - M. Any work commenced by the JOC Contractor prior to final approval of the submittals by the Design Professional and acceptance by the Construction Manager is performed by the JOC Contractor at its own risk.

N. Indicated below is a sample of the “Approval Stamp” to be utilized by the Design Professional in the review and approval process of all submissions. **Only a stamp with the language as indicated in this sample will be accepted.**

|   |                   |   |                     |
|---|-------------------|---|---------------------|
|    | APPROVED          |  | NOT APPROVED        |
|    | APPROVED AS NOTED |  | REVISE AND RESUBMIT |
| _____<br>DATE   |                   | _____<br>SIGNATURE/TITLE  |                     |
| ORGANIZATION NAME AND ADDRESS   |                   |   |                     |
| A note may be added to:   |                   |   |                     |
| <ul style="list-style-type: none"><li>• Advise the JOC Contractor that quantities have not been verified.</li><li>• Advise the JOC Contractor that all materials must meet the requirements of the specifications.</li><li>• Require the JOC Contractor to field verify all measurements.</li></ul> |                   |   |                     |

**10-1 ADMINISTRATIVE PROCEDURE NO.10**

**JOC'S APPLICATION FOR PAYMENT**

|                      |  |
|----------------------|--|
| <b>FORM GSC-16 -</b> | PREVAILING MINIMUM WAGE CERTIFICATE  |
| <b>AIA G702 -</b>    | APPLICATION AND CERTIFICATE FOR PAYMENT  |
| <b>AIA G703 -</b>    | CONTINUATION SHEET   |
| <b>FORM GSC-43 -</b> | STORED MATERIALS   |
| <b>FORM GSC-24 -</b> | PAYROLL AFFIDAVIT, DESIGN BUILD'S CERTIFICATE AND STATEMENT OF SURETY, POWER OF ATTORNEY |

**A. General Information**

1. The Client Agency will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less, upon the completion of the Job Order. For all other Job Orders, the Client Agency may make partial, monthly payments based on a percentage of the work completed.
2. JOC Contractor's Applications for Progress Payment shall be prepared, submitted and processed in accordance with the Payment Article of the General Conditions and this Administrative Procedure.
3. The Application for Payment shall be based on the approved Job Order Price Proposal. An Application for Payment will not be processed without the Small Diverse Business or Veteran Business Enterprise Utilization Report (See AP 16).
4. Before submitting an Application for Payment (Final or Partial) the JOC Contractor shall reach an agreement with the Project Manager concerning the percentage complete of the Detailed Scope of Work as it relates to the agreed upon schedule of values and the dollar value for which the Application for Payment may be submitted.
5. If the JOC Contractor submits an incorrect Application for Payment, the Construction Manager, within ten (10) days of the receipt of the Application, will notify the JOC Contractor of deficiencies in the Application. Applications for Progress Payment will only be returned to the JOC Contractor if there is missing or incomplete paperwork.
6. When an Application for Payment is received, the Construction Manager has three days, from this date, to review, correct and accept the Application for Payment. The Application is then to be forwarded to the Client Agency.
7. In accordance with the Prompt Payment Schedule (62 Pa.C.S. §3931 - §3939), Client Agency shall make payment within forty-five (45) calendar days of the date the Application for Progress Payment is received in a complete and acceptable format. For purposes of calculating the forty-five calendar days, the start date will be the day on which the Construction Manager signs the Application for Payment.
8. The Client Agency or designee shall also review the copy of the Application for Payment and notify the Construction Manager of any required adjustments or changes within seven calendar days of receipt. The Construction Manager will forward the Client Agency's comments to the Design Professional and the JOC Contractor.

9. Any adjustments or changes required as a result of the review by the Client Agency will be made on the next Application for Payment.
- B. Prevailing Minimum Wage Certificate - Form GSC-16
1. The Form GSC-16 must be completed, by the JOC Contractor, and attached to each Application for Progress Payment to certify compliance with the payment of Prevailing Minimum Wages as required by the Contract Documents.
  2. The JOC Contractor and all subcontractors are required to submit Form LLC-25 (formerly LIPW-128) or Form WH-347 if Davis Bacon Wage Act applies to the contract, to the Construction Manager, on a weekly basis.
- C. Stored Materials – Form GSC-43
1. Stored Materials may be invoiced by the JOC Contractor when materials are ordered in advance and stored at an appropriate facility or the site until installation will occur. Material that is scheduled for installation in less than forty-five days from the date of procurement is not eligible for payment as stored material.
  2. A completed GSC-43 Form must be submitted with the Application for Payment.
  3. Prior approval to store materials is not required by the Client Agency. The signatures of the JOC Contractor and the Construction Manager will attest to the fact that the forms have been reviewed and are correct.
  4. It is not necessary for the Construction Manager to visit the warehouse where materials are stored off-site. By executing the GSC-43 and submitting photographs, the JOC Contractor will be attesting to the fact that the materials are properly stored. The JOC Contractor is responsible for proper storage of the materials at the project site. Materials must be stored off the ground and properly protected from the elements.
  5. Only one supplier may be submitted on each GSC-43 Form.
  6. The description of line items on the vendor's invoice should be identical to the description on the GSC-43 Form and the AIA G703 or G703. If an item description on the vendor's invoice is not identical, the JOC Contractor must clearly describe, either on the invoice or an attachment, the invoiced item(s) as related to the items on the GSC-43 and G703 or G703.
  7. The vendor's invoice must also show the Unit Wholesale Price and the Extended Unit Wholesale Price. It is permissible for the JOC Contractor to add information to the vendor's invoice for the purpose of clarity.
  8. If items that are being submitted as stored material are intermixed with other items on a vendor's invoice, the claimed items must be highlighted or underlined.
  9. Requests for payment may not exceed eighty-five percent (85%) of the price of the item as indicated on the approved G703 or G703.
  10. When a vendor's invoice lists two or more separate items that are component parts of a single line item previously submitted on the G703 or G703, a "Supplemental Cost Breakdown Sheet" must be submitted and approved prior to payment for the individual items. Line items with differing unit prices must be shown as separate items on the Supplemental Cost Breakdown Sheet. Each component part must be shown as an individual item.
  11. The completed GSC-43 Form, submitted with the Application for Payment, must also have the following documents attached:

- a. Vendor's Invoice
  - b. Photographs of material and its location
  - c. Fire and theft insurance policy rider for the materials
  - d. Evidence of payment, or when payment has not been made, a letter on the JOC Contractor's letterhead authorizing payment to be made jointly to the JOC Contractor and the supplier.
  - e. Power of Attorney (from bonding company)
- D. Payroll Affidavit, JOC Contractor's Certificate and Statement of Surety/Power of Attorney - Form GSC-24
- 1. A Final Application for Payment must be accompanied by a completed Form GSC-24. If a Form GSC-24 is not submitted with the Final Application for Payment, the sum of \$500 will be withheld until the form is submitted.
  - 2. The Payroll Affidavit section of the form need not be completed, if the prevailing minimum wage scale does not apply. However, a statement must be made by the JOC Contractor on the reverse side of the Payroll Affidavit, indicating that the prevailing minimum wage scale does not apply.
  - 3. A copy of this form should be retained by the JOC Contractor, and an original and two copies must be forwarded with the Application for Payment. A copy of the Power of Attorney must be attached to each GSC-24.
- E. Small Diverse Business and Veteran Business Enterprise Utilization Report
- 1. A Small Diverse Business and Veteran Business Enterprise Utilization Report must be included with each Application for Payment. If this Report is not submitted, the Client Agency will decline to approve the Application for Payment and return the incomplete Application for Payment.
- F. For Each Application for Payment
- 1. Prior to submission and distribution of the Application for Payment packets by the Construction Manager, they shall be assembled in the following order:
    - a. G702 and/or G703
    - b. Job Order Price Proposal
    - c. GSC-16
    - d. GSC-43 (if stored materials)
      - i. Power of Attorney (from bonding company)
      - ii. Vendor's Invoice
      - iii. Photographs of material and its location (Client Agency Office copy only)
      - iv. Fire and theft insurance policy rider
      - v. Evidence of payment, or when payment has not been made a letter on JOC Contractor's letterhead authorizing payment to be made jointly to the JOC Contractor and the supplier
    - e. GSC-24 (if Final Invoice)
    - f. Notarized LLC-25 (formerly LIPW-128) or WH-347 for federal funded projects (if Final Invoice)
    - g. Small Diverse Business and Veteran Business Enterprise Utilization Report

2. Upon completion of the assembly of the Application for Payment packets by the Construction Manager, the original and two complete copies shall be submitted to the Client Agency. It is not necessary to attach a transmittal to each copy. In addition, two additional copies of the G702 or G703, without attachments, followed by the Invoice Correction Letter, are to be attached to the back of the entire submission.
3. Upon successful Final Inspection, the monetary amount to be retained shall be adjusted to reflect the actual amounts retained or otherwise held, as set out in the various sections of the General Conditions to the JOC Contract. The pertinent pages of the Final Inspection Report, including the Design Professional's Certificate detailing the uncompleted items and value, pending credit change orders, liquidated damages, claims, etc., must be attached to the Application for Payment packet. The items indicated on the Design Professional's Certificate shall not be paid until completed in their entirety. As the paperwork items are completed, change orders and extensions of time are approved, claims resolved, the retained amount may be reduced accordingly. The pertinent pages of the Final Inspection Report shall be attached with a strikethrough the items acceptably completed and/or approved. The adjusted retained amount should then be calculated, inserted and highlighted on the copies of the Final Inspection Report attached to the Application for Payment packets. Copies of the Final Inspection Report are to be attached to the original packet to the Client Agency.



## 11-1 ADMINISTRATIVE PROCEDURE NO.11

### CHANGES IN WORK (SUPPLEMENTAL JOBORDERS)

#### A. Changes in the Work

1. The Client Agency or Construction Manager, without invalidating the Job Order, may direct changes in the Work within the general scope of the Job Order, consisting of additions, deletions or other revisions. All such changes in the Work will be authorized by Supplemental Job Order or Field Order. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.
2. A Supplemental Job Order will follow the same procedure for ordering work as a Job Order (Refer to Administrative Procedure No. 4).

## 12-1 ADMINISTRATIVE PROCEDURE NO.12

### REQUEST FOR EXTENSION OF TIME (EOT) SUPPLEMENTAL JOB ORDER

- A. All Requests for Extension of Time shall be prepared and processed by the JOC Contractor and the Construction Manager in accordance with the Scheduling Article of the General Conditions and this Administrative Procedure.
- B. The JOC Contractor must inform the Construction Manager in writing at the first succeeding Job Conference after any alleged delay it has encountered. No forms or correspondence are required at this time, however, the JOC Contractor should verify that the verbal notification of the alleged delay has been noted in the Job Conference Report. Within ten (10) days after the end of the alleged delay, the JOC Contractor must submit the request for extension of time (“EOT”) to the Construction Manager.
- C. Failure to submit the EOT within ten days may constitute a waiver of the request and result in the denial of the request.
- D. If explanation of the delay is lengthy and/or the JOC Contractor wishes to attach additional documentation, it is permissible to indicate “see attached” in any appropriate area of the form. It is mandatory, however, that as much of a factual synopsis as possible be included on the form itself.
- E. Claims for weather related delays must be substantiated by Weather Data, which may be secured from local weather records and/or the National Oceanic & Atmospheric Administration, National Climatic Center, Asheville, North Carolina 28801.
- F. The JOC Contractor will keep one (1) copy of the request for EOT, and forward the original to the Construction Manager.
- G. Upon receipt of the request for EOT, the Construction Manager will review the request to ensure the JOC Contractor has provided the required information necessary to make a decision on the EOT request. If the information is incomplete, the Construction Manager will reply with an appropriate explanation, to the JOC Contractor for correction and resubmission. If the request for EOT conforms to the submission requirements. The Construction Manager will assign a sequential number, enter the received date, acknowledge receipt of the request, the date the Construction Manager received the request and place a copy in the Project file. A request number will not be assigned until a properly completed form is received.
- H. The Construction Manager shall review the extension request, JOC Contractor’s supporting documentation, field documentation and all other sources of information required for evaluation by the Construction Manager. The Construction Manager’s recommendation shall be appended directly to the form in the appropriate area. Additional sheets may be attached as required. The Construction Manager shall also attach all pertinent information and documentation required to justify and support the recommendation. The form shall then be signed and dated by the Construction Manager and the original. A complete copy of the request for EOT and all supporting documentation should be retained by the Construction Manager.

1. The Construction Manager will review the packet and issue a letter to the JOC Contractor, copy to the Client Agency personnel and the Design Professional.

**ADMINISTRATIVE PROCEDURE NO. 13  
SUBMISSION GUIDELINES FOR STEEL CERTIFICATES**

**PURSUANT TO THE STEEL PRODUCTS PROCUREMENT ACT  
73 P.S. §1881, ET SEQ.**

**STEEL ORIGIN CERTIFICATION: JOC Contractor – FORM ST-1  
STEEL ORIGIN CERTIFICATION: FABRICATOR – FORM ST-2  
75% U.S. MANUFACTURER CERTIFICATION: FABRICATOR – FORM ST-3  
NOT DOMESTICALLY MANUFACTURED: JOC Contractor – FORM ST-4**

**GENERAL INFORMATION CONCERNING THE  
STEEL PRODUCTS PROCUREMENT ACT AND STEEL CERTIFICATIONS**

- A. The JOC Contractor shall submit Steel Certification forms to the Construction Manager assigned to the project. Only one fully-executed certification form for each product must be submitted to the Construction Manager.
- B. According to Section 1886 of the Steel Products Procurement Act (the Act), cast iron products are considered to be steel products. The appropriate certification form, therefore, is required to be submitted for cast iron products.
- C. Aluminum and brass products are not steel products; therefore, steel certification forms are not required for such items.
- D. Pursuant to Section 1884(b)(2) of the Act, DGS has created a list of exempt machinery and equipment steel products, which is posted on the DGS website at [www.dgs.state.pa.us](http://www.dgs.state.pa.us). If a product to be utilized on the project appears on the exemption list, steel certification forms are not required.
- E. Modification or alteration of the Steel Certification forms is strictly prohibited.
- F. If the entity executing an ST form has a corporate seal, that seal should be impressed in the signature area of the form. The signatures on the ST forms do not have to be notarized, but they must be original signatures. Signature stamps are not acceptable; a form submitted with such a stamp will be rejected.
- G. Questions regarding steel certification submissions and/or compliance with the Act shall be submitted in writing to the Construction Manager as soon as possible after the Pre-Construction Meeting. Client Agency will investigate and render a written response in a timely fashion.
- H. Nothing in this Administrative Procedure should be construed as relieving the JOC Contractor, subcontractor, supplier or fabricator from complying with the requirements of the Act. Steel Certification forms must be submitted and approved by the Client Agency personnel before a steel product arrives on site. If the JOC Contractor enters into a purchase order for a "steel product" prior to submitting acceptable steel certifications, it does so at its own risk and faces penalties which include, but are not limited to, nonpayment, and/or replacement costs, and/or debarment. If steel

products are incorporated into the project prior to the submission of proper certification, the JOC Contractor assumes the full risk of nonpayment, replacement costs and/or debarment if the products are not certifiable.

- I. Approval Form forms must be submitted within 15 or 45 days from the effective date of the contract, depending upon the value of the Job Order. Within 30 days of the Design Professional's approval of any Approval Form listing a "steel product", the JOC Contractor must submit a steel certification for that product.
- J. No Application for Payment containing steel products will be processed until the appropriate steel certification form(s) has been approved by the Client Agency.
- K. Domestic availability will be determined as of the date the ST-4 form is submitted to the Client Agency for approval.
- L. The forms that follow ST-1 through ST-4 - have been developed for use on JOC projects alone. the Client Agency assumes no responsibility or liability for any use of these forms on the public works projects of any other entity subject to the Act.
- M. The North American Free Trade Agreement (NAFTA) does not supersede or preempt the Act.

## ST-1

**THIS FORM MUST BE FILLED OUT FOR EACH "STEEL PRODUCT"  
ON A JOC PROJECT UNLESS OTHERWISE NOTED.**

### **SECTION A**

**Line #1** This is the JOC Contractor's formal business name. If a sub's name appears on this form, the form must be rejected and resubmitted.

**Line #2** This is the JOC Contractor's business address.

**Line #3** This is the JOC Contractor's business phone number.

**Line #4** This is the date the ST form is submitted to the Client Agency.

**Line #5** This is the Client Agency contract number for the project.

**Line #6** This is the Client Agency project description.

**Line #7** This is the "steel product" being certified, such as an I-beam, angle, bolt, channel, etc. The JOC Contractor **may not fill** in the line with a description like "structural steel", heating unit" or "air conditioning system".

**LINE #7 IS THE MOST CRITICAL PART OF THE FORM.  
FAILURE TO PROPERLY FILL OUT LINE #7 ON EACH ST FORM  
MAKES THE ENTIRE FORM INVALID AND A NEW FORM MUST BE SUBMITTED.**

**NOTE:** The JOC Contractor does not have to submit a form for each piece of steel which is being put into the project. The JOC Contractor only has to submit an ST form for each type of steel product. For example, if the project needs 56 I-Beams of varying lengths, the JOC Contractor must submit **1 ST form** for "steel I-Beams" with a listing of the various sizes covered by that ST form. The JOC Contractor **does not** submit 56 ST-1 forms. If, on the other hand, only 30 of the I-Beams are identifiable (stamped) structural steel, the JOC Contractor submits an ST-1 form with Section B(1) marked off. The other 26 I-Beams are non-identifiable structural steel, so the JOC Contractor must also submit an ST-1 with Section B(2) marked off and attached the appropriate supporting documentation.

