



FULLY EXECUTED
Contract Number: 4400027398
Original Contract Effective Date: 01/23/2023
Valid From: 02/01/2023 To: 01/31/2025

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

Purchasing Agent

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

Your SAP Vendor Number with us: 515879

Supplier Name/Address:
E-IMAGEDATA CORP
340 GRANT ST
HARTFORD WI 53027-1075 US

Please Deliver To:

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

Supplier Phone Number: 262-673-3476
Supplier Fax Number: 262-673-3496

Contract Name:
Microfilm Equipment, Supplies & Services

Payment Terms
NET 30

Solicitation No.: 6100056936

Issuance Date: 11/17/2022

Supplier Bid or Proposal No. (if applicable): 6500145404

Solicitation Submission Date: 12/19/2022

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	Microfilm Equipment	0.000		0.00	1	0.00
2	Microfilm Supplies	0.000		0.00	1	0.00
3	Microfilm Services	0.000		0.00	1	0.00
4	Microfilm Equipment Maintenance	0.000		0.00	1	0.00

General Requirements for all Items:

Information:

Supplier's Signature _____
Printed Name _____

Title _____
Date _____



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Valid From: 02/01/2023 To: 01/31/2025

Supplier Name:
E-IMAGEDATA CORP

Header Text

The purpose of this contract as a result of IFB 6100056936 is to procure new Microfilm Equipment, Maintenance, Repairs, Supplies, Accessories, and Related Services. This is a two (2) year contract with three (3) one year renewal options.

4.18.2023- Char Riley has been assigned as the commodity specialist for this contract.

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

No further information for this Contract

Information:



FULLY EXECUTED
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Valid From: 02/01/2023 To: 01/31/2025

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

Purchasing Agent

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

Your SAP Vendor Number with us: 515879

Supplier Name/Address:
E-IMAGEDATA CORP
340 GRANT ST
HARTFORD WI 53027-1075 US

Please Deliver To:

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

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2	Microfilm Supplies	0.000		0.00	1	0.00
3	Microfilm Services	0.000		0.00	1	0.00
4	Microfilm Equipment Maintenance	0.000		0.00	1	0.00

General Requirements for all Items:

Information:

Supplier's Signature _____
Printed Name _____

Title _____
Date _____



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4.18.2023- Char Riley has been assigned as the commodity specialist for this contract.

No further information for this Contract

Information:



ORIGINAL
QUOT - Invitation For Bid

QUOT Effective Date:

11/17/2022

Bid Number:

6500145404

Issuing Office:
Raymond Jaime
OA - Office of Information Technology
613 North Street
Harrisburg PA 17120-0400 US

Supplier Name/Address:
E-IMAGEDATA CORP
340 GRANT ST
HARTFORD WI 53027-1075 US
Telephone # 262-673-3476 Fax # 262-673-3496
Email: CDITIRRO@E-IMAGEDATA.COM
Your SAP Vendor Number with us: 515879

Please Return Quotation to:
OA - Office of Information Technology
613 North Street
Harrisburg PA 17120-0400 US

Type of Security furnished if required:

- Certified bank cashier's check
- Irrevocable letter of credit
- Certificate of deposit
- Other as specified by bid
- Bond - If annual bond:

What is the name of the principal on the bond?

Return Bid by:

Bid Endng Date:
12/19/2022

Bid Endng Time:
15:00:00

Please Deliver To:

Expiration Date of Contract (if applicable)

Procurement Contact:

Buyer: Raymond Jaime
Phone:
Fax:

Delivery Date:
See Items

This Invitation For Bids is comprised of: Part I, General Information; Part II, Bid Requirements; Part III, Criteria For Selection; Part IV, IFB Specifications; Part V, Contract Clauses; any documents attached to this Invitation For Bids or incorporated by reference; and any addenda issued by the Issuing Office prior to Bid Opening.

Supplier's Signature _____ Title _____

Printed Name _____ Date _____

The Bidder has completed and submitted this Bid in accordance with the instructions and requirements and terms and conditions of the Invitation For Bid. The Bidder has attached documents that are required to be submitted with this Bid and those attachments are incorporated by reference and made a part of this Bid. The Bidder, intending to be legally bound hereby, offers and agrees, if this Bid is accepted, to provide the awarded items at the price(s) set forth in this Bid at the time(s) and place(s) specified.

Item	Material/Service Desc	Qty	UOM	Unit Price	Per	Total Line Item Price
1	Microfilm Equipment and Supplies	0.000		0.00	1	0.00
3	Maintenance and Support Services	0.000		0.00	1	0.00

Total bid amount >>>>>>>>>>>>>>>>>>>>>>>>>>>>

0.00

ALL PRICES ARE F.O.B. DESTINATIONS



Original Approval Date: 12/22/2022

Page 2 of 3

ORIGINAL

QUOT - Invitation For Bid

P00650361 09/23/2022 09:54

Supplier Name:

[E-IMAGEDATA CORP](#)

General Requirements for all Items:

Header Text

The Commonwealth intends to award multiple statewide contracts for the procurement and leasing of new Microfilm Equipment, Supplies and Services to responsive Bidders who meet the requirements of this IFB. The Commonwealth is seeking Bidders who offer the best discounts from the manufacturer's nationally publicized price list and respond to purchase orders in a timely fashion.

Please reference Specifications for IFB 6100056936 for specifics details and requirements pertaining to this IFB

To assist you with the bidding process are the following documents:

New Vendor Registration Guide, Bidding Procedures, Attaching Bid Documents and E-Alerts Guide

The Issuing Officer for this IFB is Raymond A, Jaime, 717-346-3827, rjaime@pa.gov

*** No further information for this bid ***

ATTRIBUTES PAGES TO FOLLOW

Total of Items
on Previous Page



Original Approval Date: 12/22/2022

Page 3 of 3

ORIGINAL

QUOT - Invitation For Bid

P00650361 09/23/2022 09:54

Supplier Name:

[E-IMAGEDATA CORP](#)

***** Attributes Page *****

Mandatory QUESTION #02 - Is the offer in accordance with the "Representations and Authorizations" listed in section "Submission – 001.1" of the attached solicitation document?

Response: Y

Mandatory QUESTION #01 - Has the submitter read, and does the submitter understand, the "Representations and Authorizations" listed in section "Submission – 001.1" of the attached solicitation document?

Response: Y

Appendix A - MANUFACTURERS DISCOUNT SHEET

In order to complete the Bid sheet correctly , please follow the instructions below

1. Please enter a discount rate off list price for each Manufacture your company would like to provide equipment and accessories for in the PERCENT OF DISCOUNT FROM REFERENCED PRICE LIST column.
2. Please enter the Date of the price List your discount will apply to in the Price List Identification Date column.

* Your Company must provide Manufacturers Authorization Letter(s) for all Manufacturers your company will choose to be resellers for .

**** Your company must provide a price Lists for All Manufacturers for which the Discount Rate will apply to.**

APPENDIX A - MANUFACTURERS DISCOUNT SHEET- IFB 6100056936			
Microfilm Equipment Supplies and Services			
E-Imagedata Corporation			
DESCRIPTION	PRICE LIST IDENTIFICATION DATE	WILL YOU OFFER LEASING OF YOUR EQUIPMENT UNDER THE COMMONWEALTHS TERMS AND CONDITIONS ? Y=YES N=NO	PERCENT OF DISCOUNT FROM REFERENCED PRICE LIST
Microfilm Equipment	January 1,2023	NO	5%
Microfilm Equipment Maintenance/Repairs	January 1,2023	NO	5%
Microfilm Equipment Supplies	January 1,2023	NO	5%
Accessories which are not covered or included in other purchases, including Software and Software Maintenance/Upgrades	January 1,2023	NO	5%

Rate Card

Instructions: A bidder must provide an hourly cost to perform the Related Services listed below	
Related Services	Hourly Rate
Installation	\$150.00
De-Installation	\$150.00
Transportation to DGS	\$150.00
Relocation of Equipment (Within the same building)	\$150.00
Relocation of Equipment (Within a twenty-five (25) mile Radius)	\$150.00
Relocation of Equipment (Within beyond a twenty-five (25) mile Radius)	\$150.00
Training	\$150.00
Asset Tagging	\$150.00
Document Conversion	\$150.00

RECIPROCAL LIMITATIONS ACT REQUIREMENTS

Please Complete Applicable Portion of Pages 3 & 4 and Return with Bid.

NOTE: These Requirements Do Not Apply To Bids Under \$10,000.00

I. REQUIREMENTS

- A.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering supplies produced, manufactured, mined or grown in Pennsylvania as against those bidders offering supplies produced, manufactured, mined or grown in any state that gives or requires a preference to supplies produced, manufactured, mined or grown in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state supplies and the amount of the preference:

	STATE	PREFERENCE
1.	Alaska	7% (applies only to timber, lumber, and manufactured lumber products originating in the state)
2.	Arizona	5% (construction materials produced or manufactured in the state only)
3.	Hawaii	10%
4.	Illinois	10% for coal only
5.	Iowa	5% for coal only
6.	Louisiana	4% meat and meat products 4% catfish 10% milk & dairy products 10% steel rolled in Louisiana 7% all other products
7.	Montana	5% for residents * 3% for non-residents* *offering in-state goods, supplies, equipment and materials
8.	New Mexico	5%
9.	New York	3% for purchase of food only
10.	Oklahoma	5%
11.	Virginia	4% for coal only
12.	Washington	5% (fuels mined or produced in the state only)
13.	Wyoming	5%

- B.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering printing performed in Pennsylvania as against those bidders offering printing performed in any state that gives or requires a preference to printing performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular category of printing.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state printing and the amount of the preference:

	STATE	PREFERENCE
1.	Hawaii	15%
2.	Idaho	10%
3.	Louisiana	3%
4.	Montana	8%
5.	New Mexico	5%
6.	Wyoming	10%

- C.** The Reciprocal Limitations Act, also requires the Commonwealth to give resident bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidders from that state or exclude bidders from states that exclude nonresident bidders. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder. The following is a list of the states which have been found by the Department of General Services to have applied a preference for in-state bidders and the amount of the preference:

STATE	PREFERENCE
1. Alaska	5% (supplies only)
2. Arizona	5% (construction materials from Arizona resident dealers only)
3. California	5% (for supply contracts only in excess of \$100,000.00)
4. Connecticut	10% (for supplies only)
5. Montana	3%
6. New Mexico	5% (for supplies only)
7. South Carolina	2% (under \$2,500,000.00) 1% (over \$2,500,000.00)
	This preference does not apply to construction contracts nor where the price of a single unit exceeds \$10,000.
8. West Virginia	2.5% (for the construction, repair or improvement of any buildings)
9. Wyoming	5%

STATE	PROHIBITION
1. New Jersey	For supply procurements or construction projects restricted to Department of General Services Certified Small Businesses, New Jersey bidders shall be excluded from award even if they themselves are Department of General Services Certified Small Businesses.