If the JOC Contractor is Client different suppliers, each supplier must submit the appropriate steel form.

**Line #8** This refers to the corresponding Approval Form submittal number.

**Line #9** This is the fabricator or supplier of the product listed on Line #7.

### **SECTION B**

**ONLY ONE OF THESE ITEMS CAN BE CHECKED AS APPLICABLE**

\_\_\_\_\_ 1. **Identifiable Steel Product**

This type of steel product is limited to products which are stamped "made in the USA" or otherwise identifiable as U.S. Steel.

- a) **supporting documentation:** JOC Contractor only needs to submit the ST-1 form. Client Agency field personnel will verify the markings when product arrives on-site.

           **2. Non-identifiable Structural Steel Product**

This type of steel product is limited to items of structural steel which are not marked as made in USA.

- a) **supporting documentation:** JOC Contractor must also submit, attached to the ST-1 form, bills of lading, invoices and mill certificates.

           **3. Non-identifiable, Non-structural Steel Product**

This type of steel product is every product which is non-structural steel, including, but not limited to, doors, door frames, windows, machinery and equipment.

- a) **supporting documentation:** Fully executed ST-2

- b) **NOTE:** A steel product may not appear on any Application for Payment until such time as the ST-1 and ST-2 are accepted by the Client Agency.

**SECTION C**

1. Language – **No modifications, cross-outs or alterations of any type may be made to the language of this certification paragraph.**
2. Signature – Two signatures are required on the ST-1 form. The JOC Contractor's President/Vice President must sign on one line **and** the Secretary or Treasurer must sign as a witness. The names should be typed or printed beneath the signature lines. Failure to type in the names **does not** invalidate the ST form.

**ST-1 STEEL ORIGIN CERTIFICATION: JOC CONTRACTOR**

This form must be executed by the JOC Contractor and submitted to the Construction Manager within 30 days from the date the Professional approves an Approval Form listing a "steel product". No steel product may be delivered on-site unless the Client Agency has received an ST form. A completed form is required for each type of steel product (e.g., beams, columns, stairways, etc.), from each supplier but not for each piece of steel product.

**A. TO BE COMPLETED BY THE PRIME CONTRACTOR:**

1. Name of JOC Contractor's firm \_\_\_\_\_
2. Firm's address: \_\_\_\_\_
3. Firm's phone number: \_\_\_\_\_ 4. Date submitted: \_\_\_\_\_
5. Contract No. \_\_\_\_\_ 6. Contract Title \_\_\_\_\_
7. Steel Product Certified: \_\_\_\_\_ 8. Approval Form: \_\_\_\_\_
9. Name & Address of Supplier: \_\_\_\_\_

**B. TYPE OF STEEL PRODUCT (Check and complete one (1) applicable category):**

10. \_\_\_\_\_ **Identifiable steel product:** 100% of the steel in the product is identifiably marked as manufactured in the United States.
  - a. Other documentation required: **NONE**
  - b. Manner in which steel product is identifiable:
    - (1) \_\_\_\_\_ Stamped "Made in U.S.A."
    - (2) \_\_\_\_\_ Stamped "Made in \_\_\_\_\_."
    - (3) \_\_\_\_\_ Other: Explain: \_\_\_\_\_
11. \_\_\_\_\_ **Non-identifiable structural steel:** Less than 100% of the steel contained in the product is identifiable as provided above. Structural steel is defined as steel products used as a basic structural element of a project (i.e., steel beams, columns, decking, stairways, reinforcing bars, structural lintels, pipes, etc.)
  - a. Other documentation **required:** Bills of lading, invoices and mill certificates that certify that the steel contained in the product was melted and/or manufactured in the United States.
12. \_\_\_\_\_ **Non-identifiable non-structural steel:** all other steel products including door and window frames, machines, equipment, etc.
  - a. Other documentation **required:** Executed Form ST-2

**CERTIFICATION:** I, the undersigned office of the JOC Contractor, do certify that, to the best of my knowledge, the steel product listed above complies with the provisions of the Steel Products Procurement Act (73 P.S. § 1881, et seq., as amended). I understand that by signing this document I certify that the facts contained herein are true. I further understand that this document is subject to the provision of the Unsworn Falsification to Authorities (18 P.S. § 409) and the Steel Products Procurement Act, which provides penalties including, but not limited to, debarment from bidding on any Commonwealth of Pennsylvania public works project for a period of five years. I agree to provide documentation supporting these facts if requested by the Commonwealth. The Commonwealth reserves the right to pursue any action deemed necessary to protect the Commonwealth's interest and ensure compliance with the laws of the Commonwealth.

**WITNESS:**

\_\_\_\_\_  
Name:  
Secretary or Treasurer

\_\_\_\_\_  
\_\_\_\_\_  
Name: (Seal)  
President or Vice President



## ST-2

This form must be filled out for non-identifiable, non-structural steel products.

### **SECTION A**

**To be filled out by the Purchaser, the firm that pays the Fabricator**

**Line #1** This is the name of the firm that is dealing directly with the Fabricator

**Line #2** This is the purchaser's mailing address.

**Line #3** This is the purchaser's business phone.

**Line #4** This is the date the ST-2 form is sent to the fabricator.

**Line #5** This is the Client Agency contract number or the project.

**Line #6** This is the Client Agency project description.

**Line #7** This is the "steel product" being certified, such as a chiller, condenser, hollow metal doors. The JOC Contractor may not fill in the line with a description like "structural steel", "heating unit" or "air conditioning Unit". The model number, if any, of the steel product must be listed as indicated.

**LINE #7 IS THE MOST CRITICAL PART OF THE FORM.  
FAILURE TO PROPERLY FILL OUT LINE #7 ON EACH ST FORM  
MAKES THE ENTIRE FORM INVALID AND A NEW FORM MUST BE  
SUBMITTED.**

**Line #8** This refers to the corresponding Approval Form submittal number.

### **SECTION B**

**To be filled out by the Fabricator, the firm that assembles the product listed on Line #7.**

**Line #9** This is the Fabricator's name.

**Line #10** This is the Fabricator's mailing address.

**Line #11** This is the Fabricator's business phone.

**Line #12** This is the date the Fabricator receives the ST-2 from the Purchaser.

**Line #13** This is the Fabricator's Federal I.D. number.

### **SECTION C**

1. Language – **No modifications, cross-outs or alterations of any type may be made to the language of this certification paragraph.**
2. Signature – Two signatures are required on the ST-1 form. The JOC Contractor's President/Vice President must sign on one line and the Secretary or Treasurer must sign as a witness. The names should be typed or printed beneath the signature lines. Failure to type in the names **does not** invalidate the ST form.

**ST-2 STEEL ORIGIN CERTIFICATION:**  
**NON-IDENTIFIABLE, NON-STRUCTURAL STEEL**

This form must be executed by the Purchaser and the Fabricator of any item containing steel that is not structural steel. This form must be submitted to the CONSTRUCTION MANAGER within 30 days from the date the Professional approved a Approval Form listing a "steel product". No steel product may be delivered on-site unless the Client Agency has received the ST form. Structural steel is defined as steel products used as a basic structural element or a project (i.e. steel beams, columns, decking stairways, reinforcing bars, pipes, etc.). Purchasers of structural steel products (contractors or subcontractors) **must** provide bills of lading, invoices **and** mill certifications that the steel was manufactured in the United States instead of this form. The Fabricator shall be herein defined as the firm that assembles the component parts of the product to be purchased. The Department of General Services will accept the certification of firms that are earlier in the chain of purchase (i.e. manufacturers of components, steel suppliers) in lieu of the Fabricator.

**A. TO BE COMPLETED BY THE PURCHASER:**

- 1. Name of purchasing firm: \_\_\_\_\_
  - 2. Firm's address: \_\_\_\_\_
  - 3. Firm's phone number: \_\_\_\_\_ 4. Date submitted to Fabricator: \_\_\_\_\_
  - 5. Contract No. \_\_\_\_\_ 6. Contract Title: \_\_\_\_\_
  - 7. Steel Product Certified: \_\_\_\_\_ 8: Approval Form# \_\_\_\_\_
- Model: \_\_\_\_\_

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**6. TO BE COMPLETED BY THE FABRICATOR/MANUFACTURER:**

- 9. Name of firm: \_\_\_\_\_
- 10. Address of firm: \_\_\_\_\_
- 11. Firms phone number: \_\_\_\_\_ 12. Date Received: \_\_\_\_\_
- 13. Federal Employer ID. No: \_\_\_\_\_

**CERTIFICATION:** I, the undersigned officer of the Fabricator/Manufacturer, do certify that our firm assembled/fabricated the components to the steel products listed in Section A, Item 7, and that all steel components therein are comprised of steel that is melted and/or fabricated in the United States. I understand that, by signing this document, I certify that I have received assurances from the suppliers/manufacturers of the components that said components do not contain foreign manufactured steel. I further understand that this document is subject to the provisions of the Unsworn Falsification to Authorities Act (18 P.S. § 4904). I also understand that I am subject to the provisions of the Steel Products Procurement Act (73 P.S. § 1881, et. seq.) which provides penalties including, but not limited to, debarment from supplying any products for Commonwealth of Pennsylvania Public works projects for a period of five (5) years for violations therein. I agree to provide documentation supporting these facts if requested by the Commonwealth. The Commonwealth reserves the right to pursue any action deemed necessary to protect the Commonwealth's interest and ensure compliance with the laws of the Commonwealth.

**WITNESS:**

Name: \_\_\_\_\_  
Secretary or Treasurer

Name: \_\_\_\_\_ (Seal)  
President or Vice President

## ST-3

### 2-STEP ELIGIBILITY ANALYSIS:

#### BEFORE A PRIME CONTRACTOR CAN SUBMIT AN ST-3, THE FOLLOWING ANALYSIS MUST BE SATISFIED

**STEP #1:** The contractor must establish that the “product” **contains BOTH:**

- Steel melted in the USA

AND

- Foreign Steel

Note: Step #1 focuses upon the **content** of the “product”.

Note: The % need not be close; it can be 99-1, so long as there is both foreign and domestic steel in the “product”.

**STEP #2:** The JOC Contractor must establish that 75% of the **cost** of the “product” has been mined, produced or manufactured in the USA.

**Note:** Step #2 focuses upon the cost of the entire “product”, not just the steel within it.

### SECTION A

**Line #1** This is the JOC Contractor’s name.

**Line #2** This is the JOC Contractor’s business address.

**Line #3** This is the JOC Contractor’s phone number.

**Line #4** This is the date the ST-3 is submitted to the fabricator.

**Line #5** This is the JOC number for the project.

**Line #6** This is the project description.

**Line #7** This is the “steel product” being certified, such as a chiller, condenser, hollow metal doors. The JOC Contractor **may not** fill in the line with a description like “structural steel”, “heating unit” or “air conditioning unit”. The model number, if any, or the steel product must be listed as indicated.

**LINE #7 IS THE MOST CRITICAL PART OF THE FORM.  
FAILURE TO PROPERLY FILL OUT LINE #7 ON EACH ST FORM  
MAKES THE ENTIRE FORM INVALID AND A NEW FORM MUST BE  
SUBMITTED.**

**Line #8** This refers to the corresponding Approval Form submittal number.

**SECTION B** To be filled out by the Fabricator/Manufacturer, the firm that fabricates the product listed on Line #7.

**Line #9** This is the Fabricator's name.

**Line #10** This is the Fabricator's business address.

**Line #11** This is the Fabricator's business phone.

**Line #12** This is the date the Fabricator receives the ST-3 from the purchaser.

**Line #13** This is the Fabricator's Federal I.D. Number.

**Line #14** The Fabricator must insert the percentage of the cost of the articles, materials and supplies which have been mined, produced or manufactured in the U.S. for the product listed on Line #7.

**SECTION C**

1. Language – **No modifications, cross-outs or alterations of any type may be made to the language of this certification paragraph.**
2. Signature – Two signatures are required on the ST-3 form. The Fabricator's President/Vice President must sign on one line **and** the Secretary or Treasurer must sign as a witness. The names should be typed or printed beneath the signature lines. Failure to type in the names does not validate the ST form.

**NOTES on ST-3 Forms:**

- It is not necessary to submit an ST-1 with the ST-3.
- **Construction Manager reserves the right to request additional documentation to support the percentage specified on Line 14. If the Fabricator/manufacturer refuses to produce such documentation and/or the Construction Manager deems it to be in the Client Agency's best interests, the Construction Manager may advise the Client Agency to request the Office of Inspector General to investigate the submission of the ST-3 form.**

**ST-3**

**75% U.S. MANUFACTURE CERTIFICATION**

The Steel Products Procurement Act (73 P.S. § 1881, et. seq.) allows the use of steel products with **both** foreign and domestic steel **if at least 75 percent of the cost** of the materials (including steel, rubber, wood, plastics, etc.) in the product are manufactured or produced, as the case may be, in the United States.

**This form must be executed by a Fabricator of any item containing BOTH U.S. AND FOREIGN STEEL.** The fabricator shall hereby be defined as the firm that assembles the component parts of the product to be purchased. The Client Agency will accept the certification of firms that are **earlier** in the chain of purchase (i.e., manufacturers of components, steel suppliers) in lieu of the Fabricator.

**This form must be submitted to the CONSTRUCTION MANAGER within 30 days from the date the Design Professional approves the Approval Form listing a "steel product". No steel product may be delivered on-site unless the Construction Manager has received an ST form.**

**A. TO BE COMPLETED BY THE JOC CONTRACTOR (PURCHASER):**

- 1. Name of JOC Contractor: \_\_\_\_\_
- 2. Address of JOC Contractor: \_\_\_\_\_
- 3. Phone Number: \_\_\_\_\_ 4. Date submitted to Fabricator: \_\_\_\_\_
- 5. JOC Project No.: \_\_\_\_\_ 6. Project Title: \_\_\_\_\_
- 7. Steel Product Certified: \_\_\_\_\_
- 8. Approval Form# \_\_\_\_\_ 9. Model: \_\_\_\_\_

**B. TO BE COMPLETED BY THE FABRICATOR/MANUFACTURER:**

- 10. Name of Firm: \_\_\_\_\_
- 11: Address of Firm: \_\_\_\_\_
- 12: Firm's Phone number: \_\_\_\_\_ 13. Date Received: \_\_\_\_\_
- 14: Federal Employer ID No. \_\_\_\_\_
- 15: Percentage of the cost of the articles, materials and supplies which have been mined, produced or manufactured in the U.S. for the product listed above on line 7: \_\_\_\_\_

**CERTIFICATION:** I, the undersigned Officer of the Fabricator/Manufacturer, do certify that our firm assembled/manufactured the components to the steel product listed in Section 7, that the steel in said product is both foreign and domestically manufactured, and that all the facts contained in this document are true. I agree to provide documentation supporting these facts if requested by the Construction Manager and/or Client Agency. I further understand that this document is subject to the provisions of the unsworn Falsification to Authorities Act (18 P.S. § 4904) and the Steel products Procurement Act (73 P.S. §1881, et seq.) which provide penalties including, but not limited to, debarment from supplying any products for Commonwealth of Pennsylvania public works projects for a period of five (5) years for violations therein. Upon the recommendation of the Construction Manager or the Client Agency, the Commonwealth reserves the right to pursue any action deemed necessary to protect the Commonwealth's interest and ensure compliance with the laws of the Commonwealth.

**WITNESS:**

\_\_\_\_\_  
Name:  
Secretary or Treasurer

\_\_\_\_\_  
Name: (Seal)  
President or Vice President

## ST-4

This form may be submitted in circumstances where the JOC Contractor believes that the “product” on Line #7 is not made in sufficient quantities to satisfy the requirements of the contract.

The information submitted by a JOC Contractor is subject to verification by the Department. Any JOC Contractor who executes a Purchase Order or other type of purchase agreement encompassing a “steel product” prior to receiving the Construction Manager’s written determination that the “steel product” listed on Line #7 of the ST-4 form is not manufactured in sufficient quantity to meet the requirements of the project does so at its own risk and faces penalties including, but not limited to, non-payment for the product; removal and replacement of the product at its own costs; and/or an Office of Inspector General investigation which may lead to debarment.

**Domestic availability will be determined as of the date  
the ST-4 form is submitted to the Using Agency for approval**

**Line #1** this is the JOC Contractor’s formal business name.

**Line #2** This is the JOC Contractor’s business address.

**Line #3** This is the JOC Contractor’s business phone.

**Line #4** This is the date the ST-4 form is submitted to the Client Agency.

**Line #5** This is the JOC number for the project.

**Line #6** This is the project description.

**Line #7** This is the “steel product” being certified, such as a chiller, condenser, hollow metal doors. The prime contractor may not fill in the line with a description like “structural steel”, “heating unit” or air conditioning unit”.

**LINE #7 IS THE MOST CRITICAL PART OF THE FORM.  
FAILURE TO PROPERLY FILL OUT LINE #7 ON EACH ST FORM  
MAKES THE ENTIRE FORM INVALID AND A NEW FORM MUST BE  
SUBMITTED FOR APPROVAL.**

**Line #8** This refers to corresponding Approval Form submittal number.

**Line #9** These four lines, (a) through (d), are to be filled out completely by the JOC Contractor. At least four suppliers/manufacturers must be contacted by the JOC Contractor to ascertain if the “product” on Line #7 is manufactured with domestic steel.

### **CERTIFICATION**

1. Language – **No modifications, cross-outs or alterations of any type may be made to the language of this certification paragraph.**
2. Signature – Two signatures are required on the ST-4 form. The JOC Contractor President/Vice President must sign on one line **and** the Secretary or Treasurer must sign as a witness. The names should be typed or printed beneath the signature line. Failure to type in the names **does not** invalidate the ST form.

**NOTE ON ST-4 FORMS:** It is not necessary to submit an ST-1 form with an ST-4 Form.

### **14-1 ST-4 NOT DOMESTICALLY MANUFACTURED: PRIME CONTRACTOR**

This form must be executed by the Prime Contractor and submitted to the CONSTRUCTION MANAGER within 30 days from the date the Construction Manager approves an Approval Form listing a “steel product”. No steel product may be

delivered on-site unless the Client Agency has received, reviewed and provided written approval of the ST-4 form. An ST-4 form can only be submitted for approval when a steel product is not domestically produced in sufficient quantities. The Construction Manager will verify the accuracy of the information on the ST-4 form and will contact additional suppliers/manufacturers to ascertain the availability of a domestic steel product.

1. Prime Contractor: \_\_\_\_\_ 2. Address: \_\_\_\_\_
3. Phone Number: \_\_\_\_\_ 4. Date Submitted: \_\_\_\_\_ 5. JOC Project No.: \_\_\_\_\_
6. Contract Title: \_\_\_\_\_ 7. Steel Product: \_\_\_\_\_ 8. Approval Form: \_\_\_\_\_
9. Suppliers/manufacturers contacted by the Prime Contractor that claimed that the above product is not produced/manufactured with U.S. manufactured steel. At least four Suppliers/Manufacturers are needed. Manufacturers listed in specifications must be contacted.
- 10.
- a. Firm Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
Person Contacted: \_\_\_\_\_ Date Contacted: \_\_\_\_\_
- b. Firm Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
Person Contacted: \_\_\_\_\_ Date Contacted: \_\_\_\_\_
- c. Firm Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
Person Contacted: \_\_\_\_\_ Date Contacted: \_\_\_\_\_

**CERTIFICATION:** I, the undersigned Officer of the Contractor, do certify that I have contacted the firms listed in Section 9, and was informed that said firms do not produce/manufacture the steel product listed on Line 7 with U.S. Steel in sufficient quantities to complete the above-referenced project. I understand that this document is subject to the provisions of the Unsworn Falsifications to Authorities Act (18 P.S. § 4904) and the Steel Products Procurement Act, which provide penalties including, but not limited to, debarment from bidding on any Commonwealth of Pennsylvania public works project for a period of five years. The Commonwealth reserves the right to pursue any action deemed necessary to protect the Commonwealth's interest and ensure compliance with the laws of the Commonwealth.

**WITNESS:**

Name: \_\_\_\_\_  
Secretary or Treasurer

Name: \_\_\_\_\_  
President or Vice President

(SEAL)

**ST-4 FORM FOR USING AGENCY USE ONLY – CONTRACTORS – DO NOT WRITE ON THIS SIDE OF ST FORM**

A. Field Personnel CONSTRUCTION MANAGER: \_\_\_\_\_

- 1. Date ST-4 submitted by Prime Contractor: \_\_\_\_\_
- 2. Date ST-4 forwarded to Construction Manager: \_\_\_\_\_
- 3. Date ST-4 forwarded to Client Agency: \_\_\_\_\_

B. Client Agency Date received: \_\_\_\_\_  
Action: \_\_\_\_\_



**14-1 ADMINISTRATIVE PROCEDURE NO. 14**

**FIELD DISPUTE RESOLUTION FORM**

**A. General Information on Dispute Process**

1. The Dispute Process is set forth in detail in the Disputes Article of the General Conditions.
2. The JOC Contractor shall use the Field Dispute Resolution Form attached to and incorporated by reference to this Administrative Procedure.



of

**D. New Disputes Arising Since the Previous FDR Meeting (continued):**

For additional space to continue dispute identification, attach additional sheets as necessary, which will be incorporated by reference.)

**CERTIFICATION BY DESIGN/BUILD:**

I hereby certify that this dispute is made in good faith; that the supporting documentation and data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the JOC Contractor believes the Client Agency is liable; and that I am duly authorized to certify the dispute on behalf of the JOC Contractor.

\_\_\_\_\_

Signature  
Name Printed Legibly

Date

**15-1 ADMINISTRATIVE PROCEDURE NO. 15**

**UTILIZATION/OCCUPANCY INSPECTION**

**CERTIFICATE OF OCCUPANCY/UTILIZATION  
FORM GSC - 46**

**FINAL INSPECTION**

**CERTIFICATE OF COMPLETION AND FINAL PAYMENT  
FORM GSC - 47**

**CLOSEOUT INSPECTION**

**A. Utilization/Occupancy Inspection**

1. The Construction Manager may permit the Client Agency to use or occupy any completed or partially completed portion(s) of the Work in accordance with the General Conditions and this Administrative Procedure. Such use or occupation may only occur after the Design Professional has established substantial completion of the relevant portion of the Work.
2. The request for partial occupancy by the Client Agency must be made, in writing, to the Construction Manager. If permission is granted, by the Construction Manager, the Client Agency or designee will establish the date and time for an Occupancy/Utilization Inspection and will notify the following:
  - a. Design Professional
  - b. Construction Manager (if there is one on the Project)
  - c. JOC Contractor
  - d. Project Site
  - e. Client Agency
  - f. Facility
3. The Occupancy/Utilization Inspection will be conducted to evaluate the area(s) to be occupied or equipment to be utilized for conformity to the Job Order and the Contract Documents. The use and/or occupancy of the work does not constitute acceptance of any portion so taken or used. The Occupancy/Utilization Inspection must be attended by the Construction Manager (if one is on the Project), the Design Professional, the JOC Contractor and a representative of the Client Agency.
4. The Design Professional shall conduct the inspection, unless another party is designated by the Construction Manager. A report of the Occupancy/Utilization Inspection shall be prepared and distributed in accordance with Administrative Procedure No.1, by the Design Professional within five (5) work days of the inspection, and shall include the following information:
  - a. Project Number and Contract Number(s)
  - b. Name of Facility
  - c. Project Description
  - d. Project Location
  - e. Area(s) and/or equipment to be occupied/utilized
  - f. Attendees along with their respective title and organization

- g. The responsibilities of the JOC Contractor for maintenance, heat and utilities or any other role.
- h. A list of all items remaining to be completed or corrected in the area(s) to be occupied or equipment to be used
- i. Completed Form GSC-46, "Certificate of Occupancy/Utilization"

**B. Certificate of Occupancy/Utilization – Form GSC-46**

- 1. The Construction Manager will provide a copy of the Form GSC-46 to the Design Professional or designee, as determined by the Client Agency. The form must be prepared by the Design Professional or designee, as determined by the Construction Manager, and submitted in an original and four copies to the Construction Manager.
- 2. At the conclusion of the Occupancy/Utilization Inspection, the attendees shall review the responsibilities of the JOC Contractor for maintenance, heat and utilities, the remaining items to be completed or corrected and shall sign Form GSC-46 to indicate their concurrence with the items.
- 3. The Punch List, prepared by the Design Professional or designee, as determined by the Construction Manager, shall be appended directly to the Form GSC-46. Additional sheets may be attached as required. The Punch List shall indicate, in detail, all items requiring completion or correction. The failure to include an item on the Punch List will not relieve the JOC Contractor(s) of its responsibility to complete all Work in accordance with the Job Order and Contract Documents.
- 4. The Construction Manager shall, within five (5) working days after receipt, review the Certificate of Occupancy/Utilization for completeness. If properly completed, the Construction Manager shall sign, date and distribute the Form GSC-46, with any attachments, in accordance with Administrative Procedure No. 1.
- 5. The Client Agency shall not be permitted to occupy nor utilize any portion of the Work until a fully executed copy of the Form GSC-46 has been received from the Design Professional and approved by the Construction Manager.
- 6. The date of the fully executed Form GSC-46 shall be the start date of any warranties or guarantees associated with the occupied area(s) or utilized equipment.
- 7. Any damage subsequent to the inspection due solely to the use and/or occupancy of the completed or partially completed portion of the Work shall not be the responsibility of the JOC Contractor.

**C. Final Inspection**

- 1. The Final Inspection for the Job Order shall be requested and conducted in accordance with the General Conditions and this Administrative Procedure. The JOC Contractor's request for a Final Inspection **must be submitted, in writing, to the Construction Manager.**
- 2. **Within ten (10) days of receipt of the request**, the Construction Manager shall establish a date and time for the Final Inspection and will notify the following:
  - a. Design Professional
  - b. JOC Contractor
  - c. Client Agency
  - d. Facility

3. The Final Inspection must be attended by the Construction Manager (if one is on the Project), the Design Professional, the JOC Contractor and a representative of the Client Agency.
4. The JOC Contractor shall submit, at the Final Inspection, an Application for Final Payment to the Construction Manager. The final Application for Payment should be completed and submitted in its entirety and in accordance with Administrative Procedure No. 9.
5. The Design Professional and/or Construction Manager shall conduct the Final Inspection. The inspection shall include all aspects of the Job Order(s) Detailed Scope of Work, including any areas or equipment previously occupied or utilized by the Client Agency. If the work is at “substantial completion”, a report of the Final Inspection shall be prepared and distributed in accordance with Administrative Procedure No. 1, by the Design Professional and/or Construction Manager within five (5) work days of the inspection, and shall include the following information:
  - a. Project Number and Contract Number(s)
  - b. Name of Facility
  - c. Project Description
  - d. Project Location
  - e. Attendees along with their respective title and organization
  - f. A detailed list of all remaining Punch List Work to be completed or corrected with a reasonable cost to complete each item and a statement that all items shall be completed within thirty (30) days from the date of Final Inspection.
  - g. The status of any pending Supplemental Job Orders and the status of the associated work
  - h. The status of payment of approved Supplemental Job Orders to include SJO#, approval date, debit/credit and amount to be paid
  - i. The status of claims, if any, to include the request date and position within the Client Agency system
  - j. The status of Requests for Extension of Time, if any, to include request date, and number.
  - k. Liquidated damages, if any, to include the number of days overrun, amount per day and total amount to be withheld
  - l. Recapitulation of retained amounts to include the following:
    - i. Punch List Items, plus one and one-half times the aggregate value of the items
    - ii. Credit Supplemental Job Orders
    - iii. Pending Claims
    - iv. Liquidated Damages
  - m. The status of Small Diverse Business and Veteran Business Enterprise Commitments
  - n. The status of Bonds, Guarantees, Warranties, Tests and Instructions still required, to include page and paragraph of the specifications
  - o. The status of the As-Built Record Drawings
  - p. The status of JOC Contractor’s papers, Form GSC-24 (\$500.00 shall be retained until properly submitted)
  - q. General comments, if any
  - r. Statement regarding the start date of all warranties and guarantees
  - s. Statement that the Work has been completed in accordance with the Detailed Scope of Work
  - t. Statement that the JOC Contractor shall continue insurance coverage pending written permission to terminate by DGS or the Construction Manager.

- u. Statement that the Report as written shall be deemed acceptable to all parties in receipt, unless written notification of objections is received by the Construction Manager or Client Agency within seven days of receipt of the Final Inspection Report
- v. Form GSC-47, "Certificate of Final Inspection and Final Payment" completed by the Design Professional.

If, through the course of the inspection, it is determined by the Design Professional that the work is not "substantially complete", the Design Professional shall not issue the Certificate of Completion and Final Payment. The Design Professional shall notify the Construction Manager and the JOC Contractor, in writing, substantiating the reasons for the denial.

- 6. In no case may a Final Inspection be designated as a Closeout Inspection.

**D. Certificate of Final Inspection and Final Payment – Form GSC-47**

- 1. The Construction Manager will provide a copy of the Form GSC-47 to the Design Professional or designee, as determined by the Construction Manager. The form must be prepared by the Design Professional or designee, as determined by the Construction Manager, and submitted in an original and four copies to the Construction Manager.
- 2. At the conclusion of the Final Inspection, the attendees shall review all of the remaining responsibilities of the JOC Contractor, the remaining responsibilities of the Design Professional, the status of all pending Supplemental Job Orders, the status of all pending Requests for Extension of Time, the status of any pending claims against the Client Agency or any other JOC Contractor and any other obligations of any party necessary to fulfill the requirements of the Job Order and Contract Documents. Upon completion of this review the JOC Contractor, Design Professional and the Client Agency or designee shall affix their signatures to the Form GSC-47, Certificate of Final Inspection to indicate their concurrence with the remaining responsibilities of each party.
- 3. The Punch List, prepared by the Design Professional or designee, as determined by the Construction Manager, shall be appended directly to the Form GSC-47. Additional sheets may be attached as required. The Punch List shall indicate, in detail, all items requiring completion or correction and a reasonable cost of completion plus one and one-half times the aggregate value of the items.'
- 4. The Construction Manager shall, within five (5) working days after receipt, review the Certificate of Final Inspection and Final Payment for completeness and attach the Form GSC-47 to the Final Inspection Report, as indicated in Final Inspection paragraph above.

**E. Closeout**

- 1. Refer to Article 14 of the General Conditions for closeout requirements.

## 16-1 ADMINISTRATIVE PROCEDURE NO.16

### SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE PARTICIPATION

- A. General Information:** The JOC Contractor must meet or exceed the SDB participation goal and the VBE participation goal set forth on the SDB and VBE Participation Summary Sheet, unless BDISBO and the Issuing Office have granted the JOC Contractor a full or partial Good Faith Efforts Waiver. The JOC Contractor may satisfy its SDB and VBE participation requirements by utilization of DGS-verified SDBs (Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Disability-Owned Business Enterprises (DOBE), and LGBT Business Enterprises (LGBTBE)) and DGS-verified VBEs (Veteran-Owned Small Business Enterprises and Service-Disabled Veteran-Owned Small Business Enterprises). The JOC Contractor must meet or exceed the SDB and VBE participation commitments prior to the date of the Final Inspection.
- B. Small Diverse Business Utilization Report**
- A. The JOC Contractor shall submit an SDB and VBE Utilization Report with each Application for Release of Payment (See section C below).
- B. The JOC Contract must begin submitting the SDB and VBE Utilization Report by the first full month after the Initial Job Conference or the first Application for Release of Payment (whichever is earlier).
- C. Each SDB and VBE Utilization Report must have current data (totals to date) identifying at least each element as follows:
1. Detailed information including, but not limited to, any subcontracts and purchase orders documenting the dollar value commitments to SDB and VBE firms to be used toward the satisfaction of the SDB and VBE participation percentages as required by the Contract. All SDB and VBE firms listed on the SDB and VBE Utilization Report shall be retained on the Utilization Report throughout the duration of the Project.
  2. Detailed information regarding any work that is claimed to be self-performed by the JOC Contractor and therefore allegedly not eligible for subcontracting to an SDB or VBE firm.
  3. **Construction Subcontracts and Purchase Orders:**
    - a. Dollar value of all subcontracts and/or Purchase Orders awarded to date.
    - b. Total value of commitment to SDBs and VBEs, indicated as both dollars and as a percentage of the total contract value.
    - c. For each subcontract and purchase order awarded since the previous Application for Release of Payment the:
      - (1) Identity of the SDB or VBE that will be performing the work; and
      - (2) The type of work/service/material to be performed/supplied; and
      - (3) The amount paid to date on each SDB or VBE subcontract/purchase order this month.



- (4) The designation of SDB or VBE Stocking Suppliers as either a MEP (i.e., mechanical, electrical, and plumbing) Stocking Suppliers or a General Construction Stocking Supplier.
  - (5) The fee or commission paid to the Non-Stocking Supplier. No credit will be given if the fee or commission is not listed and, the maximum credit shall not exceed 10 percent of the purchase order cost.
- D. Failure to submit an SDB and VBE Utilization Report with each Application for Release of Payment will result in an incomplete Application for Release of Payment. Such incomplete Application will be returned to the JOC Contractor and no payment will be processed until a complete Application is submitted.
- E. BDISBO will credit the selected offeror for SDB and VBE participation as follows:
1. SDB or VBE subcontractors. An SDB or VBE subcontractor, through its own employees, shall perform at least 50% of the amount of the subcontract. 100% of the total subcontract amount shall be counted towards the SDB participation goal, unless the SDB or VBE subcontractor is performing one of the functions listed in paragraphs 2-4 below.
  2. SDB or VBE manufacturers. An SDB or VBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications. 100% of the total cost of the materials or supplies purchased from the SDB or VBE manufacturer shall be counted towards the SDB or VBE participation goal, as applicable.
  3. SDB or VBE stocking suppliers. An SDB or VBE stocking supplier is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. 60% of the total cost of the materials or supplies purchased from the SDB or VBE stocking supplier shall be counted towards the SDB or VBE participation goal, as applicable.
  4. SDB or VBE nonstocking suppliers. An SDB or VBE nonstocking supplier is credited at only the amount of the fee or commission charged by the SDB or VBE nonstocking supplier for assistance in the procurement of the materials and supplies, provided that the fees or commissions are reasonable and not excessive as compared with fees customarily allowed for similar services, and with the understanding that under no circumstances shall the credit for an SDB or VBE nonstocking supplier exceed 10 percent of the purchase order cost. A nonstocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer's representative, or a stocking supplier. In order for a nonstocking supplier to receive credit, it must perform a useful business function by engaging in meaningful work (i.e., negotiating price; AND determining quality and quantity; AND ordering materials; AND paying for the materials) and the fee or commission must be provided with the purchase order and the Utilization Report. Industry practices and other relevant factors will be considered.
- F. The JOC Contractor will receive credit forwards their SDB and VBE participation commitments for use of SDB or VBE firms at any tier of supply or subcontracting; however, the dollar value of any commitment to an SDB or VBE cannot be counted twice.
1. If the JOC Contractor or any of its non-SDB or VBE Subcontractors or Suppliers makes a commitment to a SDB or VBE, the credit for the subcontract/purchase order commitment, regardless of the level or tier, shall be calculated as indicated in this Section E and credited toward the JOC Contractor's SDB or VBE participation commitments as applicable.