D. The Reciprocal Limitations Act also requires the Commonwealth not to specify, use or purchase supplies which are produced, manufactured, mined or grown in any state that prohibits the specification for, use, or purchase of such items in or on its public buildings or other works, when such items are not produced, manufactured, mined or grown in such state. The following is a list of the states which have been found by the Department of General Services to have prohibited the use of out-of-state supplies:

STATE	PROHIBITION
1. Alabama	Only for printing and binding involving "messages of the Governor to the Legislature", all bills, documents and reports ordered by and for the use of the Legislature or either house thereof while in session; all blanks, circulars, notices and forms used in the office of or ordered by the Governor, or by any state official, board, commission, bureau or department, or by the clerks of the supreme court . . ./and other appellate courts/; and all blanks and forms ordered by and for the use of the Senate and Clerk or the House of Representatives, and binding the original records and opinions of the Supreme Court . . . /and other appellate courts/
2. Georgia	Forest products only
3. Indiana	Coal
4. Michigan	Printing
5. New Mexico	Construction
6. Ohio	Only for House and Senate bills, general and local laws, and joint resolutions; the journals and bulletins of the Senate and house of Representatives and reports, communications, and other documents which form part of the journals; reports, communications, and other documents ordered by the General Assembly, or either House, or by the executive department or elective state officers; blanks, circulars, and other work for the use of the executive departments, and elective state officers; and opinions of the Attorney General.
7. Rhode Island	Only for food for state institutions.

*If the bid discloses that the bidder is offering to supply one of the above-listed products that is manufactured, mined, or grown in the listed state, it shall be rejected. Contractors are prohibited from supplying these items from these states.

II. CALCULATION OF PREFERENCE

In calculating the preference, the amount of a bid submitted by a Pennsylvania bidder shall be reduced by the percentage preference which would be given to a nonresident bidder by its state of residency (as found by the Department of General Services in Paragraph C_{above}). Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment or materials shall be reduced by the percentage preference which would be given to another bidder by the state where the goods, supplies, equipment or materials are produced, manufactured, mined or grown (as found by the Department of General Services in Paragraphs A and B above).

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE BID

III. STATE OF MANUFACTURE

All bidders must complete the following chart by listing the name of the manufacturer and the state (or foreign country) of manufacture for each item. If the item is domestically produced, the bidder must indicate the state in the United States where the item will be manufactured. **This chart must be completed and submitted with the bid or no later than two (2) business days after notification from the Issuing Office to furnish the information. Failure to complete this chart and provide the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid.**

ITEM NUMBER	NAME OF MANUFACTURER	STATE (OR FOREIGN COUNTRY) OF MANUFACTURE
9879500	E-IMAGEDATA CORP	WISCONSIN
9879501	E-IMAGEDATA CORP	WISCONSIN
9873503	E-IMAGEDATA CORP	WISCONSIN
9873504	E-IMAGEDATA CORP	WISCONSIN
9873505	E-IMAGEDATA CORP	WISCONSIN
9872503	E-IMAGEDATA CORP	WISCONSIN
9872504	E-IMAGEDATA CORP	WISCONSIN
9872505	E-IMAGEDATA CORP	WISCONSIN
9873500	E-IMAGEDATA CORP	WISCONSIN

IV. BIDDER'S RESIDENCY

A. In determining whether the bidder is a nonresident bidder from a state that gives or requires a preference to bidders from that state, the address given on the first page of this invitation to bid shall be used by the Commonwealth. If that address is incorrect, or if no address is given, the correct address should be provided in the space below:

Correct Address: E-IMAGEDATA CORP
340 GRANT STREET
HARTFORD, WI 53027

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE BID

III. STATE OF MANUFACTURE

All bidders must complete the following chart by listing the name of the manufacturer and the state (or foreign country) of manufacture for each item. If the item is domestically produced, the bidder must indicate the state in the United States where the item will be manufactured. **This chart must be completed and submitted with the bid or no later than two (2) business days after notification from the Issuing Office to furnish the information. Failure to complete this chart and provide the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid.**

ITEM NUMBER	NAME OF MANUFACTURER		STATE (OR FOREIGN COUNTRY) OF MANUFACTURE	
9873501		E-IMAGEDATA CORP		WISCONSIN
9873502		E-IMAGEDATA CORP		WISCONSIN
9872500		E-IMAGEDATA CORP		WISCONSIN
9872501		E-IMAGEDATA CORP		WISCONSIN
9872502		E-IMAGEDATA CORP		WISCONSIN
9862100		E-IMAGEDATA CORP		WISCONSIN
9862101		E-IMAGEDATA CORP		WISCONSIN
9863910		E-IMAGEDATA CORP		WISCONSIN
0388000		E-IMAGEDATA CORP		WISCONSIN

IV. BIDDER'S RESIDENCY

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Correct Address: E-IMAGEDATA CORP
340 GRANT STREET
HARTFORD, WI 53027

- B.** In order to claim the preference provided under Section I.B., Pennsylvania resident bidders must complete the following or have such information on file with the Issuing Office:
- 1.** Address of bidder's bona fide establishment in Pennsylvania at which it was transacting business on the date when bids for this contract/requisition were first solicited: _____
 - 2. a.** If the bidder is a corporation:
 - (1)** The corporation is or is not incorporated under the laws of the Commonwealth of Pennsylvania.
 - (a)** If the bidder is incorporated under the laws of the Commonwealth of Pennsylvania, provide date of incorporation: _____
 - (b)** If the bidder is not incorporated under the laws of the Commonwealth of Pennsylvania, it must have a certificate of authority to do business in the Commonwealth of Pennsylvania from the Pennsylvania Department of State as required by the Pennsylvania Business Corporation Law (15 P.S. §2001). Provide date of issuance of certificate of authority: _____
 - (2)** The corporation is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must register the fictitious name with the Secretary of the Commonwealth and the office of the prothonotary of the county wherein the registered office of such corporation is located as required by the Fictitious Corporate Name Act, as amended 15 P.S. §51 et seq. Corporate bidders conducting business under an assumed or fictitious name must provide date of registry of the assumed or fictitious name: _____
 - b.** If the bidder is a partnership:
 - (1)** The partnership is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must file with the Secretary of the Commonwealth and the office of the prothonotary the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended 54 P.S. §28.1. Partnerships conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____
 - (2)** The partnership is or is not a limited partnership formed under the laws of any jurisdiction other than the Commonwealth of Pennsylvania. If the bidder is an Out-of-state limited partnership, it must register with the Pennsylvania Department of State as required by the Act of July 10, 1981, P.L. 237, as amended, 59 Pa. C.S.A. §503. Out-of-state limited partnerships must provide the date of registry with the Pennsylvania Department of State: _____
 - c.** If the bidder is an individual:

He or she is or is not conducting business under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, he or she must file with the Secretary of the Commonwealth and the office of the prothonotary in the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended, 54 P.S. §28.1. Individuals conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____



ELECTION TO PARTICIPATE FORM

COSTARS PROGRAM

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 at the beginning of each contract year and/or upon each contract renewal date:

\$166 for a Department of General Services-verified Small Diverse Business or
Small, Veteran Business Enterprise

\$500 for a Department of General Services Self-Certified Small Business

\$1,500 for all other businesses

*If you are a Department of General Services Self-Certified Small Business or
Department of General Services-verified Small Diverse Business,
you must submit a copy of your active Small Business Contracting Program
certificate with your bid response.*

Corporate or Legal Entity Name:	E-IMAGEDATA CORPORATION
Signature:	
Date:	12/19/22
Contract Description:	MICROFILM EQUIPMENT AND SERVICES

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, which can be found at:

<https://www.gsa.gov/Forms/TrackForm/33144>

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under *Section 1352, Title 31, U. S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than **\$100,000** for such failure.