2. In the event that the SDB or VBE whose entire subcontract value is counted towards the SDB or VBE participation commitments then subcontracts a portion of the work or supplies associated with this subcontract to another SDB or VBE, the dollar value of the subcontract with/to this lower tier SDB or VBE is NOT counted towards the JOC Contractor's SDB or VBE participation commitments, as applicable, in order to prevent the duplicate counting of SDB or VBE commitment dollars. In this case, the dollar value of this lower tier SDB or VBE subcontract has already been included within the scope of work and dollar value of the SDB or VBE commitment already counted as a part of the JOC Contractor's SDB or VBE participation commitment as applicable.
  3. All SDBs or VBEs must present a photocopy of their current SDB or VBE certificate from DGS to the JOC Contractor. To receive credit towards their SDB or VBE participation commitments, the SDB or VBE must be a DGS-verified SDB or VBE as of the date the work to be completed by the SDB or VBE has commenced.
- G. A JOC Contractor's SDB or VBE participation commitments are calculated by adding all or a percentage of the dollar commitments (as set forth in Section E) to DGS-verified SDB or VBE subcontractors of all tiers, DGS-verified SDB or VBE manufacturers, DGS-verified SDB or VBE stocking suppliers, and the fee or commission paid to the DGS-verified non-stocking supplier and dividing that total amount by the total Commonwealth payments to the JOC Contractor.

### **C. Remedies**

- A. The DGS may, in accordance with the General Conditions for the JOC Contract (Payments Withheld), decline to approve an Application for Release of Payment in whole or in part if the SDB and VBE Utilization Report is not included and return the incomplete Application for Release of Payment.
- B. If after the first three months following Contract execution, the JOC Contractor fails to progress in achieving their SDB and VBE commitments (based upon the data supplied in the SDB and VBE Utilization Report), the Funding Agency may withhold payments until the JOC Contractor and the Funding Agency discuss the reasons for lack of progress and achieve a resolution. The JOC Contractor is not entitled to interest on any funds withheld due to their failure to submit a properly completed SDB and VBE Utilization Report or their failure to progress in achieving the SDB and VBE participation commitments.
- C. The JOC Contractor's compliance with requirements of the SDB and VBE participation commitments, including the fulfillment of any SDB and VBE commitments in all subcontracts and purchase orders is material to the contract between the JOC Contractor and the Funding Agency. Any failure to comply with these requirements constitutes a substantial breach of the Contract. It is further understood and agreed that in the event the Funding Agency determines that the JOC Contractor has failed to comply with these requirements, the Funding Agency may, in addition to any other rights and remedies the Funding Agency may have under the contract, any bond filed in connection therewith, or at law or in equity, impose remedies as applicable on the JOC Contractor. Remedies for breach of this component may include entry into the CRP, termination, suspension, default, penalties, and/or debarment from future contracting opportunities with the Commonwealth of Pennsylvania. The remedies enumerated herein are for the sole benefit of the Funding Agency and the Funding Agency's enforcement of any provision or the Funding Agency's indulgence of any non-compliance with any provision hereunder shall not operate as a waiver of any of the Funding Agency's rights in connection with the Contract, nor shall it give rise to actions by any third parties, including any SDB or VBE firms.

**END OF APPENDIX Q: ADMINISTRATIVE PROCEDURES**

DATE: Issued with rebid

DEPARTMENT OF GENERAL SERVICES  
1800 HERR STREETS  
HARRISBURG, PENNSYLVANIA

**ADDENDUM NO. 1**

on

**RFP Number DGS-A-2020-0001 JOC Program Consultant - Rebid**

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As stated in the RFP, by submitting a proposal, Proposer acknowledges and affirms that the provisions of all addendum have been included in the Proposal and that the Proposer understands its responsibility for all provisions of all addendum.

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**Item 1**

Part II Proposal Requirements II-I Technical Submission Requirement - Section E Personnel

- Q. Please confirm that DGS is not seeking design services under this RFP and information for “Design specialist” is not required?
- A. Professional Design Services are part of the JOC Contractor Contracts however, Proposers are to provide their ‘Personnel’ that will be engaged in their work.

**Item 2**

Part II Proposal Requirements – II-2 Small Diverse Business and Veteran Business Enterprise Participation Submittal

- Q. Please clarify if the package may be included in the same package as the separately sealed Technical Proposal and separately sealed Cost Proposal?
- A. As identified in Part II, each proposal shall consist of three separately sealed submittals. The required Submittals may be delivered in one package/envelope, but submittals must remain separated within the package/envelope.

**Item 3**

Part IV Work Statement – IV-1 Objectives

- Q. Will DGS consider revising the maximum project value of \$400,000 during the term of the agreement?
- A. The maximum project value in the RFP remains as written.

**Item 4**

Part IV Work Statement – IV-4 Tasks - Section C Procurement Support

- Q. Where it states “The selected Proposer . . . shall be prohibited from bidding or proposing on any of the construction contracts issued under the JOC program” please confirm that this restriction also applies to design services and that the selected proposer, or any firm determined by the Department to be related or affiliated with the selected Proposer, shall be prohibited from providing design services for projects under the JOC program?
- A. The selected JOC Program Consultant and its consultant(s) and subcontractor(s) cannot perform any services/responsibilities associated with the JOC Contractor Contract or be a sub-contractor of any tier to the JOC Contractor.

**Item 5**

Part IV Work Statement – IV-4 Tasks - Section D Job Order Project/Construction Management

- Q. Please confirm that the selected proposer is responsible for each sub-task under Section D for every Job Order executed through the JOC Program?
- A. RFP remains as written.

**Item 6**

Part IV Work Statement – IV-4 Tasks - Section D Job Order/Construction Management

- Q. Will DGS consider allowing Proposers to submit separate fees for Job Order Project Services and Construction Management Services by including a Cost Proposal attachment that breaks down the single submitted fee in Appendix G into component parts?
- A. RFP remains as written.

**Item 7**

Part IV Work Statement – IV-4 Tasks - Section D Job Order/Construction Management

Item Number 8

- Q. Is there an expectation that the JOC Contractor would be responsible for inaccuracies in the as-built drawings?
- A. The JOC Contractor remains responsible for the as-built drawings in accordance with their contract. The JOC Program Consultant is expected to review all as-built drawings for accuracy in accordance with its contract.

**Item 8**

Part IV Work Statement – IV-4 Tasks - Section G Program and Technical Support

- Q. Where it states “The selected Proposer shall update, as often as reasonably required, any or all of the JOC documents, including the Technical Specifications and contract term and conditions” please clarify the expectation of the JOC Program Consultant?
- A. It is expected that the JOC Consultant will be responsible for assisting in the development and review of any changes needed to JOC documents. The reference to “as often as reasonably required” will remain as is.

**Item 9**

Part IV Work Statement – IV-4 Tasks - Section G Program and Technical Support

Item Number 1

- Q. Given uncertainty with the ongoing pandemic and the fact that many implementation tasks may be done offsite, please confirm that this requirement will be discussed mutually between the issuing office and the selected proposer prior to signing a contract.
- A. This section will remain as written in the RFP, noting that the section states “unless other direction is provided by the Department.”

**Item 10**

Appendix N – IT Contract Terms and Conditions – Section 12 Contract Integration – Paragraph e  
Other terms unenforceable

- Q. If a proposer’s software is subject to an end user license agreement, when should that agreement be submitted to the Commonwealth for review and approval?
- A. Any end user license agreements or SaaS subscription agreements related to this RFP should be provided as part of the proposal.

DATE: 2/11/2021

DEPARTMENT OF GENERAL SERVICES  
1800 HERR STREETS  
HARRISBURG, PENNSYLVANIA

**ADDENDUM NO. 2**

**on**

**RFP Number DGS-A-2020-0001-Rebid JOC Program Consultant**

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Respond back to RA-publicworks@pa.gov to acknowledge receipt of this addendum.

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**General Changes**

**Item 1** – A Protest has been received by the Department therefore this procurement is being stayed until the Department issues a Final Determination regarding the Protest. The Proposal Submission Deadline of February 18, 2021 is postponed until an Addendum is issued to re-establish the Proposal Submission Deadline.

DATE: 2/24/2021

DEPARTMENT OF GENERAL SERVICES  
1800 HERR STREETS  
HARRISBURG, PENNSYLVANIA

**ADDENDUM NO. 3**

**on**

**RFP Number DGS-A-2020-0001-Rebid JOC Program Consultant**

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Respond back to RA-publicworks@pa.gov to acknowledge receipt of this addendum.

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**General Changes**

**Item 1** - The Proposal Submission Deadline is now scheduled for March 8, 2021 at 1:00 pm.. Please note, the deadline to submit questions on this RFP has passed.

**Item 2** - Appendix A, IT Terms and Conditions was inadvertently labeled as Appendix N. Appendix N should be considered as Appendix A.





**FOS**  
of CannonDesign

## **Job Order Contracting Program Consultant**



## **Department of General Services, Commonwealth of Pennsylvania**

RFP NO. DGS A-2020-0001-JOC-Program Consultant-Rebid

**Technical Submittal** | March 8, 2021



March 5, 2021

**Joseph Cassata, RA, NCARB**

President, FOS of CannonDesign

716.316.5664 | jcassata@foscd.com

Dear Selection Committee:

Facility Optimization Solutions (FOS) of CannonDesign appreciates this opportunity to offer the Department of General Services of the Commonwealth of Pennsylvania unparalleled value for job order contracting program consulting services through our Simplebid™ platform. As a nationwide leader in physical asset management consulting, we share our clients' passion for providing and maintaining the highest quality facilities in an efficient and fiscally responsible manner. We are excited at the prospect of creating value and efficiency for the Commonwealth through the delivery of our innovative, market redefining JOC products and services. Our firm offers extensive knowledge and expertise in the design, engineering, construction, and capital program consulting fields. It is our distinct pleasure to offer the Commonwealth this proposal for software and professional services.

In providing several billion dollars of construction services since inception, we have successfully managed and built new construction and renovation projects involving federal, state, and local government entities, higher education institutions, PK-12 school districts, public and private healthcare providers, and many other public organizations. Our collaborative culture and integrated expertise in cost estimating, design, construction, consulting, and software development uniquely positions FOS and our Simplebid™ platform as the Commonwealth's best option for this contract.

Please note that our legal business entity, Facility Optimization Solutions LLC, appears on required forms and paperwork associated with our proposal. Our group that provides JOC services is branded as FOS of CannonDesign and is referenced throughout this proposal.

## EXPERTISE

Facility management consulting, capital planning strategy, and JOC procurement services are the core solutions provided by the FOS team. We started our dedicated practice for these services as a response to the market demand by clients looking to optimize their facilities maintenance, operations, and capital construction programs. We created a purpose-built interdisciplinary group of highly qualified specialists to deliver innovative products and professional services for our clients including facility condition assessments, strategic capital planning, and JOC/IDIQ procurement program management. FOS is recognized by World Architecture 100 as the #1 provider of these services by an A/E firm in the World.

## FUELED BY INTELLIGENCE

We know the needs and challenges faced by our clients that manage high volume JOC programs. Our innovative software platform, cost database designed specifically for JOC, and program management services are supported by in-house construction professionals, cost estimators, architects, engineers, project managers, and software developers. This team created the Simplebid™ platform to revolutionize how JOC is administered by being more efficient and cost effective while increasing the transparency and oversight standards expected in public procurement.

Our team takes a collaborative approach that considers the perspective of both the owner and contractor. We know that creating an environment where both parties are well trained and work towards the common goal of efficient, high quality construction project delivery (at a competitive price) is the value offered by JOC procurement.



### **INSPIRED TEAMWORK**

Our experienced team of professionals is hand-picked to deliver JOC-software and program management consulting, and cost estimating services. Leading this program implementation will be Mark Schrock of our Buffalo, NY office. Mark will provide overall project oversight and leadership ensuring quality and satisfaction with our program procedures, software platform, and cost data. Supporting Mark are our cost estimating, account management, software development, and software support teams. These individuals assigned to the Commonwealth who represent each discipline will be fully allocated to the Commonwealth during the program implementation process, and adequate resources will be supplied throughout the contract term from our team with supplement from local small diverse business partners.

### **DYNAMIC & INNOVATIVE**

The Simplebid™ platform was developed in partnership with the County of Los Angeles, the largest local government in the United States. In pursuit of a progressively better JOC platform that was unavailable on the market, the County tasked FOS to develop a new software management tool and cost database that would provide greater efficiency, superior reporting capability, increased configurability, and create a more transparent JOC delivery environment – all while ensuring the continued rapid delivery of high quality construction projects. With our solution now implemented, we are excited to bring the Simplebid™ platform to other clients and begin sharing the value created.

FOS has over ten years experience successfully supporting capital improvement programs, estimating construction projects using software built in-house, and over 100 years of related design, engineering, and construction experience. We acknowledge that the Simplebid™ platform is new to the market. We ask that you consider our related experience and direct JOC experience with the County of Los Angeles, and encourage you to speak with our references there. In late 2020, FOS was selected as the successful bidder to implement the Simplebid™ platform at Chicago Public Schools and the University of California System where we are currently working to implement services comparable to those requested by the Commonwealth. The market for JOC program consulting services is very small, and we ask that you consider our products and services in support of a more competitive environment. We welcome the Commonwealth to request a live demonstration of our products and services as part of your evaluation.

Ultimately, what defines FOS of CannonDesign is our desire to work in strong partnership with the Commonwealth to establish shared goals and exercise joint ownership of project decisions from start to finish. FOS is a solutions-based practice that is not satisfied with simply exceeding our clients' expectations. A long-term collaborative working relationship that delivers value with purpose is what we offer within this proposal, and we look forward to the opportunity to discuss our solutions in greater detail.

Sincerely,

[Redacted Signature]

Joseph Cassata, RA, NCARB



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Signed proposal cover page, notarized non-collusion affidavit, and Iran free procurement certification attached as paper documents per the RFP.

SDB/VBE Participation Submittal and Cost Submittal provided as separate documents per the RFP.

# Statement Of The Problem



# Statement of the Problem

Our professional team has the knowledge and experience to develop and implement a more efficient and effective JOC program for the Commonwealth. This team has a long and successful history providing professional services and software including JOC implementation and strategic capital planning solutions for local governments, public school districts, institutions of higher education, healthcare organizations, and more.



## Program Transition

Considering that the Commonwealth has an existing JOC program in place, our role will include an analysis of the existing program, an implementation of the Simplebid™ platform including the unit price catalog and related specifications, an agency-wide rollout and transition, prior to transfer of existing JOC contracts or solicitation of new contracts. Our platform is designed to make the transition process straightforward and efficient, considering the unavoidable commitment of time and resources the Commonwealth will dedicate to this process.

As described in this proposal, the Simplebid™ platform and program management services are new to the market. We did not venture to simply create an emulation of comparable products available on the market today. Instead, we worked in close partnership with the County of Los Angeles, possibly the largest user of JOC procurement in the County, to create a comprehensive, long term solution that addresses challenges in their JOC program and deficiencies that are common in the national market for JOC procurement support services. Our cooperative endeavor yielded an industry changing solution, the Simplebid™ JOC platform.

The team who will work with the Commonwealth to implement the JOC program is the same team working with the County of Los Angeles. Their combined experience including construction, cost estimating, JOC, design-build, software implementation, support, and training, is the foundation of our ability to design, develop, and exceed implementation expectations within an appropriate schedule for the Commonwealth.

Our purpose-built team is designed to contain diverse yet specific skillsets and knowledge integral to the execution of JOC procurement. This team will take a holistic approach to understanding your program, needs, and expectations before implementing the Simplebid™ platform to support and manage the JOC program.

Once a thorough understanding of the Commonwealth's existing program is established and the implementation plan is finalized, our team will begin the steps necessary to transition the program over to the Simplebid™ platform. This includes:

- **Document Development** including preparation of the unit price catalog and associated specifications and creation of program documents utilized by the information management system including forms, dashboards, and reports.
- **Onboarding and training** of Commonwealth staff on the use of our unit price catalog and information management system.
- **Procurement support** including onboarding and training for existing or prospective JOC contractors, education and training for contractors, and assistance in contractor adjustment factor evaluation.





After contractors are onboarded and active in the Simplebid™ platform, our team will provide ongoing support to the Commonwealth throughout the duration of our contract. Based on the scope of work described in the RFP, FOS will provide our Simplebid™ managed solution, which includes a comprehensive program inclusive of the software platform and cost data, ongoing program facilitation services, and construction management services.

**The Simplebid™ managed solution includes the following services aligning with the Commonwealth's procedures:**

- Coordination and attendance of a joint scoping meeting between the agency and contractor for each identified job order.
- Review of scoping documents and RFPs developed by the agency.
- cursory review of design provided by contractor. Following agency review of provided design, FOS may conduct a more thorough design review if ordered by the agency.
- Review of proposals submitted to agency by JOC contractor, verifying that the submitted costs accurately and appropriately reflect the job order scope of work.

- Perform construction management on each job order, including:
    - Administering initial conference and all subsequent meetings.
    - Reviewing and processing all construction-related forms.
    - Provide oversight to verify work is being performed in accordance with the job order documents.
    - Review job order invoicing.
    - Assist the commonwealth throughout the job order invoicing, approval, and closeout process.
- Supporting the entire process is the Simplebid™ rapid procurement platform, which includes the associated unit price catalog, also branded as the Simplebid™ Book. Described more thoroughly in the work plan section of this document, the Simplebid™ platform is a comprehensive job order contracting information management platform, that enables the JOC procurement process per industry standards and as configured for the Commonwealth. The platform is designed to support each step in the process described by the RFP.