SIGNATURE: _____  _____

TITLE: _____ VP of SALES _____ DATE: 12/16/2022 _____



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

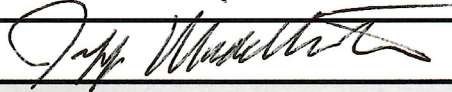
A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania’s Unemployment Compensation Law, Workers’ Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee’s compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

	12/19/22
<i>Signature</i>	<i>Date</i>
Jeff Middleton	
<i>Name (Printed)</i>	
VP of Sales	
<i>Title of Certifying Official (Printed)</i>	
E-Image Data Corp.	
<i>Contractor/Grantee Name (Printed)</i>	

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>	
E-Image data Corporation	
<i>By (Authorized Signature)</i>	
[Handwritten Signature]	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>
Jeff Middleton - VP of Sales	12/19/22

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>



2023 ScanPro Product Price List

PA State Contract Pricing for Solicitation #6100056936

Effective January 1, 2023

Part Number	Product Name		\$MSRP	5% PA Discount
ScanPro All-In-One Models Automatic, High-Speed Production and Conversion Scanning				
9879500	ScanPro i9500 All-In-One	USB 3.1 model for indexed searching 1, 2, 3 level blipped film, new high performance 26 MP camera (6.6 MP image sensor x4), 5x to 105x Optical Zoom Magnification, AUTO-Carrier for fiche, motorized UC 550 Carrier for 16mm/35mm roll film , AUTO-Scan software, 3-year factory warranty, 6-month free SPA membership trial	\$19,290	\$18,326
9879501	ScanPro i9500 All-In-One	USB 3.1 model for indexed searching 1, 2, 3 level blipped film, new high performance 26 MP camera (6.6 MP image sensor x4), 5x to 105x Optical Zoom Magnification, AUTO-Carrier for fiche, motorized UC 650 Carrier for 16mm/35mm/cartridge(M) roll film , AUTO-Scan software, 3-year factory warranty, 6-month free SPA membership trial	\$19,646	\$18,664
9873503	ScanPro 3500 All-In-One	USB 3.1 model with new high performance 26 MP camera (6.6 MP image sensor x 4), 5x to 105x Optical Zoom Magnification, AUTO-Carrier for fiche, Fiche/Aperture card carrier , AUTO-Scan software, 3-year factory warranty, free 6-month SPA membership trial	\$10,386	\$9,867
9873504	ScanPro 3500 All-In-One	USB 3.1 model with new high performance 26 MP camera (6.6 MP image sensor x 4), 5x to 105 x Optical Zoom Magnification, AUTO-Carrier for fiche, motorized UC 550 Carrier for 16mm/35mm roll film , AUTO-Scan software, 3-year factory warranty, free 6-month SPA membership trial	\$11,787	\$11,198
9873505	ScanPro 3500 All-In-One	USB 3.1 model with new high performance 26 MP camera (6.6 MP image sensor x 4), 5x to 105x Optical Zoom Magnification, AUTO-Carrier for fiche, motorized UC 650 Carrier for 16mm/35mm/cartridge(M) roll film , AUTO-Scan software, 3-year factory warranty, free 6-month SPA membership trial	\$12,990	\$12,341
9872503	ScanPro 2500 All-In-One	USB 3.1 model with new high performance camera, 5x to 32x Optical Zoom Magnification, AUTO-Carrier for fiche, Fiche/Aperture card carrier , 3-year factory warranty, free 6-month SPA membership trial	\$8,033	\$7,631
9872504	ScanPro 2500 All-In-One	USB 3.1 model with new high performance camera, 5x to 32x Optical Zoom Magnification, AUTO-Carrier for fiche, motorized UC 550 Carrier for 16/35mm roll film , 3-year factory warranty, free 6-month SPA membership trial	\$9,445	\$8,973
9872505	ScanPro 2500 All-In-One	USB 3.1 model with new high performance camera, 5x to 32x Optical Zoom Magnification, AUTO-Carrier for fiche, motorized UC 650 Carrier for 16mm/35mm/cartridge(M) roll film , 3-year factory warranty, free 6-month SPA membership trial	\$9,852	\$9,359
ScanPro Standard Models On-Demand Research and Records Retrieval				
9873500	ScanPro 3500 Standard	USB 3.1 model with new high performance 26 MP camera (6.6 MP image sensor x 4), 5x to 105x Optical Zoom Magnification, AUTO-Scan software, Fiche/Aperture card carrier , 3-year factory warranty, free 6-month SPA membership trial	\$7,860	\$7,467
9873501	ScanPro 3500 Standard	USB 3.1 model with new high performance 26 MP camera (6.6 MP image sensor x 4), 5x to 105x Optical Zoom Magnification, AUTO-Scan software, Fiche/Aperture card carrier, motorized UC 550 Carrier for 16mm/35mm rollfilm , 3-year factory warranty, 6-month free SPA membership trial	\$9,265	\$8,802
9873502	ScanPro 3500 Standard	USB 3.1 model with new high performance 26 MP camera (6.6 MP image sensor x 4), 5x to 105x Optical Zoom Magnification, Fiche/Aperture card carrier, motorized UC 650 Carrier for 16mm/35mm/cartridge(M) roll film , AUTO-Scan software, 3-year factory warranty, free 6-month SPA membership trial	\$10,395	\$9,875
9872500	ScanPro 2500 Standard	USB 3.1 model with new high performance camera, 5x to 32x Optical Zoom Magnification, Fiche/Aperture card carrier , 3-year factory warranty, free 6-month SPA membership trial	\$5,491	\$5,216
9872501	ScanPro 2500 Standard	USB 3.1 model with new high performance camera, 5x to 32x Optical Zoom Magnification, Fiche/Aperture card carrier, motorized UC 550 Carrier for 16mm/35mm roll film , 3-year factory warranty, free 6-month SPA membership trial	\$6,877	\$6,533
9872502	ScanPro 2500 Standard	USB 3.1 model with new high performance camera, 5x to 32x Optical Zoom Magnification, Fiche/Aperture card carrier, motorized UC 650 for 16mm/35mm/cartridge(M) roll film , 3-year factory warranty, free 6-month SPA membership trial	\$7,232	\$6,870
Fire Wire to USB 3.1 Upgrades (pricing does not include on-site customer installation & training)				
8881236	ScanPro 700/800/1100/2000/3000 Upgrade to USB 3.1 for Fiche Only		\$3,831	\$3,639
8881234	ScanPro 700/800/1100/2000/3000 Upgrade to USB 3.1 for Fiche & combination 16mm/35mm Roll Film carrier		\$4,245	\$4,033
8881235	ScanPro 700/800/1100/2000/3000 Upgrade to USB 3.1 for Fiche & combination 16mm/35mm/Cartridge(3M) Roll Film carrier		\$4,245	\$4,033
Optional Items				
9862100	Automatic scanning carrier, field upgrade kit for AUTO-Carrier NOT READY (SN 7XXXX, 8XXXX,10XXXX, 11XXXX or 13XXXX)		\$3,385	\$3,216
9862101	Automatic scanning carrier, field upgrade kit for AUTO-Carrier READY (SN 22-XXXX, 30-XXXX, 25-XXXX, or 35-XXXX)		\$3,085	\$2,931
0388000	Automatic scanning carrier, field upgrade kit with Adapter Plate required for models without UCC 550 or 650 carrier		\$40	\$38
9863910	Color Camera Scans both negative and positive film		\$719	\$683
9864000	Onsite Annual Maintenance Contract		\$895	\$850
9864100	Installation & Training		\$695	\$660
ScanPro Advantage Membership Easy-to-Use Exclusive Features				
9863601	1-Year software membership with exclusive features		\$249	\$237
9865602	2-Year software membership with exclusive feature		\$473	\$449
9865603	3-Year software membership with exclusive features		\$672	\$638
9865604	4-Year software membership with exclusive features		\$846	\$804
9865605	5-Year software membership with exclusive features		\$995	\$945



**ORIGINAL
 BID - Invitation For Bid
 P00650361 09/23/2022 09:54**

BID Effective Date:

11/17/2022

Bid Invitation Number:

6100056936

Issuing Office:

Raymond Jaime
 OA - Office of Information Technology
 613 North Street
 Harrisburg PA 17120-0400 US

Supplier Name/Address:

Your SAP Vendor Number with us: _____

Please Return Quotation to:

OA - Office of Information Technology
 613 North Street
 Harrisburg PA 17120-0400 US

Type of Security furnished if required:

- Certified bank cashier's check
- Irrevocable letter of credit
- Certificate of deposit
- Other as specified by bid
- Bond - If annual bond:

What is the name of the principal on the bond? _____

Return Bid by:

Bid Ending Date:
12/19/2022

Bid Ending Time:
15:00:00

Expiration Date of Contract (if applicable)

Delivery Date:
See Items

Please Deliver To:

Procurement Contact:

Buyer: Raymond Jaime
 Phone:
 Fax:

This Invitation For Bids is comprised of: Part I, General Information; Part II, Bid Requirements; Part III, Criteria For Selection; Part IV, IFB Specifications; Part V, Contract Clauses; any documents attached to this Invitation For Bids or incorporated by reference; and any addenda issued by the Issuing Office prior to Bid Opening.

Supplier's Signature _____ Title _____
 Printed Name _____ Date _____

The Bidder has completed and submitted this Bid in accordance with the instructions and requirements and terms and conditions of the Invitation For Bid. The Bidder has attached documents that are required to be submitted with this Bid and those attachments are incorporated by reference and made a part of this Bid. The Bidder, intending to be legally bound hereby, offers and agrees, if this Bid is accepted, to provide the awarded items at the price(s) set forth in this Bid at the time(s) and place(s) specified.

Item	Material/Service Desc	Qty	UOM	Unit Price	Total Line Item Price
1	Microfilm Equipment and Supplies	0.000		\$ _____	\$ _____
3	Maintenance and Support Services	0.000		\$ _____	\$ _____

General Requirements for all Items:

Header Text

ALL PRICES ARE F.O.B. DESTINATIONS

List of Items Continued on Following Page



ORIGINAL
BID - Invitation For Bid
P00650361 09/23/2022 09:54
Original Approval Date: 11/17/2022

Page 3 of 3

Supplier Name: _____

***** Attributes Page *****

*** No further information for this bid ***

Mandatory QUESTION #02 - Is the offer in accordance with the "Representations and Authorizations" listed in section "Submission – 001.1" of the attached solicitation document?

Response:

Mandatory QUESTION #01 - Has the submitter read, and does the submitter understand, the "Representations and Authorizations" listed in section "Submission – 001.1" of the attached solicitation document?

Response:

FOR

MICROFILM EQUIPMENT, SUPPLIES AND SERVICES

ISSUING OFFICE

**Department of General Services
Bureau of IT Procurement**

IFB NUMBER

6100056936

DATE OF ISSUANCE

November 17, 2022

**SPECIFICATIONS
FOR
MICROFILM EQUIPMENT, SUPPLIES AND SERVICES**

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APPENDIX N – QUARTERLY REPORT TEMPLATE

APPENDIX O- STATEMENT OF WORK

CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Deadline to submit questions via email to: RA-GSITPROCUREMENT@pa.gov with the subject line "IFB 610056936 Question"	Bidders	11/22/2022 12:00 PM
Answers to potential questions posted to the eMarketplace website (http://www.emarketplace.state.pa.us) no later than this date.	Issuing Office	11/28/2022 3:00 PM
Please monitor the eMarketplace website for all communications regarding this IFB.	Bidders	On Going
Bids must be received by the Issuing Office at: PASupplierPortal website (http://www.pasupplierportal.state.pa.us) no later than this date."	Bidders	12/19/2022 3:00 PM

PART I
SPECIFICATIONS

I-1. Objectives.

- A. General.** The Commonwealth intends to satisfy the need for Microfilm Equipment, Supplies and Services from those interested in submitting bids (Bidders) for this Invitation for Bids (IFB).
- B. Specific.** The Commonwealth intends to award multiple statewide contracts for the procurement and leasing of new Microfilm Equipment, Maintenance, Repairs, Supplies, Accessories, Software and related Services to responsive Bidders who meet the requirements of this IFB. The Commonwealth is seeking Bidders who offer the best discounts from the manufacturer's nationally publicized price list and respond to purchase orders in a timely fashion.

I-2. Nature and Scope of the Project. This IFB involves the delivery of Microfilm Equipment, Supplies and Services to all executive agencies at locations across the Commonwealth. Items covered by the contract include:

- Microfilm Microfiche Readers and associated supplies
- Microfilm/Microfiche camera lenses and associated Supplies
- Microfilm and Microfiche film and supplies (lamps, processing supplies, microfilm jackets)
- Roll Film Readers and associated supplies
- Aperture Card Scanning equipment and associated supplies
- Scanning for Paper and Books
- All sundry supplies associated with Microfilm / Microfiche Reader / Roll Film Readers
- Related Software and software upgrades
- Maintenance and service repairs of new and existing microfilm equipment.
- Document Conversion Services for converting, but not limited to Microfilm and Microfiche (16mm, 35mm, Aperture Cards, and Books etc.) to the agency's desired format (PDF, Jpeg, Tiff, etc.).

I-3. Requirements.

- A. ITPs.** This IFB is subject to the Information Technology Policies (ITP's) {formerly known as Information Technology Bulletins} issued by the Office of Administration, Office for Information Technology (OA-OIT). ITP's may be found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.

All bids must be submitted on the basis that all ITPs are applicable to this procurement. It is the responsibility of the Bidder to read and be familiar with the ITPs. Notwithstanding

the foregoing, if the Bidder believes that any ITP is not applicable to this procurement, it must list all such ITPs in its bid, 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 Bidder'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.

B. Bid Submission. Bids must be submitted electronically via the PA Supplier Portal website on or before the due date specified in the Calendar of Events. Any bid submitted to the Issuing Office in hardcopy format will be rejected. The following documentation must be completed and submitted with a bid:

- Appendix A – Manufactures Discount Sheet
- Appendix B –GSPUR-89 Reciprocal Limitations Act Requirements
- Appendix D – COSTARS Program Election to Participate Form
- Appendix F – Lobbying Certification Form
- Appendix G – BOP-2201-06 Workers Protection and Investment Certification Form
- Appendix H – Enterprise On-Premise Software Services License Requirements Agreement (If Applicable)
- Appendix I- Enterprise SaaS Software Services License Requirements Agreement (If applicable)
- Appendix J- Iran Free Procurement Certification Form

- **Manufactures Authorization Letter** (if applicable). If a Bidder is submitting as a reseller, it must submit a Manufacturers Authorization Letter which clearly states the Bidder is authorized to provide the Original Equipment Manufacturers (“OEM”) equipment and services to the Commonwealth for this IFB. The Manufacturers Authorization Letter must reference the Commonwealths IFB 6100056936 for Microfilm Equipment, Supplies and Services.

- **Price lists.** Price lists must be submitted with the bid proposal for the sole purpose of providing a reference to the various items on the Price list and the Manufacturers price for each item.

C. Bidder Eligibility. To be eligible to submit a Bid, a Bidder must:

1. Be an OEM or an authorized Reseller having at least 5 years of experience selling or servicing the items covered under the contract. All installations and service personnel must be certified by the OEM for installation and repair, where applicable.

D. Pricing.

1. A single percentage discount shall be offered for each category with the manufacturer's product line and shall be based on the manufacturer's nationally published price list in effect at the time of the IFB. Please reference *Appendix A – Manufacturers Discount Sheet*.
2. Bidders are required to submit Price List with their bids for the sole purpose of providing a reference to the various items on the Price List and the Manufacturer's Price and percentage discount for each item.
3. Any replacement models shall be offered at the same discount as the model being replaced. If the model being replaced is no longer available, a new model of equal or better quality and performance will be offered; being compatible with the system(s). Discounts shall be taken off the nationally published price list referenced below.
4. **Manufacturer's Suggested Retail Price List (MSRP)**
5. In the event that more than one version of a price list is received from Multiple Bidders for the same manufacturer's product line, the bidder offering the older price list must update their price list to the most recent version at the same discounts initially offered or each category. Failure of the Bidders to comply with this requirement may result in rejection of their bid.

E. Price List Changes. Awarded contractors may update their contract price list every quarter or biannually, beginning with the contract date to reflect new products, manufacturer's price changes, deletion of discontinued products, etc.

F. Price List and Catalogs. Awarded contractors shall be required to furnish, without charge, price lists and catalogs identical to those accepted with their bid, including changes (additions, deletions, etc.) pursuant to the contract, to authorize users which request them. Price lists and catalogs must be furnished in an electronic format agreed to by the Commonwealth. If the awarded contractor(s) has an active website, ensure you include this within your bid.

G. Price Changes Applicable only to Term Contracts. This is a term contract for commodities or services, the following provision apply:

1. **Quantity Discounts.** Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions for quantity purchases of any products offered under the contract(s).
2. **Best Pricing Offer.** During the contract term, if a customer becomes aware of better pricing offered by the contractor for substantially the same or smaller

quantity of product outside the contract, but upon the same or similar terms of the contract, then at the discretion of the customer the price under the contract shall be immediately reduced to the lower price.

3. **Sales Promotions.** In addition to decreasing prices for the balance of the contract term due to a change in market conditions, a contractor may conduct sales promotions involving price reductions for a specific lesser period. Promotional prices shall be available to all customers. A contractor shall submit to the Contract Specialist documentation identifying the proposed:

- a. Starting and end dates of the promotion.
- b. Products involved; and
- c. Promotional prices compared to then authorized prices.

4. **Trade-In.** Customers may trade-in equipment when making purchases from the contract(s). A Trade-In shall be negotiated between the customer and contractor. Customers are obligated to actively seek current fair market value when trading equipment.

- Commonwealth Agencies are to utilize the Pennsylvania Automated Surplus System (P.A.S.S) [Pennsylvania Automated Surplus System \(P.A.S.S\)](#) through the Department of General Services Supplies and Surplus Operations to confirm the Trade In value. Agencies may contact DGS Supplies and Surplus Operations at 717-787-4083.

H. Software. The Contractor may not offer microfilm equipment which requires commercially available software for its use, unless and until the Commonwealth has entered into the appropriate software license agreement with the software licensor depending on if the software is On-Premise or Software as a Service. The Contractor must inform any such software licensor that it must enter into a software license agreement with the Commonwealth that incorporates *Appendix H - Enterprise On-Premise Software Services License Requirements Agreement* or *Appendix I - Enterprise SaaS Software Services License Requirements Agreement* as a material part of the licensor's software license agreement.

I. Related Services. The Commonwealth will purchase the following optional Related Services on a per order basis at its discretion.

The Commonwealth will develop a statement of work (SOW) for optional Related Services utilizing *Appendix O – Statement of Work Template*, which will be attached to the associated purchase order. The Contractor must identify if any subcontractors will be used along with a brief description of the services.

1. **Maintenance /Extended Warranty Services.**

- a. The Contractor must, if requested by the Commonwealth, provide maintenance/extended warranty services for all equipment being offered.
- b. The Contractor must provide a written quote for all maintenance /extended warranty services orders, which the Commonwealth will attach to the associated SRM purchase order.
- c. Orders for maintenance/extended warranty services made during the term of the contract may extend up to three (3) years past the expiration date of the contract.

2. **Training.** The Contractor must provide training upon installation of a new product and as requested thereafter by the Commonwealth. All training services performed during normal business hours must be provided by the Contractor, at no cost to the Commonwealth. The Contractor must provide on-site training to users as identified by the requesting agency.

Training must include, but is not limited to, hands-on activities, videos, and manuals. The Contractor must provide users with hands-on training and materials including a detailed walk-through of all machine features. In addition, if the product is connected to the network, the Contractor must demonstrate remote printing capabilities.

3. **Maintenance, Repairs and Support.**

- a. **For Lease Equipment.** The Original contractor supplying equipment must provide routine and preventative maintenance as well as repair services for the term of the lease. The costs shall be included in the monthly lease cost of the equipment. The maintenance service shall include such service as is necessary to keep the equipment operating satisfactorily.
- b. **For Purchased Equipment.** The Contractor must provide full-service maintenance and repairs to cover all of the specified manufacturer's equipment procured through outright purchase. The Contractor may provide full-service maintenance and repairs for other manufacturer's equipment already owned by the commonwealth agency. Full-service maintenance and repairs must include replacement of all parts and provide all labor for maintenance necessary to keep the equipment in good operating condition. All replacement parts shall be covered by the contract. Replacement parts will be furnished on an exchange basis. Genuine manufacturer's replacement parts shall be used exclusively unless a letter of exception is approved by the manufacturer and commonwealth agency contact person.

4. **Installation.** The Contractor must install equipment if requested by the Commonwealth.

5. **De-Installation.**

- a. The Contractor must de-install and pack the equipment at the operational location
- b. De-installation of Equipment for the purpose of this IFB entails cleaning the hard drive to DOD standards or allowing the Commonwealth to keep the hard drive and packaging the Equipment for storage or removal.

6. **Relocation.**

- a. The Contractor must provide relocation of Equipment with three service levels.
 - i. Within the same building
 - ii. Within twenty- five (25) miles
 - iii. Beyond a twenty –five-mile radius
- b. The Contractor must unpack and re-install the Equipment at the new designated location specified by the Commonwealth. Damages resulting from the relocation of the Equipment is the responsibility of the Contractor.
- c. The Contractor must perform visual and physical system check that can be performed with an operating system.