This includes:

- Management of JOC contractor and subcontractor information, including contacts, census data, and SDB/VBE information for each.
- Management of JOC master contracts.
- Management of individual departments and agencies as needed by the Commonwealth. The platform may be setup to handle multiple departments independently.
- Management of individual projects identified for JOC procurement.
- Development individual job orders including scope preparation, RFP document preparation and submission, proposal development using unit price catalog line items, and proposal review using the Simplebid™ proposal review module.
- Completion of job order approval, signing and issuance of notice to proceed documents, and support for closeout procedures for each job order, each project, and each master contract.
- Configurable/customizable dashboards for program statistics, performance indicators, and any other queried data objects contained inside the platform.
- Configurable/customizable reports module with export to various filetypes including Adobe PDF, Microsoft Excel, and flat file. Support for report scheduling and delivery through email or FTP server.
- Open API to support integration with other Commonwealth software platforms.



# Statement of the Problem

An important distinction should be understood regarding the Simplebid™ book, our unit price catalog provided to the Commonwealth. We have simplified and streamlined our cost structure to better align itself with the purpose of job order contracting. We have intentionally and strategically reduced the number of available line items by creating assembled units of common work, for example, wall sections and runs of electrical conduit, where individual components of each system are combined into a finished assembly. In addition, we have intentionally and strategically reduced the number of individual components by not capturing a very large catalog brand name items. This creates time savings in the proposal development and review process for individual job orders and can create savings for the Commonwealth by disallowing the inclusion of unnecessary quantities of materials and labor. In addition, when combined with functionality included in the Simplebid™ proposal review module, we have reduced or eliminated the ability to artificially increase job order prices through the addition of unnecessary line items.

Our design review, program facilitation support, and construction management services are each important components of enabling an efficient and cost effective JOC program for the commonwealth. FOS will provide management resources for each of these tasks while looking to our SDB/VBE partners as a pivotal component of these services. We aim to partner with the most qualified vendors with current experience working inside the Commonwealth's JOC program. This ensures a continuing trusted relationship of providing value to the Commonwealth throughout our contract.

## Pennsylvania-Specific Requirements

The most basic implementation of State specific requirements in the program is configuring the Simplebid™ platform to the contract and job order limits created by the Commonwealth, including the master contract terms and limits, and individual job order limit.

The program procedures and unit price catalog will reflect Commonwealth JOC procedures and procurement laws.

A specific example relates to 43 P.S. §§165.1-165.17, where our unit price catalog will be subject to the requirements of the Pennsylvania Prevailing Wage Act. The unit price catalog will also consider Davis-Bacon wage rates, assuming that federal funds may be involved with this program. In addition, during program implementation, we will consider House Bill 163, which repeals the Separations Act, and how that legislation may benefit the ongoing JOC program.





# Excellence In Design & Construction

We design and construct buildings throughout the State of Pennsylvania to sustainable, green, and resilient standards including LEED, WELL, and more - meaning our specifications and cost estimating departments are uniquely qualified to develop a unit price database for the Commonwealth that includes these standards and line items. Rather than forcing the Commonwealth into a one-size-fits-all platform, our partnership will ensure that the JOC program is thoughtfully designed around the goals of the Commonwealth.

Developing and maintaining the regionalized and customized project cost database for the Commonwealth is the responsibility of our cost estimating and specifications departments. Aligning existing specifications to the cost database and developing new items when needed is a critical step in program implementation and support.

We realize that maintaining a complete and accurate UPB with indexing by Construction Specification Institute's Master Format is a critical aspect of the construction and JOC process. We hold our data to the highest standard of accuracy. The caliber and geographic reach of our work and exposure associated with building at risk mean we cannot rely upon nationally published cost data to support our firm.

Going far beyond the typical approach of simply costing by vendor and subcontractor quotes, we utilize our Dynamic - Cost - Management (DCM) method to help ensure the pricing generated is complete and flexible enough to meet the intent and specifications of the various scopes of work generated for JOC work orders. Our customized estimating database assures alignment between budgets, contractor bids, and documents therefore minimizing costly and time-consuming field changes due to a lack of coordination.

Our cost estimating and specifications departments leverage their in-house national experience specific to municipal government construction typologies to implement the UPB for each client.

Our team has been developing cost models for over 100 years, estimating nearly \$5 billion worth of construction costs per year with less than a 3% margin of error over the past ten years. Estimates for design and construction work are reconciled to actual contractor bids to update and verify database accuracy.

The UPBs produced for the Commonwealth's departments will be based on cost models developed and maintained for forty years. Our data is not nationally published for purchase by the general public — it is used internally and through products we produce for our clients and existing JOC programs that we support.

Each line item is created or adjusted to the Commonwealth's construction specifications and regionalized to local material and prevailing labor parameters determined by the Pennsylvania Department of Industrial Relations.



We understand that the UPB's used by the Commonwealth may not simply be regionalized but instead must be localized to specific conditions. Items like this may not be modified using a simple factor and require the local knowledge and expertise offered by our team to ensure complete and accurate UPBs.

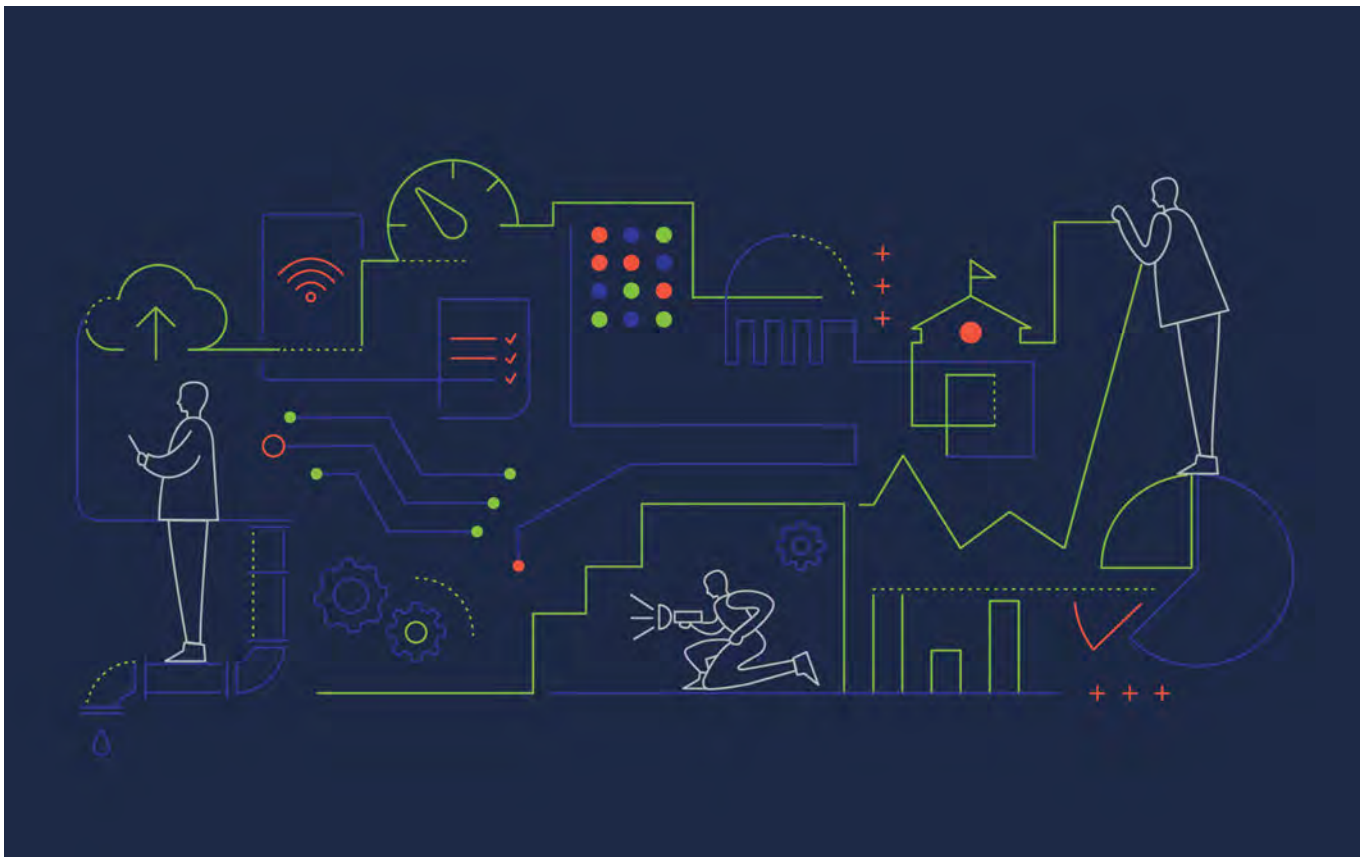
We rely on local economic factors, actual contractor bids and costs from new construction and renovation projects, and global economic trends that each have an effect on the unit price of construction tasks.

Our database is continuously updated based on availability of new data. Our assemblies-based approach means we have greater control to update more frequently in response to local market conditions. Some parameters such as labor or specific material costs can be modified to easily update the database globally. We do not wait for your next approved update cycle to begin refreshing our data.


Although updated continually, we will only publish a new UPB each time new JOC contracts are solicited, or when reasonably required by the Commonwealth. The unit price catalog update process must be solidified during the program implementation process to ensure transparency in the process for our team, the Commonwealth, and JOC contractors.

Our team brings every component required for long-term JOC program support and success. Combining JOC program managers, cost estimators, software developers, data analysts, and construction managers, we will be a strong long-term partner to the Commonwealth in the provision and support of an effective and efficient JOC program, accomplishing the agencies' need for effective and efficient design, construction, and construction management.

**At the center of every FOS of CannonDesign project is the desire to impact a community. We're committed to making our communities stronger, more equitable, and better positioned for tomorrow's challenges.**



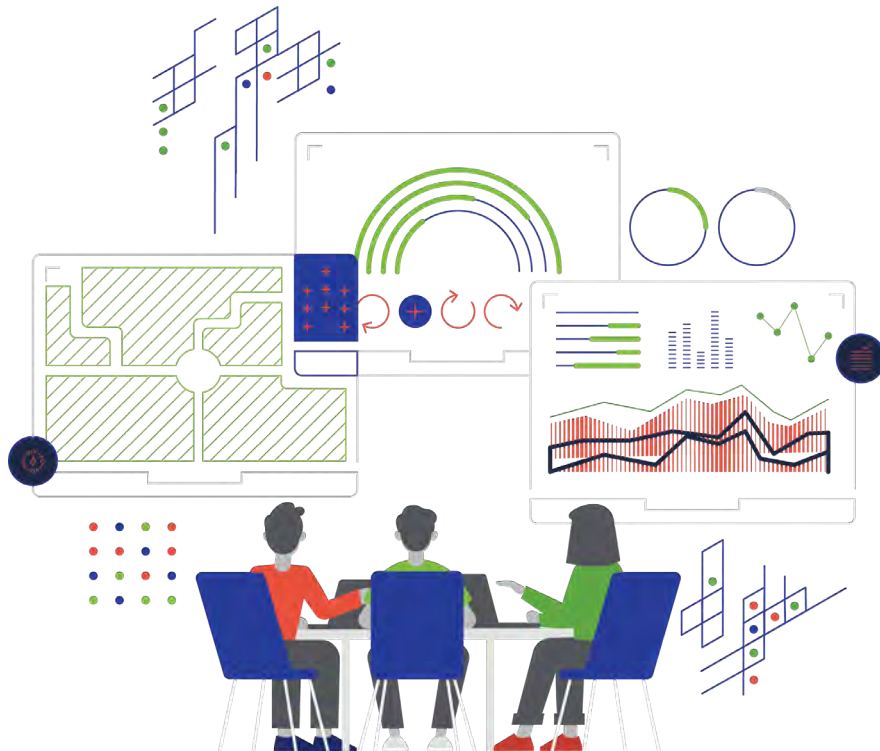
# **Management Summary & Work Plan**



# Management Summary

The FOS team is prepared to deliver a comprehensive solution for the Commonwealth's JOC program through our Simplebid™ platform and services. The services that will be provided include:

- A program needs assessment to understand the Commonwealth's JOC program and create the framework for transition to the Simplebid™ platform.
- Development and implementation of the Simplebid™ unit price catalog and associated technical specifications.
- Implementation of the Simplebid™ platform based on the plan created during the program needs assessment.
- Procurement support for onboarding new or existing JOC contractors into the Commonwealth's JOC program.
- Complete program support, including construction management, for all job orders provided by our program management, cost estimating, construction management, and data analysts in conjunction with our SDB/VBE partners.





# Work Plan

## Program Needs Assessment

[REDACTED]

[REDACTED]

### **CASE STUDY – Multiple Departments**

When setting up our platform for the County of Los Angeles, we faced the challenge of accommodating the varying needs and differences of four separate groups:

- Department of Public Works
- Internal Services Department
- Community Development Authority
- Department of Recreation and Parks

Working together with stakeholders from each department, we adapted and customized our platform to ensure that the proper workflows, data fields, reports, and cost database items were properly implemented to the unique standards and expectations. The result is that users of each department interact with slightly different user interfaces that best fit their needs. We expect to work with the various departments of your team in a similar fashion to achieve the same goal.

# Work Plan

## Unit Price Catalog

Parallel to the transition and implementation planning process, our cost estimating team will optimize our cost database into the unit price catalog that will be the heart of the Commonwealth's JOC program. Maintained by experienced cost estimators that support international design, engineering, and construction, including at risk and design build construction, we hold our data to the highest standard of accuracy. The caliber and geographic reach of our work and exposure associated with building at risk mean we cannot rely upon nationally published cost data to support our firm.

Developing and maintaining the regionalized and customized project cost database for the Commonwealth is the responsibility of the CannonDesign cost estimating and specifications departments. Aligning existing specifications to the cost database and developing new items when needed is a critical step in program implementation and support.

[Redacted text block]

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We understand that the UPB's used by the Commonwealth may not simply be regionalized but instead must be localized to specific conditions. Items like this may not be modified using a simple factor and require the local knowledge and expertise offered by our team to ensure complete and accurate UPBs.

We rely on local economic factors, actual contractor bids and costs from new construction and renovation projects, and global economic trends that each have an effect on the unit price of construction tasks.

# Work Plan

[REDACTED]

[REDACTED]

[REDACTED]



# Work Plan

## Technical Specifications

Associated with the Simplebid™ book are technical specifications to describe the general means and methods suggested to complete an identified unit of construction work. Our cost estimating team works with our specifications team on design, engineering, and construction work throughout the nation. These groups have worked together for decades, and represent over 100 years' experience. Their coordination ensures that task descriptions and specifications associated with each line item in the unit price catalog is clear, concise, and effective for executing ordered work.

## Implementation & Training

Following software environment setup, unit price catalog, approval, and program management document approval, we will upload the unit price catalog into the Simplebid™ platform and make the program ready for live operation. The final internal implementation step before soliciting bids from contractors is user training. FOS employs an in-house software implementation and training group that offers continuous and on-demand training for software functionality through in-person and online classes. The same level of training provided for the Commonwealth users is offered to the contractors eventually selected through competitive solicitation. This group maintains up to date documentation and training materials that are updated upon each software version release. Additionally, our in-house cost estimators and construction managers can provide JOC program management training and guidance. It is expected that these activities will be an integral part of our ongoing support of the Commonwealth's JOC program.

## Program Management & Facilitation

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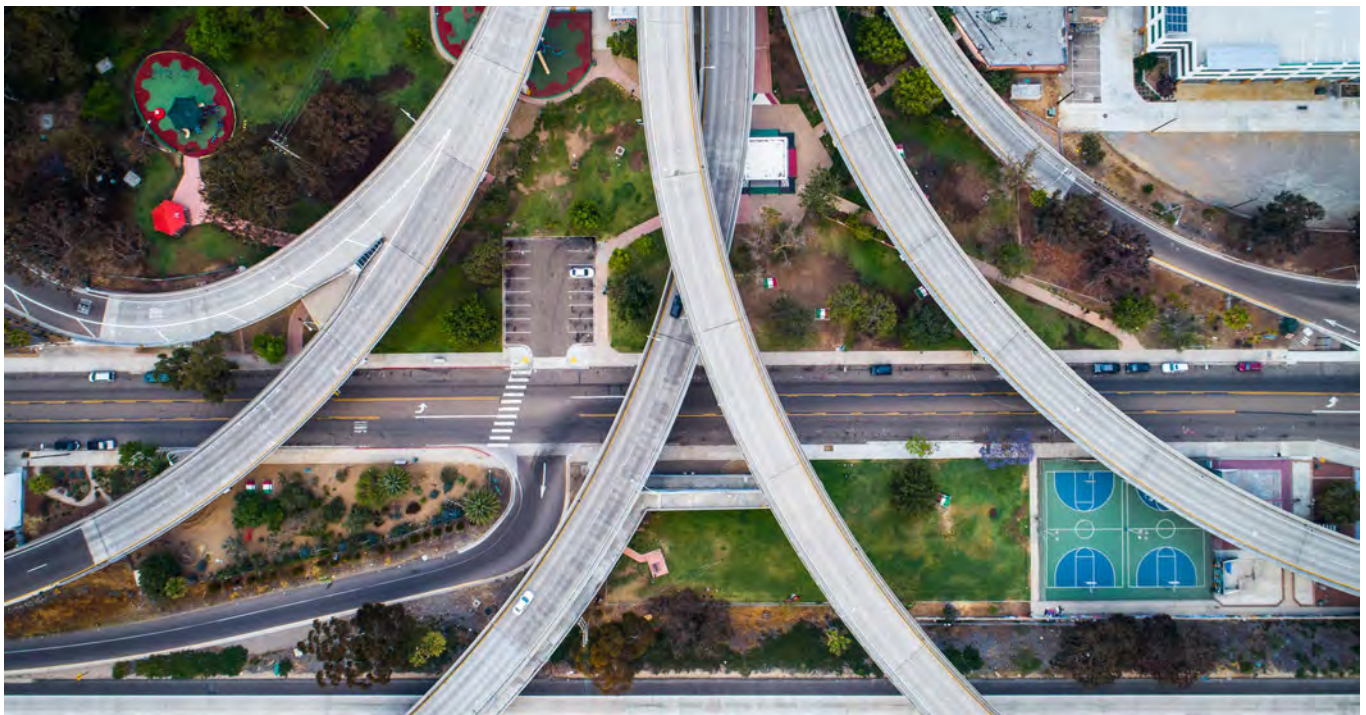


# Work Plan

## Construction Management

With more than 45+ years of construction management experience, we partner with clients, design teams, and builders to deliver projects that set new standards in quality, cost savings, and timeliness. Our construction management team has overseen hundreds of projects throughout the U.S., tailoring our approach each time to achieve client goals. From JOC project and construction management to custom programs that help clients manage complex projects for their capital programs, we provide comprehensive services for clients to manage construction tasks including strategic planning, design and construction all the way through occupancy. Serving as an extension of our clients' staff, we oversee the award of contracts, develop budgets and schedules, procure materials, maintain quality control, coordinate the project team and worksite, and support the overall success of projects.