7. **Asset Tagging.**

- a. The Contractor must affix an identification tag number and the Commonwealth agency inventory tag to the equipment.
- b. Each identification tag must be located such that it is easily accessible and readable by the Commonwealth. Identification numbers will be used as a reference for service calls.
- c. Identification numbers, serial numbers, Commonwealth agency inventory asset tag numbers and other identification information must be provided to the Commonwealth in an electronic format, which can be incorporated into existing equipment databases. The Commonwealth will provide database formats to be used by the Contractor.

J. Service level Agreements (SLAs)/ Liquidated Damages (LDSs)

The following SLAs and LDs apply to the contractor's performance with each agency.

<u>Performance Metric</u>	<u>Performance Target</u>	<u>Definition</u>	<u>Frequency of Review</u>	<u>Liquidated Damages</u>
Delivery of Equipment.	100%	<p>The Contractor must make the required delivery time within ten (10) business days after receipt of an order.</p> <p>Calculation: (Each Order Delivered after the standard fulfillment time of ten (10) business days = Missed Order)</p> <p>“This SLA may be waived by the ordering agency if an agreed upon date is established as part of the purchase order. If the agreed upon date is missed, a service credit request will be issued.”</p>	Per Order Assessed Monthly	5% of the cost of the order.
Shipment Correction.	100%	<p>The Contractor must correct any incorrect shipment within ten (10) business days after receipt of an order.</p> <p>Calculation: (Each Incorrect Order Corrected after the standard correction time of ten (10) business days = Missed Correction)</p> <p>“This SLA may be waived by the ordering agency if an agreed upon date is established as part of the purchase</p>	Per Order Assessed Monthly	5% of the cost of the order.

		order. If the agreed upon date is missed, a service credit request will be issued.”		
Fix-time. (Measured from the time the Commonwealth submits a trouble ticket to the Contractor, to the time the equipment is returned to full and complete working order during the original warranty period).	95%	Resolve the trouble tickets submitted by each agency, each month, in a fix-time of no more than twelve (12) business hours from the time the trouble ticket was submitted. Calculation: = ((Sum of tickets resolved within 12 defined business hours within measurement window)/ (Total number of tickets opened during 12 defined business hours within measurement window)) expressed as a percentage	Monthly	If the Contractor fails to meet the SLA for two (2) consecutive months, or for a total of three (3) non-consecutive months within a calendar year, the Contractor will be ineligible to receive orders from any agency in the Commonwealth for six (6) months.
Quarterly Report Delivery. (The Contractor must provide the Commonwealth with quarterly reports detailing equipment purchasing activity performance and customer satisfaction).	100%	The reports must be provided to the Commonwealth no later than fifteen (15) business days after the end of the quarter. Calculation: (Each Quarterly Report received after the standard reporting time of fifteen (15) business days = Missed Report delivery)	Quarterly	If the Contractor fails to meet the SLA for two (2) quarters within a calendar year, the Contractor will be ineligible to receive orders from any agency in the Commonwealth for six (6) months.
Monthly Report Delivery. (The Contractor must provide the Commonwealth with monthly reports detailing delivery metrics, response/fix-	100%	The reports must be provided to the Commonwealth no later than ten (10) business days after the end of the month.	Monthly	If the Contractor fails to meet the SLA for two (2) consecutive months or three (3) months within a calendar year, the Contractor

time metrics, and the status of outstanding issues.)		<p>Calculation: (Each Monthly Report received after the standard reporting time of ten (10) business days = Missed Report delivery)</p>	will be ineligible to receive orders from any agency in the Commonwealth for six (6) months.
------------------------------------------------------	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------

Note: Business Days/Hours are Monday – Friday from 7am – 7pm Eastern Time.

The Contractor must reimburse the Commonwealth within 45 days of the missed SLA. The Contractor must pay the LDs by deducting the amount from invoices submitted under this Contract or by sending a check addressed to the Commonwealth of Pennsylvania for the amount of the LDs. All checks must be sent to the following address:

Comptroller’s Office
 Attn: Revenue Accounting
 555 Walnut St., 9th Floor
 Harrisburg PA 17101

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

K. Reporting.

1. **Monthly Reports.** The Contractor must provide monthly reports to each using Commonwealth agency and a consolidated monthly report to the Office of Administration, Office for Information Technology, Bureau of IT Procurement. The Contractor must utilize *Appendix M – Monthly Report Template*. A monthly report must consist of, and include at a minimum:

- a. Ordering and delivery report of microfilm equipment, supplies and services purchases which includes at a minimum: Agency Information, Equipment, Supplies or Services information, Order Information, Shipment and Delivery Information and Invoice information.
- b. Problem and response report which includes, at a minimum: Agency Information, Product or Services Information and Problem/Response Information.
- c. Outstanding Issues report which includes, at a minimum Requestor Information and Outstanding Issue Summary.

d. □ The monthly reports must include all activity by the Commonwealth, as well as for external procurement activity by other state entities.

e. □ The Contractor must provide monthly reports to the Commonwealth no later than ten (10) business days after the end of the month.

2. □ **Quarterly Reports.** The Contractor must provide quarterly reports to the Department of General Services Bureau of IT Procurement.

The quarterly customer satisfaction report must be delivered in the format approved separately by the Commonwealth which includes, at a minimum: performance of the Contractor in the areas of: quality assurance, accuracy of orders shipped, professionalism, flexibility, competence, timeliness of delivery and response to question.

The Contractor must utilize *Appendix N – Quarterly Report Template* for the remainder of the quarterly report, which must consist of, and include at a minimum:

a. □ Sales Summary report which inc.

b. □ Includes, at a minimum: Agency Information, Equipment, Supplies or Services information and Order Information.

c. □ Outstanding Issues Summary report which includes, at a minimum: Agency Information and Outstanding Issue Summary.

Appendix A - MANUFACTURERS DISCOUNT SHEET

In order to complete the Bid sheet correctly , please follow the instructions below

1. Please enter a discount rate off list price for each Manufacture your company would like to provide equipment and accessories for in the PERCENT OF DISCOUNT FROM REFERENCED PRICE LIST column.
2. Please enter the Date of the price List your discount will apply to in the Price List Identification Date column.

* Your Company must provide Manufacturers Authorization Letter(s) for all Manufacturers your company will choose to be resellers for .

**** Your company must provide a price Lists for All Manufacturers for which the Discount Rate will apply to.**

APPENDIX A - MANUFACTURERS DISCOUNT SHEET- IFB 6100056936

Microfilm Equipment Supplies and Services			
COMPANY NAME -			
DESCRIPTION	PRICE LIST IDENTIFICATION DATE	WILL YOU OFFER LEASING OF YOUR EQUIPMENT UNDER THE COMMONWEALTHS TERMS AND CONDITIONS ? Y=YES N=NO	PERCENT OF DISCOUNT FROM REFERENCED PRICE LIST
Microfilm Equipment			
Microfilm Equipment Maintenance/Repairs			
Microfilm Equipment Supplies			
Accessories which are not covered or included in other purchases, including Software and Software Maintenance/Upgrades			

Rate Card

Instructions: A bidder must provide an hourly cost to perform the Related Services listed below

Related Services	Hourly Rate
Installation	\$-
De-Installation	\$-
Transportation to DGS	\$-
Relocation of Equipment (Within the same building)	\$-
Relocation of Equipment (Within a twenty-five (25) mile Radius)	\$-
Relocation of Equipment (Within beyond a twenty-five (25) mile Radius)	\$-
Training	\$-
Asset Tagging	\$-
Document Conversion	\$-

RECIPROCAL LIMITATIONS ACT REQUIREMENTS

Please Complete Applicable Portion of Pages 3 & 4 and Return with Bid.

NOTE: These Requirements Do Not Apply To Bids Under \$10,000.00

I. REQUIREMENTS

- A.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering supplies produced, manufactured, mined or grown in Pennsylvania as against those bidders offering supplies produced, manufactured, mined or grown in any state that gives or requires a preference to supplies produced, manufactured, mined or grown in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state supplies and the amount of the preference:

	STATE	PREFERENCE
1.	Alaska	7% (applies only to timber, lumber, and manufactured lumber products originating in the state)
2.	Arizona	5% (construction materials produced or manufactured in the state only)
3.	Hawaii	10%
4.	Illinois	10% for coal only
5.	Iowa	5% for coal only
6.	Louisiana	4% meat and meat products 4% catfish 10% milk & dairy products 10% steel rolled in Louisiana 7% all other products
7.	Montana	5% for residents * 3% for non-residents* *offering in-state goods, supplies, equipment and materials
8.	New Mexico	5%
9.	New York	3% for purchase of food only
10.	Oklahoma	5%
11.	Virginia	4% for coal only
12.	Washington	5% (fuels mined or produced in the state only)
13.	Wyoming	5%

- B.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering printing performed in Pennsylvania as against those bidders offering printing performed in any state that gives or requires a preference to printing performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular category of printing.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state printing and the amount of the preference:

	STATE	PREFERENCE
1.	Hawaii	15%
2.	Idaho	10%
3.	Louisiana	3%
4.	Montana	8%
5.	New Mexico	5%
6.	Wyoming	10%

- C.** The Reciprocal Limitations Act, also requires the Commonwealth to give resident bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidders from that state or exclude bidders from states that exclude nonresident bidders. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder. The following is a list of the states which have been found by the Department of General Services to have applied a preference for in-state bidders and the amount of the preference:

STATE	PREFERENCE
1. Alaska	5% (supplies only)
2. Arizona	5% (construction materials from Arizona resident dealers only)
3. California	5% (for supply contracts only in excess of \$100,000.00)
4. Connecticut	10% (for supplies only)
5. Montana	3%
6. New Mexico	5% (for supplies only)
7. South Carolina	2% (under \$2,500,000.00) 1% (over \$2,500,000.00)
	This preference does not apply to construction contracts nor where the price of a single unit exceeds \$10,000.
8. West Virginia	2.5% (for the construction, repair or improvement of any buildings)
9. Wyoming	5%

STATE	PROHIBITION
1. New Jersey	For supply procurements or construction projects restricted to Department of General Services Certified Small Businesses, New Jersey bidders shall be excluded from award even if they themselves are Department of General Services Certified Small Businesses.

D. The Reciprocal Limitations Act also requires the Commonwealth not to specify, use or purchase supplies which are produced, manufactured, mined or grown in any state that prohibits the specification for, use, or purchase of such items in or on its public buildings or other works, when such items are not produced, manufactured, mined or grown in such state. The following is a list of the states which have been found by the Department of General Services to have prohibited the use of out-of-state supplies:

STATE	PROHIBITION
1. Alabama	Only for printing and binding involving "messages of the Governor to the Legislature", all bills, documents and reports ordered by and for the use of the Legislature or either house thereof while in session; all blanks, circulars, notices and forms used in the office of or ordered by the Governor, or by any state official, board, commission, bureau or department, or by the clerks of the supreme court . . ./and other appellate courts/; and all blanks and forms ordered by and for the use of the Senate and Clerk or the House of Representatives, and binding the original records and opinions of the Supreme Court . . . /and other appellate courts/
2. Georgia	Forest products only
3. Indiana	Coal
4. Michigan	Printing
5. New Mexico	Construction
6. Ohio	Only for House and Senate bills, general and local laws, and joint resolutions; the journals and bulletins of the Senate and house of Representatives and reports, communications, and other documents which form part of the journals; reports, communications, and other documents ordered by the General Assembly, or either House, or by the executive department or elective state officers; blanks, circulars, and other work for the use of the executive departments, and elective state officers; and opinions of the Attorney General.
7. Rhode Island	Only for food for state institutions.

*If the bid discloses that the bidder is offering to supply one of the above-listed products that is manufactured, mined, or grown in the listed state, it shall be rejected. Contractors are prohibited from supplying these items from these states.

II. CALCULATION OF PREFERENCE

In calculating the preference, the amount of a bid submitted by a Pennsylvania bidder shall be reduced by the percentage preference which would be given to a nonresident bidder by its state of residency (as found by the Department of General Services in Paragraph C_{above}). Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment or materials shall be reduced by the percentage preference which would be given to another bidder by the state where the goods, supplies, equipment or materials are produced, manufactured, mined or grown (as found by the Department of General Services in Paragraphs A and B above).

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE BID

III. STATE OF MANUFACTURE

All bidders must complete the following chart by listing the name of the manufacturer and the state (or foreign country) of manufacture for each item. If the item is domestically produced, the bidder must indicate the state in the United States where the item will be manufactured. **This chart must be completed and submitted with the bid or no later than two (2) business days after notification from the Issuing Office to furnish the information. Failure to complete this chart and provide the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid.**

ITEM NUMBER	NAME OF MANUFACTURER	STATE (OR FOREIGN COUNTRY) OF MANUFACTURE

IV. BIDDER'S RESIDENCY

A. In determining whether the bidder is a nonresident bidder from a state that gives or requires a preference to bidders from that state, the address given on the first page of this invitation to bid shall be used by the Commonwealth. If that address is incorrect, or if no address is given, the correct address should be provided in the space below:

Correct Address: _____

- B.** In order to claim the preference provided under Section I.B., Pennsylvania resident bidders must complete the following or have such information on file with the Issuing Office:
- 1.** Address of bidder's bona fide establishment in Pennsylvania at which it was transacting business on the date when bids for this contract/requisition were first solicited: _____
 - 2. a.** If the bidder is a corporation:
 - (1)** The corporation is or is not incorporated under the laws of the Commonwealth of Pennsylvania.
 - (a)** If the bidder is incorporated under the laws of the Commonwealth of Pennsylvania, provide date of incorporation: _____
 - (b)** If the bidder is not incorporated under the laws of the Commonwealth of Pennsylvania, it must have a certificate of authority to do business in the Commonwealth of Pennsylvania from the Pennsylvania Department of State as required by the Pennsylvania Business Corporation Law (15 P.S. §2001). Provide date of issuance of certificate of authority: _____
 - (2)** The corporation is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must register the fictitious name with the Secretary of the Commonwealth and the office of the prothonotary of the county wherein the registered office of such corporation is located as required by the Fictitious Corporate Name Act, as amended 15 P.S. §51 et seq. Corporate bidders conducting business under an assumed or fictitious name must provide date of registry of the assumed or fictitious name: _____
 - b.** If the bidder is a partnership:
 - (1)** The partnership is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must file with the Secretary of the Commonwealth and the office of the prothonotary the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended 54 P.S. §28.1. Partnerships conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____
 - (2)** The partnership is or is not a limited partnership formed under the laws of any jurisdiction other than the Commonwealth of Pennsylvania. If the bidder is an Out-of-state limited partnership, it must register with the Pennsylvania Department of State as required by the Act of July 10, 1981, P.L. 237, as amended, 59 Pa. C.S.A. §503. Out-of-state limited partnerships must provide the date of registry with the Pennsylvania Department of State: _____
 - c.** If the bidder is an individual:

He or she is or is not conducting business under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, he or she must file with the Secretary of the Commonwealth and the office of the prothonotary in the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended, 54 P.S. §28.1. Individuals conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____

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PART I - GENERAL INFORMATION

PART I - GENERAL INFORMATION

I.1 IFB-001.1 Purpose (Oct 2006)

The Commonwealth of Pennsylvania (Commonwealth) is issuing this Invitation for Bids (IFB) to meet the needs of DGS to satisfy a need for MICROFILM EQUIPMENT, SUPPLIES AND SERVICES.

I.2 IFB-005.1 Type of Contract (Oct. 2006)

If the Issuing Office enters into a contract as a result of this IFB, it will be a contract containing the Contract Terms and Conditions as shown in Part V of this IFB.

I.3 IFB-008.1C No Pre-bid Conference (Oct. 2006)

There will be no pre-bid conference for this IFB. If there are any questions, please forward them to the Issuing Office prior to the bid opening date and time.

I.4 IFB-009.1 Questions (February 2012)

All questions regarding the IFB must be submitted in writing to the email address of the Issuing Officer provided in the solicitation. While there is no set timeline for the submittal of questions, questions received within 48 hours prior to the bid due date and time will be answered at the discretion of the Commonwealth. All questions received will be answered, in writing, and such responses shall be posted to eMarketplace as an addendum to the IFB. The Issuing Officer shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the IFB or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation.

I.5 IFB-010.1 Addenda to the IFB (Oct. 2006)

If the Issuing Office deems it necessary to revise any part of this IFB before the bid response date, the Issuing Office will post an addendum to its website at <HTTPS://WWW.DGS.PA.GOV/PAGES/DEFAULT.ASPX> it is the Bidder's responsibility to periodically check the website for any new information or addenda to the IFB.

I.6 IFB-011.1B Submission of Bids – Electronic Submittal (May 2011)

- a. Bids are requested for the item(s) described in the Invitation For Bids and all the documents referenced in the form (collectively called the IFB). Bidders must submit their bids through the Commonwealth's electronic system (SRM).
- b. It is the responsibility of each bidder to ensure that its Bid is received through the electronic system prior to the date and time set for the opening of bids ("Bid Opening Time"). No Bid shall be considered if it arrives after the Bid Opening Time, regardless of reason for the late arrival.

Bids that are timely received prior to the Bid Opening Time shall be opened publicly in the presence of one or more witnesses at the time and place designated in this IFB for the Bid opening.
- c. Bids must be firm. If a Bid is submitted with conditions or exceptions or not in conformance with the terms

and conditions referenced in the IFB Form, it shall be rejected. The Bid shall also be rejected if the items offered by the Bidder are not in conformance with the specifications as determined by the Commonwealth.

d. The Bidder, intending to be legally bound hereby, offers and agrees, if this Bid is accepted, to provide the awarded items at the price(s) set forth in this Bid at the time(s) and place(s) specified.

I.7 IFB-024.1 Bid Protest Procedure (April 2016)

The Bid Protest Procedure is on the DGS website at

<http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf>

I.8 IFB-025.1 Electronic Version of this IFB (Oct 2006)

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

I.9 IFB-027.1 COSTARS Program (January 2017)

COSTARS Purchasers. Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 (“Section 1902”), authorizes local public procurement units and state-affiliated entities (together, “COSTARS Members”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members’ participation.

A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A “local public procurement unit” is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission;
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
- Any tax-exempt, nonprofit educational institution or organization;
- Any tax-exempt, nonprofit public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as Local Public Procurement Units on a case-by-case basis.

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:

- The Pennsylvania Turnpike Commission;
- The Pennsylvania Housing Finance Agency;
- The Pennsylvania Municipal Retirement System;
- The Pennsylvania Infrastructure Investment Authority;
- The State Public School Building Authority;

- The Pennsylvania Higher Education Facilities Authority, and
- The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>

B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902 , from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.

C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.

D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.

E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
DGS-verified Small Diverse Business Bidder	\$166
DGS Self-Certified Small Business Bidder	\$500
All Other Bidders	\$1,500

1. Each bidder electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.

2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.

F. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.

1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract

award and prior to the renewal date for each succeeding Contract period.

2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:

a. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.

b. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.

c. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.

d. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.

e. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.

f. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.

G. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.

1. The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/irj/portal/anonymous> , Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.

3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

H. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.costars.state.pa.us .

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.costars.state.pa.us , where it may register by completing the online

registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.

2. Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101
Telephone: 1-866-768-7827
E-mail GS-PACostars@pa.gov

I.10 IFB-028.1 Participating Addendum with an External Procurement Activity (Dec 6 2006)

Section 1902 of the *Commonwealth Procurement Code*, 62 Pa.C.S. Section 1902, permits external procurement activities to participate in cooperative purchasing agreements for the procurement of services, supplies or construction.

a. **Definitions.** The following words and phrases have the meanings set forth in this provision:

- 1) *External procurement activity:* The term, as defined in 62 Pa. C. S. Section 1901, means a 'buying organization not located in the Commonwealth [of Pennsylvania] which if located in this Commonwealth would qualify as a public procurement unit [under 62 Pa. C.S. Section 1901]. An agency of the United States is an external procurement activity.'
- 2) *Participating addendum:* A bilateral agreement executed by the Contractor and an external procurement activity that clarifies the operation of the Contract for the external procurement activity concerned. The terms and conditions in any participating addendum shall affect only the procurements of the purchasing entities under the jurisdiction of the external procurement activity signing the participating addendum.
- 3) *Public procurement unit:* The term, as defined in 62 Pa. C. S. Section 1901, means a 'local public procurement unit or purchasing agency.'
- 4) *Purchasing agency:* The term, as defined in 62 Pa. C. S. Section 103, means a 'Commonwealth agency authorized by this part or any other law to enter into contracts for itself or as the agent of another Commonwealth agency.'

b. **General.** A participating addendum shall incorporate the terms and conditions of the Contract resulting from this IFB. The Contractor shall not be required to enter into any participating addendum.

c. **Additional Terms.**

- 1) A participating addendum may include additional terms that are required by the law governing the external procurement activity.
- 2) A participating addendum may include new, mutually agreed upon terms that clarify ordering procedures specific to a participating external procurement activity.
- 3) The construction and effect of any participating addendum shall be governed by and construed in accordance with the laws governing the external procurement activity.
- 4) If an additional term requested by the external procurement activity will result in an increased cost to the Contractor, the Contractor shall adjust its pricing up or down accordingly.

d. **Prices.**

- 1) **Price adjustment** For any costs affecting the percent markup that the Contractor will or will not incur or

that differ from costs incurred or not incurred in the fulfillment of this Contract, the Contractor shall adjust its pricing up or down accordingly. These costs may include, but not be limited to:

- a) State and local taxes;
 - b) Unemployment and workers compensation fees;
 - c) E-commerce transaction fees; and
 - d) Costs associated with additional terms, established pursuant to the Contract.
- 2) The Contractor's pricing for an external procurement activity shall be firm and fixed for the duration of the initial term of the Contract. After the initial term of the Contract, if the Contract is renewed, the Contractor's pricing may be adjusted up or down based on market conditions only with the mutual agreement of both the Contractor and any external procurement activity.

e. Usage Reports on External Procurement Activities.

The Contractor shall furnish to the Contracting Officer an electronic quarterly usage report, preferably in spreadsheet format no later than the fifteenth calendar day of the succeeding calendar quarter. Reports shall be e-mailed to the Contracting Officer for the Contract. Each report shall indicate the name and address of the Contractor, contract number, period covered by the report, the name of the external procurement activity that has used the Contract and the total volume of sales to the external procurement activity for the reporting period.

- f. Electronic Copy of Participating Addendum.** The Contractor, upon request of the Contracting Officer, shall submit **one** electronic copy of the participating addendum to the Contracting Officer within **ten** days after request.

I.11 IFB-029.1 Prices (Dec 6 2006)

The bid submitted by the successful Bidder will be incorporated into any resulting Contract and the Bidder will be required to provide the awarded item(s) at the prices quoted in its Bid.

I.12 IFB-030.1 Approved Equal (Nov 2006)

Whenever an item is defined in this IFB by trade name and catalogue number of a manufacturer or vendor, the term 'or approved equal,' if not inserted therewith shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, the Issuing Office will consider Bids for the referenced product only. The term 'or approved equal' is defined as meaning any other make which, in the sole opinion of the Issuing Office, is of such character, quality, and performance equivalence as to meet the standard of quality of products specified for which it is to be used equally as well as that specified. A Bidder quoting on a product other than the referenced product shall: a) furnish complete identification in its Bid of the product it is offering by trade name, brand and/or model number; b) furnish descriptive literature and data with respect to the substitute product it proposes to furnish; and c) indicate any known specification deviations from the referenced product.

I.13 IFB-031.1 Alternates (Oct 2013)

A Bidder who wants to offer an alternate must notify the Issuing Office in writing, at least five (5) days prior to the scheduled Bid opening, that the Bidder intends to offer an alternate in its Bid. An "alternate" is a product that deviates from the requirements of the specifications in its composition, qualities, performance, size dimension, etc. The written notification from the Bidder must include a complete description of the alternate and must identify the

product's deviations from the specifications. Upon receipt of the notification, the Issuing Office will determine whether the alternate is acceptable. If the Issuing Office, in its discretion, determines that the alternate is acceptable, the Issuing Office will issue a change notice to the invitation for bids that revises the specifications. If no change notice is issued revising the specification, a Bid offering the alternate will not be considered for award. If an item or items in the IFB are designated "no substitute," this provision does not apply and no alternate may be proposed by a bidder nor will any alternate be considered by the Issuing Office.

I.14 IFB-032.1 New Equipment (Nov 2006)

Unless otherwise specified in this invitation for bids, all products offered by Bidders must be new or remanufactured. A 'new' product is one that will be used first by the Commonwealth after it is manufactured or produced. A 'remanufactured' product is one which: 1) has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item; 2) does not, in the opinion of the Issuing Office, differ in appearance from a new item; and 3) has the same warranty as a new item. Unless otherwise specified in this invitation for bids, used or reconditioned products are not acceptable. This clause shall not be construed to prohibit Bidders from offering products with recycled content, provided the product is new or remanufactured.

I.15 I-IFB-033.1 Modification or Withdrawal of Bid (Nov 2006)

- a. Bid Modification Prior to Bid Opening. Bids may be modified only by written notice or in person prior to the exact hour and date specified for Bid opening.
 - 1) If a Bidder intends to modify its Bid by written notice, the notice must specifically identify the Bid to be modified and must be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the modification to modify the Bid on behalf of the Bidder. The Bid modification must be received in a sealed envelope. The sealed envelope must identify the assigned Collective Number and the Bid Opening Time, and should state that enclosed in the envelope is a Bid modification
 - 2) If a Bidder intends to modify its Bid in person, the individual who will modify the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to modify the Bid on behalf of the Bidder. If a Bidder intends to modify its Bid in person, the Bidder may do so only in the presence of an agency employee. (The agency employee will observe the actions taken by the individual to modify the Bid, but will not read the Bid or the modification).
- b. Bid Withdrawal Prior to Bid Opening. Bids may be withdrawn only by written notice or in person prior to the exact hour and date specified for Bid opening.
 - 1) If a Bidder intends to withdraw its Bid by written notice, the notice shall specifically identify the Bid to be withdrawn and shall be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the bid withdrawal to withdraw the bid on behalf of the Bidder. Except as provided in Subparagraph c, below, bid withdrawals received after the exact hour and date specified for the receipt of Bids shall not be accepted.
 - 2) If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to withdraw the Bid on behalf of the Bidder.
- c. Bid Withdrawal After Bid Opening. Bidders are permitted to withdraw erroneous Bids after Bid opening only if the following conditions are met:
 - 1) The Bidder submits a written request for withdrawal.
 - 2) The Bidder presents credible evidence with the request that the reason for the lower Bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the Bid.

- 3) The request for relief and supporting evidence must be received by the Issuing Office within three (3) business days after Bid opening, but before award of the contract.
 - 4) The Issuing Office shall not permit a Bid withdrawal if the Bid withdrawal would result in the award of the contract on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the bidder has a substantial interest.
 - 5) If a Bidder is permitted to withdraw its Bid, the Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.
- d. Firm Bid. Except as provided above, a Bid may not be modified, withdrawn, or cancelled by any Bidder for a period of sixty (60) days following the time and date designated for Bid opening, unless otherwise specified by the Bidder in its Bid. If the lowest responsible Bidder, as determined by the Issuing Office, withdraws its Bid prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the Bidder shall be liable to the Commonwealth for all costs and damages associated with the re-award or re-bid including the difference between the Bidder's price and the actual cost that the Commonwealth pays for the awarded items.
- e. Clarification and Additional Information. After the receipt of Bids, the Issuing Office shall have the right to contact Bidders for the purpose of seeking:
- 1) Clarification of the Bid which confirms the Issuing Office's understanding of statements or information in the Bid or;
 - 2) Additional information on the items offered; provided the IFB does not require the rejection of the Bid for failure to include such information.

I.16 I-IFB-034.1 Rejection of Bids (Nov 2006)

The Issuing Office reserves the right to reject any and all Bids, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid if the best interests of the Commonwealth are thereby served.

I.17 Submission-001.1 Representations and Authorizations (February 2017)

By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.

E. The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.

F. To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.

G. To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.

H. The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.

I. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.

J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.

K. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

L. The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

PART II - REQUIREMENTS

PART II - REQUIREMENTS

II.1 IFB-006.1b COSTARS Program Election to Participate (July 2012)

If the bidder is willing to sell the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to COSTARS members, the bidder should complete and return the COSTARS Program Election to Participate form which is an attachment to this IFB. If the bidder is asserting that it is a Department of General Services Certified Small Business, the bidder must submit its active certification with the bid response.

II.2 II-IFB-008.1b Lobbying Certification and Disclosure – Electronic Submission. (Oct 2006).

With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000 all recipients must certify that they will not use federal funds for lobbying and must disclose the use of non-federal funds for lobbying by filing required documentation. Offerors must complete and return the Lobbying Certification Form and the Disclosure of Lobbying Activities Form, which are attached to and made a part of this IFB. The completed and signed Lobbying Certification Form and the Disclosure of Lobbying Activities Form should be submitted with the Bid Response. Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.

II.3 II-IFB-016.1 Post-Submission Descriptive Literature (Dec 2006)

The Commonwealth may, during its evaluation of the bids, require any bidder to submit cuts, illustrations, drawings, prints, test data sheets, specification sheets and brochures which detail construction features, design, components, materials used, applicable dimensions and any other pertinent information which the Issuing Office may require in order to evaluate the product(s) offered. The required information must be submitted within two (2) business days after notification from the Issuing Office. Failure to submit the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid as non-responsive.