As a trusted advisor to the owner, we assume a proactive stance to anticipate potential problems and develop solutions before the program is adversely affected. In addition to managing single projects, we are skilled at managing groups of concurrent and related projects within a program —interfacing with all project team members, tracking issues, and facilitating and expediting solutions. In everything we do, we act as an extension of our clients' staff, representing and protecting their interests first. In addition to our oversight and management of these construction management activities, we will look to our SDB partners to help fulfill these services to the Commonwealth. We will mentor and train their staff on the Commonwealth's procurement procedures and the use of our platform to facilitate the process.



# Work Plan

## Information Management System



[Redacted text block]

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# Work Plan

[Redacted]

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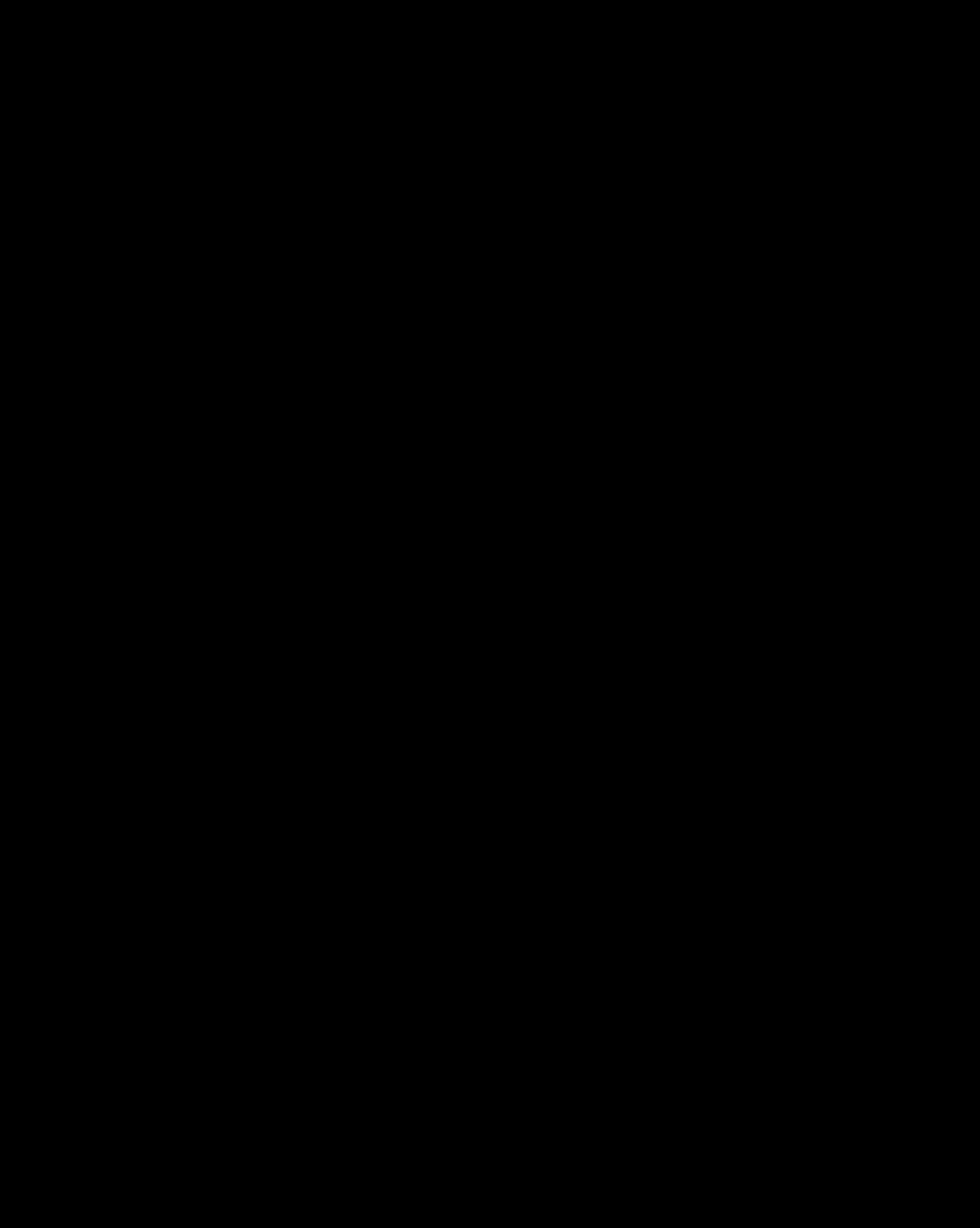
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# Work Plan

[Redacted content]

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# Software System Overview



# Work Plan

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# Work Plan

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# Work Plan

[REDACTED]

There is an unlimited amount of data storage for files and communication. Our system is designed to be the central data repository for all things related to the Commonwealth's JOC program.

[REDACTED]

## Change Orders

If a change order needs to be issued during a project, a new scope of work is developed to accommodate the necessary changes. This scope of work and the pricing proposal process follows the same workflow as the original job order. [REDACTED]

[REDACTED]

## System Maintenance

The Support Staff will provide maintenance and continued management and operation services for the program as outlined in our cost proposal. It is our team's responsibility to ensure that the program is available, effective, and useful at all times. We understand the need for system availability. We rely on our solutions to do business, and we fully recognize the need and expectations set forth in the request. The support staff will provide continued management and operation services throughout the life of the contract. The support team will provide all goods, services and other work necessary in order to maintain the program to ensure performance and reliability. As part of maintenance services, our support team will (a) correct any and all errors, including compatibility issues among program components themselves and/or among program components (b) provide updates and version releases to the program, (c) provide operational support for the program, and (d) provide training, materials and other implementation support for program updates and versions. The support team will provide the Commonwealth with written notice no later than ninety (90) days before the scheduled implementation of any updates that will impact existing functionality and business processes.

[REDACTED]



## Program & Technical Support

Throughout the contract duration, FOS is responsible for continuous support and maintenance of the JOC program and Simplebid™ Rapid Procurement Platform.

Access to unlimited toll-free over the phone software support is provided. Updates and additional functionality to the software are implemented as they are developed at no cost to the Commonwealth. The UPB, technical specifications, and JOC program documents are updated to reflect market conditions and additional cost items based on the Commonwealth's needs. These system support and maintenance costs are included in the service subscription.

We will provide training to all users based on their role and experience. Our training program includes onsite classroom training for Commonwealth stakeholders, onsite introductory education for perspective contractors, support for both the Commonwealth and contractors throughout the procurement process, onsite classroom training for contractors post award of a master JOC contract, and ongoing onsite/online refresher training for all stakeholders.

Our training curriculum includes but is not limited to:

- JOC General Education
- Using the Simplebid™ Book
- Contract Administration
- Price Proposal Development
- Price Proposal Review
- Program Reporting and Auditing

In addition, training resources are available online through the Simplebid™ software platform, and published user manuals and training guides are provided to all users.

Our training program involves self-evaluation. Not only do we evaluate stakeholders during and after training sessions to ensure proficiency, we ask users to evaluate how effective our curriculum and training methodologies are. If we find that our methods are not providing the most effective education to stakeholders, we modify our approach and provide additional training until users are satisfied and proficient.





# Prior Experience



# Firm Profile (CannonDesign).



We began in 1945 with one person and a vision - that integrated design could achieve great results for our clients. Now, almost a century later, that vision echoes in all our work. We've grown from a single small office to a global, award-winning, full-service architectural, engineering, construction, and facility management consulting firm.

CannonDesign has developed an international reputation for design excellence, technological innovation, and unsurpassed client service. Our wide-ranging service offerings allow us to provide organizations with comprehensive solutions that address specific needs, goals, and challenges.



## People

Firm wide, we have almost 1,000 employees on staff. **We have no geographic boundaries - we hand pick custom teams from our global network for the specific needs of each project.**

Our vision emphasizes core values of integrity, teamwork, transparency, sustainability, and excellence. We differ from other multi-office design firms in our thinking, work ethic, and organization. We are an interdisciplinary firm, integrating all the skills needed to deliver innovative solutions.



## Place

Our submitting entity, Facility Optimization Solutions LLC, is a part of the larger CannonDesign firm and although the entity was only recently formed, CannonDesign has been in business for over 75 years.

### Offices:

We have 17 offices strategically placed across the country (Ann Arbor, Baltimore, Boston, Buffalo, Chicago, Columbus, Dallas, Denver, Houston, Irvine, Los Angeles, New York, Pittsburgh, San Diego, St. Louis, Toronto, & Washington DC).



## Purpose

We are guided by our common vision and purpose: "Together, we create design solutions to the greatest challenges facing our clients and society."

This shared vision shapes the way we think and work. Our clients are our most important partners. By aligning ourselves with our client's vision, we are able to address their challenges in multiple dimensions, drawing on our deeply-resourced, multi-disciplinary skill base.

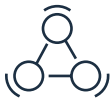
\*Per the RFP, we do not have any commitments or potential commitments that may impact our ability to perform the Contract, if awarded.

# Firm Profile (FOS).



Since 2009, Facility Optimization Solutions (FOS) of CannonDesign has been providing facility management and strategic capital planning consulting to meet the ongoing stewardship needs of our clients.

Throughout the life-cycle of an asset portfolio, the time and capital spent on operations and maintenance far exceeds design and construction costs. We crafted a unique, interdisciplinary team of subject matter experts that is an industry leader in providing facility condition assessments, facility management optimization, and custom software solutions to help our clients understand and extend physical asset life-cycles.



## Data-Driven Solutions

We leverage our diverse resources to develop innovative solutions for each of our clients' unique needs. Our expertise in physical asset management includes:

- Job order contracting (JOC) software & program management
- Facility condition assessments
- Capital improvement planning
- Capital asset and project management software
- Asset inventory & maintenance planning
- Energy audits
- Forensic & feasibility assessments



## World Ranked

# #1 Globally

Facility Management Services by an AE firm  
-World Architecture 100, 2021

# +600 m

Square footage managed using our software platforms

# 100%

Client satisfaction rating & reported ROI following implementation of our immediate recommendations

## Prior Experience

Job Order Contracting (JOC)  
Software Platform

PROJECT DATES:  
2018 - Present

### KEY PERSONNEL:

Project Principal - Joseph Cassata  
Project Director - Mark Schrock  
Process Leader - Kara Mecomonaco  
Lead Software Developer - Cody Becker

### REFERENCE CONTACT INFORMATION:

Brian Soria, Contracting Unit Head  
LA County Department of Public Works  
7601 E Imperial Highway, 500, Room 103  
Downey, CA 90242  
bsoria@dpw.lacounty.gov  
626.458.2588

## County of Los Angeles



In late 2018, FOS began development of a web-based job order contracting (JOC) software platform with project cost and specifications database for the County of Los Angeles, Department of Public Works.

Their need for greater oversight, more expedited job order process, superior reporting capability, and overall better experience for owners and contractors led to our solution, the Simplebid™ JOC platform.

Our solution built organically for the County has passed user acceptance testing and is now in the final stages of implementation. We are pleased to share that feedback received from the County has been positive regarding our people, process, and delivered solution.

A guiding principal within FOS is an unwavering focus to complete our work on time, on budget, with a commitment to exceeding the needs and goals of our clients. Our success is measured by delivering useful and meaningful solutions that have a positive impact on the stakeholders they serve.

This project was completed on time and on budget.

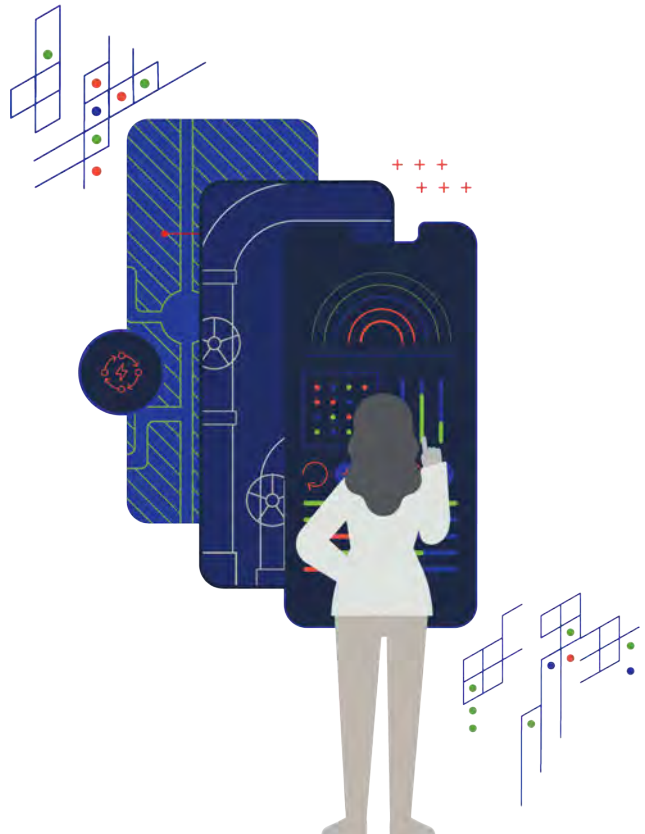
# Awarded Job Order Contracting Software & Support Services Contracts

## The University of California System

In late 2020, FOS was awarded a contract with the University of California System for the provision of our Simplebid™ platform and related services. This fully executed contract allows FOS to provide our services to any of the UC System campuses for support and maintenance of their JOC programs. The UC System has a total annual JOC spend of nearly \$40 million.

## Chicago Public Schools

Chicago Public Schools has awarded FOS as the successful proposer to transition their entire JOC program over to the Simplebid™ platform. Approved by the CPS Board of Directors, a contract with CPS is currently pending. Once executed, FOS will begin the program needs assessment and transition process for the JOC program, which has an annual spend of nearly \$15 million.





# Current & Completed Projects

Our clients are in diverse places. Our team's experience includes:



## Municipal / Civic

Alameda County  
Albright Knox Art Gallery  
CannonDesign WNY  
Catholic Diocese of Pittsburgh  
**Charlotte County**  
City of Buffalo  
City of Sacramento  
City of San Bernardino  
City of Ottawa  
**City of Santa Rosa**  
City of Urbana  
**County of Los Angeles**  
County of San Luis Obispo  
Covidien  
Dormitory Authority of the State of NY  
EMD Millipore (MERCK)  
Follette  
Grand Island Fire Department  
Harrison Hot Springs  
Houston First Corporation  
Kalaloch Lodge  
Massport  
Mathewson McCarthy Baseball (Pro Bono)  
New York Public Libraries  
Niagara Falls International Airport  
**Orange County**  
Pittsburgh Sports & Exhibition  
Rehoboth Beach Country Club  
Siemens - Frito Lay  
Sports and Exhibition Authority  
St Joseph University Parish  
Strater Hotel  
The Archdiocese of Hartford  
Town of Grand Island  
Town of Perinton  
Town of Yarmouth  
Veteran Affairs  
YMCA of Pittsburgh  
Salvation Army  
West Yellowstone



## Higher Ed

**A.T. Still University**  
Auraria Higher Education Center  
Bentley University  
Boston College  
Buffalo State College  
California State University  
Canisius College  
Carlow University  
College of DuPage  
Cornell University  
CUNY Brooklyn College Jamaica Bay  
**Dickinson College**  
D'Youville College  
Gallaudet University  
Harvard University  
Howard Community College  
Iowa State University  
Kentucky Wesleyan University  
Knox College  
Lehigh University  
Marquette University  
Mississippi University for Women  
Montclair State University  
Nassau Community College  
New York Medical University  
**Pace University**  
Pennsylvania State University  
Prince Georges Community College  
St. Louis University  
The Ohio State University  
University at Buffalo  
**University of Illinois Urbana-Champaign**  
University of Maryland  
University of Michigan  
University of Texas at San Antonio  
University of Victoria  
University of Wisconsin  
Virginia Tech  
Waldorf University Forest City  
Washington & Jefferson College  
Washington and Lee University  
Washington College  
Wellesley College



## K12

Addison School District  
Amherst Central School District  
27J Schools  
Baltimore County Public Schools  
Buffalo City School District  
Burbank Schools  
**Brevard County Schools**  
Catholic Diocese of Pittsburgh  
Central Community School System  
Cherry Creek Schools  
Chicago City Schools  
Dunkirk City Schools  
Denver Public Schools  
Depew Union Free School District  
Elmira City Schools  
Fontbonne Univ. JFK High School  
Grand Island Central Schools  
Hempstead Union Free School District  
Lincolnshire Prairie View Schools  
Maryvale Union Free Schools  
Newfane Central Schools  
Niagara Falls City Schools  
Niagara Wheatfield CSD  
Nippersink School District  
**Perkins School for the Blind**  
Poughkeepsie City Schools  
Prairie Grove CSD 46  
Randolph Central Schools  
Regina Dominican High School  
Roosevelt Union Free School District  
Schenectady City Schools  
**Santa Monica Malibu Unified School District**  
South Orangetown Central  
Stephenson County School District  
UNO Charter School Network  
West Seneca School District  
Yonkers Public School



## Healthcare

Advocate Health Care  
Allegheny Health Network  
Allina Health  
Anne Arundel Health System  
Arnot St. Joseph's Hospital Transitional Plan  
Arnot Health Care  
Baptist Health South FL  
**Bayhealth Medical Center**  
Children's Medical Center Dallas  
DASNY Creedmor Building 70  
Eastern Maine Health System  
Honeywell Building Solutions (Woodstock Hospital)  
Joseph Brant Hospital  
Kern Medical Center  
Niagara Falls Memorial Medical Center  
Niagara Health Systems North York General Hospital  
Penn State College of Medicine  
Hershey Medical Center  
St. Joseph's Healthcare  
St. Louis University Medical Center  
Texas Health and Human Services Commission (HHSC)  
Toronto East General Hospital  
Trillium Health Partners  
Trinity Health  
Truman Medical Center  
**University of Cincinnati Medical Center**  
University of Kansas Health System  
University of Maryland Medical Center - St. Joseph Campus  
University of Wisconsin Health  
UPMC - J. Blair Memorial Hospital  
Upstate Medical Center  
Veteran Affairs Central Labs,  
Denver, Fresno, Palo Alto  
Virginia Commonwealth University Health System

FOS performed facility condition assessments and related strategic capital planning projects for each of the listed clients. All projects used our FOScore® software to accomplish the data collection, organization, analysis, project development, and capital plan compilations. **Clients highlighted in orange represent clients who are users of our software.**





**K-12**



**CIVIC**



**HEALTHCARE**



**HIGHER ED**

**For the past 6 years,  
we have achieved a 100%  
client satisfaction rating.**



# Personnel

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**Project Leadership**

**Joe Cassata, RA, NCARB**  
FOS President

**Mark Schrock, CCM**  
Senior JOC Program Manager

**Bill Buch**  
Project Implementation Leader

**Cost & Specifications**

**William Grill**  
Director of Cost Estimating

**David Hough**  
Cost Modeling Specialist

**Frank Sturniolo, AIA, CDT, LEED**  
Director of Specifications

**Implementation & Development**

**Kara-Ann Mecomonaco**  
Software Process Leader

**Matthew Clough**  
Programmer

**Andrew Larson**  
Technical Support / Training

**Program & Construction Management**

Program Management, Cost, &  
Specifications Team

Qualified SDB/VBE Partners

Software Support  
Team

**Support from nearly 1,000 CannonDesign employees  
representing numerous skill-sets & disciplines**

# Joe Cassata

RA, NCARB

## FOS of CannonDesign President

My role on any project is to be at the intersection and push the team down the right path. I want my team to always be thinking about what we can do to tilt the status quo to solve the next problem and help our clients be the best at what they do in the best facilities.

It is our job to connect the dots. Organizations today are interested in bringing people and ideas together in a way that was not previously feasible. We deliver the tools to create and enhance these connections.

Joe leads the FOS of CannonDesign practice. He has over 30 years of professional experience as a facilities architect, project manager and principal, combining expertise in technical documentation, project organization, and contract administration in education, healthcare, government, and corporate projects.



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### EDUCATION

BA, Environmental Design,  
State University of New York at Buffalo

MA, Architecture,  
State University of New York at Buffalo

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### PROFESSIONAL REGISTRATIONS

Registered Architect, NY

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### YEARS OF EXPERIENCE / YEARS WITH FOS

30 / 17

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### PROJECT EXPERIENCE

City of San Bernardino • LA County • Alameda County  
• Orange County • Santa Monica Malibu Unified School  
District • City of Santa Rosa • City of Sacramento

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### COMMITMENT TO THE COMMONWEALTH

Joe will provide total project oversight and confirm client expectations are met and exceeded in our development and implementation of the JOC program.



# Mark Schrock

CCM, ASSOC. AIA

## Senior JOC Program Manager

As a senior vice president and leader of our product solutions group which includes our Simplebid™ service line, Mark will provide senior level leadership integrating Commonwealth stakeholders with our staff to create a single collaborative team throughout the program development and implementation phases.

Mark's expertise in construction project management includes education, healthcare, government, office, and corporate projects. With 30 plus years of commercial construction experience, he has extensive knowledge and proven leadership in building construction that is further complemented by delivery of more than 15 years of architecturally led Design/Build projects.



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### EDUCATION

Certificate Construction Management,  
California State Polytechnic University,  
College Extended University

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### PROFESSIONAL AFFILIATIONS

American Institute of Architects

Project Management Institute

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### YEARS OF EXPERIENCE / YEARS WITH FOS

32 / 9

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### PROJECT EXPERIENCE

City of San Bernardino • LA County • Alameda County  
• Orange County • Santa Monica Malibu Unified School  
District • City of Santa Rosa • City of Sacramento

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### COMMITMENT TO THE COMMONWEALTH

Once the Commonwealth's JOC program is operational, Mark will continue to provide overall program leadership working with our support groups ensuring your expectations are exceeded.

# William Buch

CCM, ASSOC. AIA

## Project Implementation Leader

Bill is an experienced and detail-oriented cost estimator and constructor, with 25 years of practical leadership and multi-trade journeyman level field work. He is proficient in architecturally led design/build construction including office and field management of architectural and construction staff and project teams. Bill specializes in estimation, vendor procurement, and construction project management with diverse experience in commercial vertical structures, as well as site and civil horizontal construction. With a proven track record of successful estimation and management, Bill is well-suited to exceed our clients' expectations.

Bill will be the day-to-day contact leading and administering project tasks to ensure the complete and timely implementation of the Commonwealth's JOC program. Bill will coordinate all program development tasks including the program needs assessment process, unit price book development, functionality and workflow customization, and related tasks.



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### PROFESSIONAL REGISTRATIONS

Licensed General Contractor, CA

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### YEARS OF EXPERIENCE / YEARS WITH FOS

26 / 3

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### PROJECT EXPERIENCE

LA County • Santa Monica Malibu Unified School District (SMMUSD) • Brevard County • Cherry Creek School District • 27J School District • Gallaudet University • Baltimore County Public Schools

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### COMMITMENT TO THE COMMONWEALTH

Following program development and implementation, Bill will provide ongoing support leadership to the Commonwealth including ancillary JOC services, reporting and auditing support, software support, UPB new item development, and UPB published updates, at a minimum.



# Kara-Ann Mecomonaco

## Software Process Leader

Influenced by her software development, support, and leadership experience, Kara is an information technology specialist focused on custom software reporting mechanisms for diverse clients with complex portfolios. Her work spans all key phases of the design process and she takes pride in helping our clients think about tech utilization in exciting new ways. Her passion, ideas, and skills easily translate to the on-site training she provides.

**Kara has extensive experience in the implementation and ongoing maintenance and support of all instances of FOS software installations.**



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### EDUCATION

BA Computer Information Systems, State University of New York at Fredonia

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### YEARS OF EXPERIENCE / YEARS WITH FOS

5 / 4

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### PROJECT EXPERIENCE

LA County • California State University • City of Palo Alto • City of Sacramento • Alameda County • Orange County

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### COMMITMENT TO THE COMMONWEALTH

Kara coordinates our software development and support teams. She will enable our software support and report development resources to be continually available to the Commonwealth throughout the life of our contract.



# Matt Clough

## Programmer

Experienced in a variety of software languages, environments, and platforms, Matt is adept at working with clients to solve challenges through software application development. Matt's experience is specific to facilities asset management solutions in markets including higher education, PK-12, healthcare, aviation, defense, and more. His robust experience with database architecture, web-based user interfaces, data analysis, and reporting will ensure that all software specifications for the project are met and exceeded.

Matt brings technical expertise, helping clients bridge the gap between asset data collection and data analysis. He strives to pave a path forward to implement innovative solutions. By developing data visualizations and reporting, Matt ensures our clients understand what their needs are to make strategic, informed decisions for future planning.



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### EDUCATION

BBA, Information Systems,  
University of Texas at San Antonio

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### YEARS OF EXPERIENCE / YEARS WITH FOS

12 / 2

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### PROJECT EXPERIENCE

LA County • Confidential Higher Education Client •  
Allegheny Health Network • Baltimore County Public  
Schools • Tennessee Software Solutions

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### COMMITMENT TO THE COMMONWEALTH

Matt will provide programming services and confirm client expectations are met and exceeded in our development and implementation of the JOC program.

# William Grill

CPE, LEED AP BD + C

## Director of Cost Estimating

Bill is the director of our in-house cost estimating group, a team of interdisciplinary professionals maintaining a robust cost database refined over the past forty years. Bill and his team provide ongoing database support to ensure the UPB reflects all local, regional, national, and global economic conditions. Bill has experience in all markets for projects ranging from small renovations to major \$1B+ new construction.

As an integral point of leadership and guidance for the JOC cost estimating group, Bill ensures that all of our cost data is up to date, controlled for quality, and that long-term market and local conditions are understood and predicted for the benefit of all cost data users internally and externally.



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### EDUCATION

BS Mechanical Engineering, Alfred University

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### PROFESSIONAL AFFILIATIONS

Alpha Lambda Delta Honor Society

Tau Beta Pi Engineering Honor Society

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### YEARS OF EXPERIENCE / YEARS WITH FOS

21 / 19

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### PROJECT EXPERIENCE

California State University • Solano County • Charlotte County • Houston First Corporation • VA Fresno • Santa Clara University • Schools of the Sacred Heart San Francisco

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### COMMITMENT TO THE COMMONWEALTH

Bill will provide leadership and oversight to the cost estimating team ensuring the accuracy and quality of our cost database in the pursuit of continuous satisfaction during the Commonwealth's execution of the JOC program.

# David Hough

## Cost Modeling Specialist

David works in parallel to Bill Buch and Bill Grill's cost estimating group to work through specific item costing and general cost support for the Commonwealth's project managers and contractors. David's experience in cost models and estimating databases makes him the perfect fit to support the project specific needs of the Commonwealth to provide an exceptional experience using the JOC program.

A firm believer in transparency and effective communication, David consistently delivers results with fewer change orders and ensures users have a complete understanding of requirements.

David's pragmatic and innovative thinking drives him to create client relationships that go beyond meeting and exceeding expectations, preferring a collaborative environment that ensures problems and challenges are addressed in the most value-driven way possible.



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### EDUCATION

BS, Mechanical Engineering,  
Rochester Institute of Technology

AAS, Engineering Science,  
Erie Community College

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### YEARS OF EXPERIENCE / YEARS WITH FOS

32 / 2

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### PROJECT EXPERIENCE

LA County • Confidential Higher Education Client •  
Baltimore County Public Schools

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### COMMITMENT TO THE COMMONWEALTH

David will partner directly with users of the JOC platform, including Commonwealth stakeholders and contractors, to support the use of the cost database and assist with line item additions as they are requested.



# Frank Sturniolo

AIA, CDT, LEED AP

## Director of Specifications

Frank leads the CannonDesign specifications department, an integral piece of the UPB and cost database. Each cost item and assembly that makes up the Simplebid™ Book is associated with a reference specification, developed and maintained by Frank and his team.

Frank helps control and ensure technical quality of projects, developing standards, and training junior staff. He also serves as technical liaison and presenter for CannonDesign Academy.



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### EDUCATION

BPS, Architecture w/ minor in Engineering, State University of New York at Buffalo

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### PROFESSIONAL REGISTRATIONS

Registered Architect, NY, CA, FL, CT  
NCARB

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### PROFESSIONAL AFFILIATIONS

American Institute of Architects

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### YEARS OF EXPERIENCE / YEARS WITH FOS

36 / 18

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### PROJECT EXPERIENCE

LA County • University of California • San Diego State University • University of Maryland • Bayhealth

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### COMMITMENT TO THE COMMONWEALTH

Frank will provide specifications support and oversight to the Commonwealth and our cost estimating department during the development and continued maintenance of the unit price database used to execute the JOC program.

# Andrew Larson

## Program Technical Support / Training

Andrew has shared his talents to project support for a variety of FOS engagements in all markets across the country. He leverages experience in supply chain and client success management to ensure that needs and expectations are met and exceeded throughout the duration of a project. He takes pride in helping clients think about their facilities and capital programs in exciting new ways.

Andrew has provided significant project and implementation maintenance for FOS software clients, ensuring deadline and budget goals are met while providing technical support and training necessary for project success.



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### EDUCATION

BS, Energy Business and Finance - Pennsylvania State University

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### YEARS OF EXPERIENCE / YEARS WITH FOS

7 / 5

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### PROJECT EXPERIENCE

LA County • Orange County • City of San Bernardino • Santa Monica Malibu Unified School District • Brevard County • Cherry Creek School District • City of Urbana • Town of Perinton

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### COMMITMENT TO THE COMMONWEALTH

Andrew will provide ongoing support to both Bill and Kara throughout the development and implementation stages. Additionally, Andrew will provide outreach and education services to perspective JOC contractors during pre-bid seminars and other training engagements.



# Training

A large, dark blue, curved shape that starts from the bottom left and sweeps upwards and to the right, ending at the bottom right corner of the page. It has a smooth, organic edge.

# Training

FOS employs an in-house software implementation and training group that offers continuous and on-demand training for software functionality through in-person and online classes. The same level of training provided for the Commonwealth users is offered to the contractors eventually selected through competitive solicitation. This group maintains up to date documentation and training materials that are updated upon each software version release.

Additionally, our in-house cost estimators and construction managers can provide JOC program management training and guidance. It is expected that these activities will be an integral part of our ongoing support of the Commonwealth's JOC program.

In-person training courses are typically spent in day-long 6-hour sessions of varying curricula. Online training sessions are offered in 2-hour and 4-hour training of similar curricula, often used for refresher courses. A full week of in-person classroom sessions are offered as part of the program implementation.

We will provide training to all users based on their role and experience. Our training program includes onsite classroom training for Commonwealth stakeholders, onsite introductory education for perspective contractors, support for both the Commonwealth and contractors throughout the procurement process, onsite classroom training for contractors post award of a master JOC contract, and ongoing onsite/online refresher training for all stakeholders. Commonwealth stakeholders will include but is not limited to JOC program and project managers, contract administrators, IT staff, and compliance and oversight management if applicable.

The training program generally includes one full week of in-person or virtual classroom sessions for Commonwealth stakeholders, based on the number of individuals requiring training, and 2-3 days of in-person or virtual classroom sessions for selected contractors. Our training curriculum includes but is not limited to:

- JOC General Education
- Using the Simplebid™ Book
- Contract Administration
- Price Proposal Development
- Price Proposal Review
- Program Reporting and Auditing

In addition, training resources are available online through the Simplebid™ software platform, and published user manuals and training guides are provided to all users.

Our training program involves self-evaluation. Not only do we evaluate stakeholders during and after training sessions to ensure proficiency, but we also ask users to evaluate how effective our curriculum and training methodologies are. If we find that our methods are not providing the most effective education to stakeholders, we modify our approach and provide additional training until users are satisfied and proficient.



# Financial Capability







































































































# **Objections & Additions To Standard Contract Terms**

# Objections & Additions To Terms

| Comment # | RFP / IT Terms & Conditions Section         | Objection or Addition  |
|-----------|---|--|
| 1.        | Section IV - 4(B)(3) RFP p.28               | We wish to clarify that our role with respect to the Commonwealth's terms and conditions for design and construction projects does not extend to legal advice.   |
| 2.        | Section IV-4(D) RFP pp. 32-33               | We request to change the word "ensure" to "confirm" in Sections 4(a), 4(b), and 5(c). As is customary, FOS's professional liability carrier covers claims arising from errors or omissions that rise to the level of negligence. Accordingly, where the standard of care is raised higher than this by language that may create a guarantee or a warranty or create uncertainty through the incorporation of the ambiguous concept of "satisfaction", the insurability of such claims may become clouded, thereby potentially impairing the insurance resources that protect the Commonwealth. For that reason, we would seek to insert a standard of care in the final agreement that aligns with industry standard and clarify that this standard is consistently applied throughout the contract. |
| 3.        | IT Terms & Conditions, Section 10           | See comment 2. We seek to clarify that the requirements of this section are subject to the standard of care set forth in Section 63(c)   |
| 4.        | IT Terms & Conditions, Section 12(e)        | See attached Simplebid™ Order Form and End User License Agreement (EULA). The terms of the EULA govern use of the Simplebid™ platform and cost book. To the extent there is conflict between the Contract and the Simplebid™ Order Form and EULA would govern.   |
| 5.        | IT Terms & Conditions, Section 20(a)(ii)    | See comment 2. We seek to change "satisfactorily performed" to "performed in accordance with this Contract."   |
| 6.        | IT Terms & Conditions, Section 23(b)(ii)(3) | FOS's professional liability carrier covers losses to the proportionate extent that FOS is found liable in dispute resolution for damages caused by negligent errors or omissions. Therefore, in order to protect the insurability of the services to be rendered by FOS, we request that the indemnification be limited to the proportionate extent of losses caused by negligent errors and omissions of FOS and that FOS's responsibility for costs associated with the project upon the rejection of Supplies and after termination for default be subject to a finding of negligence on the part of FOS in a binding dispute resolution proceeding.   |
| 7.        | IT Terms & Conditions, Section 28(a)*ii)    | See comment 2. We seek to replace "satisfactorily rendered" with "rendered in accordance with this Contract."  |



| Comment # | RFP / IT Terms & Conditions Section  | Objection or Addition  |
|-----------|--------------------------------------|--|
| 8.        | IT Terms & Conditions, Section 28(c) | See comment 6. In addition, we seek to delete the reference to “liquidated damages.”   |
| 9.        | IT Terms & Conditions, Section 31(c) | We request that the last paragraph of this section be subject to Section 46.   |
| 10.       | IT Terms & Conditions, Section 39(a) | See comment 6. We seek to insert the word “negligent” before the word “activities” in line 2. Further, as is typical, FOS’s professional liability carrier will not reimburse defense costs of an indemnified party until liability for negligence is established, and only to the proportionate extent of the finding of negligence. The inclusion of a duty to defend and pay defense costs of an indemnified party on a current basis clouds the insurability of claims for negligent errors or omissions. In order to protect the insurability of the services to be rendered by FOS, we request that the last two sentences of Section 39(a) be deleted in their entirety.  |
| 11.       | IT Terms & Conditions, Section 42(a) | We request to remove the word “patent” from line 4 and insert the word “reasonable” before “attorneys fees” in line 23.  |
| 12.       | IT Terms & Conditions, Section 44(b) | See comment 4. The Simplebid™ Order Form and EULA govern use of the Simplebid™ software and associated cost book. We would request to update Section 44(b) to reflect this. The Commonwealth would not be permitted to use the Simplebid™ Software and associated cost book upon expiration or termination for default to allow the Commonwealth or a third party to complete work under the Contract.   |
| 13.       | IT Terms & Conditions, Section 46    | See comment 4. The Simplebid™ Order Form and EULA govern use of the Simplebid™ software and associated cost book, and the term of the engagement will be set forth in the Order Form. We would request to clarify that Contractor will retain all rights in and to the Simplebid™ Software and associated cost book, including any improvements, customization, modifications or knowledge developed while performing the services, and in any working papers compiled in connection with the services (but not the Commonwealth Information reflected in them), including any copyrights, patents, and/or trademarks therein or associated therewith. The Simplebid™ software and associated cost book will not be considered “works made for hire” and copyrights/inventions will not be assigned to the Commonwealth. Further, FOS would not make a warranty against non-infringement. Finally, we wish to clarify that the copyright notice for the Simplebid™ software and associated cost book will be in the name of FOS, not the Commonwealth. |
| 14.       | IT Terms & Conditions, Section 47    | We would like to clarify that FOS does not intend to share the source code for the Simplebid™ software and associated cost book.   |

# Objections & Additions To Terms

| Comment # | RFP / IT Terms & Conditions Section | Objection or Addition   |
|-----------|-------------------------------------|---|
| 15.       | IT Terms & Conditions, Section 63.  | See comment 2. FOS will provide services in accordance within industry standards, but it will not agree to make warranties with regard to the services. We'd also like insert the following language: "Notwithstanding any other term in this Contract, all services rendered by the Contractor will be governed by this standard of care." |
| 16.       | IT Terms & Conditions, Section 64.  | We request to delete all terms regarding Liquidated Damages.  |
| 17.       | IT Terms & Conditions, Section 72.  | See comment 4. We seek to incorporate a reference to the Simplebid™ Order Form and EULA into this section.  |
| 18.       | IT Terms & Conditions, Exhibit B.   | See comment 4. We would seek to replace this Exhibit with the Simplebid™ Order Form and EULA.   |

## Appendix D

### Trade Secret/Confidential Proprietary Information Notice

**Instructions:**

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

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

**Name of submitting party:**

**Contact information for submitting party:**

FOS of CannonDesign  
Joe Cassata

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

Bid Proposal for RFP DGS A-2020-001-JOC-Program Consultant-Rebid

**Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g. response to bid #12345, application for grant XYZ being offered by the Department of Health, documents required to be submitted under law ABC)**

Response to bid RFP DGS A-2020-001-JOC-Program Consultant-Rebid

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

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

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

| <u>Page Number</u> | <u>Description</u>  | <u>Explanation</u>  |
|--------------------|---|---|
| 6-25               | Tabs titled “Statement of Problem” and “Management Summary and Work Plan” | The content of these tabs contains considerable amounts of information related to our business processes and software products, entitled the Simplebid™ JOC platform and related services. These are considered trade secrets and may not be disclosed. |
| 48-93              | Tab titled “Financial Capability”   | These pages contain confidential financial information about our company.:  |
| 104-107            | Tabs titled “Objections to IT Terms and Conditions”                       | These pages contain proprietary information about our Simplebid™ software platform.   |
|                    |   |   |
|                    |   |   |
|                    |   |   |
|                    |   |   |

## Acknowledgment

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

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

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

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

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



Joe Cassata, RA, NCARB

3/5/2021

Signature

Title

Date

**APPENDIX H**  
**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, Joe Cassata, RA, NCARB [title] of Facility Optimization Solutions, LLC [name of Contractor] a Delaware [place of incorporation] corporation or other legal entity, ("Contractor") located at 50 Fountain Plaza, Buffalo NY 14202 [address], having a Social Security or Federal Identification Number of [REDACTED], do hereby certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: 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:

Facility Optimization Solutions LLC

[REDACTED] 3/5/2021  
Signature/Date

[REDACTED] 3/5/2021  
Signature/Date

Darra Kubera  
Printed Name/Title

Joe Cassata, RA, NCARB  
Printed Name/Title

**APPENDIX J**

**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 Certified Small Business) at the beginning of each contract year and upon each contract renewal date.**

**If you are asserting that your firm is a Department of General Services Certified Small Business, provide an active Department of General Services Small Business Certification.**

Facility Optimization Solutions LLC

\_\_\_\_\_  
Name

\_\_\_\_\_  
3/5/2021

\_\_\_\_\_  
Signature/Date

Joe Cassata, RA, NCARB

\_\_\_\_\_  
Printed Name/Title



FOS of CannonDesign does not have any specific objections to your IT Terms and Conditions. If selected, we ask that the Commonwealth allow us to discuss the IT Terms and Conditions and ensure that they are appropriate for the nature of software and services that are being provided. Use of the Simplebid™ platform is subject to our end user license agreement (EULA) which is provided on the following pages.



### **Simplebid™ End User License Agreement**

Your use of, and access to, the Simplebid™ job order contracting software, including the Simplebid cost book ("Cost Book") and/or other related products (collectively, the "Software"), and the features, functions, and services offered through the Software (collectively, the "Services"), is subject to Your prior acceptance of this End User License Agreement ("EULA"), as may be amended from time to time by Facility Optimization Solutions, LLC ("FOS" we," or "us").

**Scope of License.** Subject to the terms and conditions contained herein, FOS grants You a limited, revocable, non-exclusive, non-transferable license to use the Software subject to the terms of this EULA only for Your limited internal business purposes as specifically requested by the entity/agency running the job order contracting program that You are participating in (the "Entity/Agency") to provide job order contract proposals and supporting documents exclusively to the Entity/Agency (the "License"). If You and FOS have executed an Order Form for the Simplebid Software ("Order Form"), the License is also subject to the terms of the Order Form. This License is subject to the following restrictions, in addition to such other restrictions as may be contained in the Order Form or the Privacy Policy:

- a. You will not permit any person other than Yourself to access and use the Software and/or Services;
- b. You will not use the Software or Services for any purpose other than Your internal business purposes only and only for the Entity/Agency;
- c. You may not resell, sublicense, transfer, re-distribute, allow access to or otherwise provide or make available for any purpose any component of the Software to any person, firm or entity except as expressly set forth herein;
- d. You may not and may not permit or authorize any third party to, alter, reverse engineer, disassemble, decompile, circumvent or disable any code, feature or security or technologic measure that effectively controls access to, the Software, or otherwise engage in any conduct designed or intended to interfere with the operation of the Software;
- e. You shall not, and shall cause the Authorized Users not to, (i) use the Software and/or Services to store or transmit computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, routines, files, scripts, agents or programs, (ii) use the Software and/or Services to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the privacy or intellectual property rights of any third party, (iii) access or use the Software and/or Services for any benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive products or services, (iv) sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon, the Software and/or Services, (v) interfere with or disrupt the integrity or performance of the Software and/or Services or third-party data contained therein, (vi) attempt to gain unauthorized access to the Software and/or Services or any associated systems or networks or (vii) modify, make derivative works of, disassemble, decompile or reverse engineer the Software and/or Services or any component thereof.
- f. You are solely responsible for the use and security of Your and Your Authorized Users own computers, hardware, and services used to access the Software and/or Services.

**DISCLAIMER.** FOS is not responsible for adjustment factors used in the Software, knowledge of construction cost estimating, unethical use or exploitation of the Software by any party or harm that may result from use of the Software. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY OF THIS EULA, THE ORDER FORM, OR THE PRIVACY POLICY, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, FOS HEREBY DISCLAIMS ALL WARRANTIES OF ANY TYPE, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND ANY COST BOOK DATA INCLUDED IN THE SOFTWARE,



INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR ORDINARY PURPOSE, NONINFRINGEMENT, MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, FEATURES, PERFORMANCE LEVELS, SUPPORT RESOURCES, AND FREEDOM FROM COMPUTER VIRUS. TO THE EXTENT A WARRANTY MAY NOT BE DISCLAIMED AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM REQUIRED UNDER SUCH LAW. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY FOS AND/OR ITS AGENTS OR EMPLOYEES, SHALL CREATE A WARRANTY. FOS DOES NOT WARRANT THAT THE SOFTWARE WILL MEET ALL YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL SOFTWARE DEFECTS WILL BE CORRECTED.

Ownership of Software. The Software, including the Cost Book, contains copyrighted material, trademarks and other intellectual property that is owned or licensed by FOS. FOS retains all title, interest, ownership rights and intellectual property rights in and to the Software and/or Services and reserves all rights not expressly granted to You in this EULA. The Software is licensed to You, not sold.

Updates. FOS may, from time to time, develop new versions, patches, bug fixes, updates, upgrades and other modifications to improve the Software and/or Services (“Updates”). These may be automatically installed and/or released without providing any additional notice to, or consent from, You or Your Authorized Users. All Updates are subject to the terms of this EULA.

Third Party Software. Some components of the Software or Services (whether developed by FOS, our affiliates or third parties) (the “Third-Party Software”) may be governed by separate licenses. Your license rights with respect to Third-Party Software are defined by the applicable Third-Party Software license, and nothing in this EULA will restrict, limit or otherwise affect any rights or obligations you may have, or conditions to which you may be subject under such Third-Party Software licenses. You agree to be bound by and subject to the terms and conditions of each applicable Third-Party Software license. If you do not agree to be bound by and subject to the terms and conditions of each applicable Third-Party Software license, You must terminate this EULA by uninstalling and destroying all copies of the Software that are in Your and Your Authorized Users possession or control. If our rights from a licensor of Third-Party Software are limited, suspended or terminated for any reason, Your rights will also be so limited, suspended or terminated.

For U.S. Government End Users. The Software is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Software is provided to U.S. Government End Users only as a commercial end item and with only those rights as are granted to all other customers pursuant to the terms and conditions herein.

Export Restrictions. The Software, Services and related technologies are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and regulations and acknowledge that you have the responsibility to obtain authorization to export, re-export, or import the Software and related technology, as may be required. You will indemnify and hold FOS harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney’s fees) arising from or relating to any breach by You and/or Your Users in connection with this paragraph.

Limitation of Liability. FOS’s liability under this EULA in connection with any claim arising out of or relating to the License, Software and/or Services any provided in connection with this EULA shall be limited to the lesser of the amount of Your actual direct damages or either (i) the amount of the License Fees paid to FOS under the applicable Order Form, if You have executed an Order Form, or (ii) \$500, if you have not executed an Order Form. Your right to monetary damages in such amount shall be exclusive of all other remedies which You may have at law or in equity against FOS, any affiliate or subsidiary of FOS, or any officer, director, shareholder, employee, consultant, agent, successor, or assign of FOS.

Account; Passwords. To access and use the Software and/or the Services, you must register an account with FOS (the “Account”). You shall only use the username issued to You by FOS in connection with the Account, except as authorized by this EULA. If You are provided with a temporary username and/or password, You must modify the temporary credentials and create a unique username and/or password. You shall not share the Your Account username or password with anyone except as authorized by this EULA. You are responsible for maintaining the confidentiality of Your Account username and password and You are fully responsible for all activities that occur in connection with same. In the event of any breach of security, including, without limitation, access to the Software and/or Services via Your Account by someone other than You, You agrees to immediately (a) change Your password, and (b) notify FOS of the security breach. You agree that the terms of this EULA will be binding upon and govern the relationship between You and FOS. You further agree to take any and all action necessary to ensure compliance with this EULA, and You shall indemnify FOS for any and all costs, damages, losses or expenses incurred in respect any use of the Software and/or Services via Your Account. FOS will not be liable for any loss or damage arising from your failure to comply with this paragraph. FOS reserves the right to terminate Your access to the Software and/or Services at any time for any reason or no reason.

Your Data: Suggestions.

- a. As between You and FOS, You own all right, title, and interest in and to the Your Data. Except as provided in this subparagraph, FOS obtains no rights under this EULA from you in or to the Your Data, including any related intellectual property rights. You grant FOS a license to display, perform, execute, distribute and modify the Your Data to enable You to operate the Software and/or Services and provide any applicable support. Further, You consent to FOS’s (i) use of anonymous or de-identified Your Data for the purposes of marketing the Software and/or Services for benchmarking purposes; (ii) use of technical data and related information, including information about your browser, to facilitate the provision of software updates, product support, and other services to you (if any) related to the Software and/or Services, and (iii) disclosure of the Your Data to comply with any request of a governmental or regulatory body (including subpoenas or court orders). You agrees that these rights and licenses are royalty-free, worldwide and irrevocable (for so long as the Your Data is stored in the Software) and include a right of FOS to make the Your Data available to, and transfer such rights to, others with whom FOS has contractual relationships related to the provision of the Software, the Services and/or any support related to same.
- b. You further represent and warrant that (a) You own all right, title, and interest in and to the Your Data or have the rights and permissions necessary to use Your Data in connection with the Software and Services; and (b) You have all rights and permissions necessary to grant the rights contemplated by this EULA.
- c. If you provide any suggestions regarding the Software or the Services to FOS, we will own all right, title and interest in and to the suggestions, even if you have designated the suggestions as confidential. FOS will be entitled to use the suggestions without restriction. You hereby irrevocably assign to FOS all right, title and interest in and to the suggestions and agree to provide FOS any assistance FOS may require to document, perfect and maintain FOS’s rights in the suggestions.

Waiver of Consequential Damages. In no event shall FOS or its affiliates be liable to You for any special, indirect, consequential or incidental damages arising out of, or as the result of the License, the Software and/or the Services provided to You, regardless of whether arising out of a contract claim, tort claim or otherwise and whether such damages are foreseeable.

Indemnification. You assume sole responsibility for its use of the License, the Software and/or the Services and shall defend, indemnify and hold FOS, its affiliates, and their directors, officers and employees

harmless from and against all liabilities, claims, and damages that arise in connection with or as a result of use of the Software and/or Services by You or Your Authorized Users.

Right to Audit. FOS reserves the right to monitor and audit Your and Your Authorized Users' use of the Software and/or Services.

Termination. This EULA shall continue in effect until terminated as set forth herein. This EULA may be terminated, and/or the License revoked or modified by FOS if the You breach any provision of this EULA, including, without limitation, if You fails to pay applicable fees when due and FOS submitted a proper invoice. FOS shall provide seven (7) days written notice to You of termination of this EULA or revocation of any License. FOS may also terminate this EULA immediately upon notice to You if FOS's relationship with a third-party provider whose software, hosting or other technology FOS uses to provide the Software and/or Services expires, terminates or requires FOS to change the way FOS provides the Software and/or Services. Upon FOS's termination of this EULA due to Your breach, it is agreed that no refund of License Fees shall be due to You. Upon termination of the EULA, neither You nor Your Users will be authorized to use the Software and/or Services and the License shall be immediately cancelled. In the event of termination of the EULA, upon written request by You, copies of Your Data will be delivered to You within thirty (30) days thereof; provided, that You shall pay in advance all reasonable costs of transferring copies of the Your Data to You. No termination of this EULA shall release or affect any obligations or liabilities incurred by either party under this EULA prior to the effective date of such termination. The paragraphs of this EULA under the headings "Disclaimer," "Ownership of Software," "Limitation of Liability," "For U.S. Government End Users," "Export Restrictions," "Waiver of Consequential Damages," "Indemnification," and "Governing Law" shall survive termination of the License and this EULA.

Force Majeure. FOS shall have no liability to You for any damages whatsoever arising out of or as a result of the failure by FOS to provide the Software, Services and/or any support as a direct or indirect result of any use or circumstance beyond the reasonable control of FOS (including, without limitation, acts of God, acts of public enemy, war, accidents, fires, electrical or equipment failures, strikes, postal delays, labor difficulties, contractor difficulties, problems with telecommunications providers, Internet disruption, explosions or governmental orders or regulations).

Governing Law. This EULA shall be construed according to, and the legal relations between the Parties shall be governed by, the laws of the State of New York, excluding its conflicts of law provisions. You and FOS agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Erie, to resolve any dispute or claim arising from this EULA.

Amendments. Changes to this EULA may be made by FOS by publishing revised versions of this EULA to the URL [www.simplebid.net](http://www.simplebid.net). All revisions to this EULA shall be deemed effective and binding upon You and Your Users immediately upon being published to the foregoing URL without advance notice or consent of You or Your Users.





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