II.4 II-IFB-017.1b Reciprocal Limitations Act – Electronic Submittal (February 2007)

This procurement is subject to the Reciprocal Limitations Act. Bidders must complete and submit with the Bid Response the State of Manufacture Chart, which is contained in GSPUR-89 ("Reciprocal Limitations Act Requirements") which is attached to and made part of this IFB. The completed State of Manufacture Chart should be submitted as part of the Bid Response

II.5 II-IFB-018.1b Iran Free Procurement Certification and Disclosure – Electronic Submittal (November 2016)

Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, a bidder 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 bidders must complete and return the Iran Free Procurement Certification form, which is attached hereto and made part of this IFB. The completed and signed Iran Free Procurement Certification form must be submitted with the Bid Response.

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#.WDNfJJ>

PART III - SELECTION CRITERIA

PART III - SELECTION CRITERIA

III.1 III-IFB-001.1a Mandatory Responsiveness Requirements (Oct 2006)

To be eligible for selection, a bid must be:

- a. Timely received from a Bidder;
- b. Properly signed by the Bidder.

III.2 III-IFB-006.1f Method of Award - All Bidders (April 2011)

Award will be made to all responsive and responsible bidders.

III.3 III-IFB-007.1 Awards (May 2011)

Unless all Bids are rejected, and except as otherwise provided by law, award will be made through the issuance of a contract/purchase order in accordance with the method of award. Unless otherwise specified by the Issuing Office in the IFB form the Commonwealth reserves the right to award by item or on a total Bid basis, whichever is deemed more advantageous to the Commonwealth. In cases of discrepancies in prices, the unit price will be binding unless the unit price is obviously in error and the extended price is obviously correct, in which case the erroneous unit price will be corrected. As a condition for receipt of award of a contract/purchase order, the Bidder must be registered in the Commonwealth of Pennsylvania's Vendor Master file. In order to register, bidders must visit the Pa Supplier Portal at <https://www.pasupplierportal.state.pa.us/> or call the Customer Support Center at 877-435-7363 or 717-346-2676.

III.4 III-IFB-008.1 Tie Bids (Nov 2006)

All tie bids will be broken by the Issuing Office.

III.5 III-IFB-009.1 Prompt Payment Discounts (Nov 2006)

Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Bidder, however, the Issuing Office will take advantage of such offer.

III.6 III-IFB-010.1 Option for Separate Competitive Bidding Procedure (Nov 2006)

The Commonwealth reserves the right to purchase products or services covered under this Contract through a separate competitive bidding procedure, whenever Commonwealth deems it in the best interest of the Commonwealth. The right will generally be exercised only when a specific need for a large quantity of the product or service exists or when the price offered is significantly lower than the Contract price.

III.7 III-IFB-014.1 Rebates (Nov 2006)

Any rebate applicable at the time of bid should be taken into consideration by the bidder in calculating its bid price. Bidders must specifically state in their bid proposal, when applicable, that rebates have been considered in arriving at the bid price. Following award, the Commonwealth will assign to the awarded bidder, any rebates which the bidder stated that he took into consideration. If the bidder fails to include such a statement, the Commonwealth will receive the full benefit of the manufacturer's rebate.

PART IV - WORK STATEMENT

PART IV - WORK STATEMENT

IV.1 IFB-001.1a Specifications (Nov 2006)

The Commonwealth is seeking bids to procure the item(s) set forth in the attached document entitled "Specifications."

PART V - CONTRACT TERMS and CONDITIONS

PART V - CONTRACT TERMS and CONDITIONS

V.1 CONTRACT-001.1b Contract Terms and Conditions (Nov 30, 2006)

The Contract with the awarded bidder (who shall become the "Contractor") shall include the following terms and conditions:

V.2 CONTRACT-002.1a Term of Contract – Contract (May 2012)

The initial term of the Contract shall be 02 year(s) and 00 month(s).

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

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

V.3 CONTRACT-002.2b Renewal of Contract Term – Mutual (Oct 2013)

The Contract may be mutually renewed for a maximum of 3 additional 1 year term(s), so long as the Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter dated not less than 090 days prior to the expiration of the term of the agreement, or any extension thereof, and the Contractor consents to the renewal not less than 060 days prior to the expiration of the term of the agreement or any extension thereof. The renewal may be exercised as individual or multiple year terms(s). Any renewal will be under the same terms, covenants and conditions. No further document is required to be executed to renew the term of the contract.

V.4 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006)

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

V.5 CONTRACT-003.1a Signatures – Contract (July 2015)

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

The Contract may be electronically signed by the Commonwealth. The electronically-printed name of the Purchasing Agent represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have "Fully Executed" at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

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

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding

contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

c. 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.

V.6 CONTRACT-004.1a Definitions (Oct 2013)

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

a. Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this contract, that entity shall also be identified as "Agency".

b. Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.

c. Days: Unless specifically indicated otherwise, days mean calendar days.

d. Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.

e. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.

f. Services: All Contractor activity necessary to satisfy the Contract.

V.7 CONTRACT-005.1a Purchase Orders (July 2015)

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

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

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

a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.

b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain

agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

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

V.8 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)

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

V.9 CONTRACT-007.01a Supplies Delivery (Nov 30 2006)

All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date.

V.10 CONTRACT-007.02 Estimated Quantities (Nov 30 2006)

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

V.11 CONTRACT-008.1a Warranty. (Oct 2006)

The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.

V.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2013)

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which

is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report, document or other material provided to the Commonwealth under the contract.

The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract.

This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same.

As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action.

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.

The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract.

If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing.

If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

V.13 CONTRACT-009.1d Ownership Rights (Oct 2006)

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

V.14 CONTRACT-010.1a Acceptance (Oct 2006)

No item(s) received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the item(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Commonwealth within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Commonwealth's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such

item(s), 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.

V.15 CONTRACT-010.2 Product Conformance (March 2012)

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

1. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
2. Supply published manufacturer product documentation.
3. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
4. Complete a survey/questionnaire relating to the bid requirements and specifications.
5. Provide customer references.
6. Provide a product demonstration at a location near Harrisburg or the using agency location.

V.16 CONTRACT-010.3 Rejected Material Not Considered Abandoned (March 2012)

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

V.17 CONTRACT-011.1a Compliance With Law (Oct 2006)

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

V.18 CONTRACT-013.1 Environmental Provisions (Oct 2006)

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

V.19 CONTRACT-014.1 Post-Consumer Recycled Content (June 2016)

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> .

V.20 CONTRACT-014.3 Recycled Content Enforcement (February 2012)

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.

V.21 CONTRACT-015.1 Compensation (Oct 2006)

The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Purchase Order. All item(s) shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.

V.22 CONTRACT-015.2 Billing Requirements (July 2021)

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:

- Vendor name and "Remit to" address, including SAP Vendor number;
- SAP Purchase Order number;
- Delivery Address, including name of Commonwealth agency;
- Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- Quantity provided;
- Unit price;
- Price extension;
- Total price; and
- Delivery date of supplies or services.

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

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

V.23 CONTRACT-016.1 Payment (Oct 2006)

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) 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 (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

V.24 CONTRACT-016.2 Payment – Electronic Funds Transfer (July 2022)

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

V.25 CONTRACT-017.1 Taxes (Dec 5 2006)

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 state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph 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.

V.26 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)

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

V.27 CONTRACT-019.1 Hold Harmless Provision (Nov 30 2006)

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), 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.

V.28 CONTRACT-020.1 Audit Provisions (Oct 2006)

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

V.29 CONTRACT-021.1 Default (Oct 2013)

a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:

- 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
- 2) Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Contract or Purchase Order terms;
- 3) Unsatisfactory performance of the work;
- 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
- 5) Improper delivery;
- 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
- 7) Delivery of a defective item;
- 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
- 9) Discontinuance of work without approval;
- 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- 11) Insolvency or bankruptcy;
- 12) Assignment made for the benefit of creditors;
- 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
- 14) Failure to protect, to repair, or to make good any damage or injury to property;
- 15) Breach of any provision of the Contract;

16) Failure to comply with representations made in the Contractor's bid/proposal; or

17) Failure to comply with applicable industry standards, customs, and practice.

b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.

c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

d. The rights and remedies of the Commonwealth provided in this paragraph 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 paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

V.30 CONTRACT-022.1 Force Majeure (Oct 2006)

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 aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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

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

V.31 CONTRACT-023.1a Termination Provisions (Oct 2013)

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

a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.

b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under the Subparagraph a.

V.32 CONTRACT-024.1 Contract Controversies (Oct 2011)

a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.

b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

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

V.33 CONTRACT-025.1 Assignability and Subcontracting (Oct 2013)

a. Subject to the terms and conditions of this paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be

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

c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.

g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

V.34 CONTRACT-026.1 Other Contractors (Oct 2006)

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 work 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 paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

V.35 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (August 2018)

The Contractor agrees:

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

V.36 CONTRACT-028.1 Contractor Integrity Provisions (January 2015)

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.

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

a. "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.

b. "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.

c. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.

d. "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.

e. "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.

f. "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.

g. "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.

2. In furtherance of this policy, Contractor agrees to the following:

a. 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.

b. 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.

c. 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.

d. 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 the Contractor's submission of the contract signed by Contractor.

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

(1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

(2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

f. 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)*.

g. 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.

h. 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.

i. 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.

j. 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.

V.37 CONTRACT-029.1 Contractor Responsibility Provisions (July 2021)

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

V.38 CONTRACT-030.1 Americans with Disabilities Act (July 2021)

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

- 1 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 agreement or from activities provided for under this agreement. As a condition of accepting and executing this

agreement, 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 through contracts with outside contractors.

- 2 The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

V.39 CONTRACT-031.1 Hazardous Substances (April 2017)

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 34 Pa. Code Section 301.1 - 323.6.

a. Labeling. The Contractor shall ensure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Subparagraphs (1) through (4):

1) Hazardous substances:

- a) The chemical name or common name,
- b) A hazard warning, and
- c) The name, address, and telephone number of the manufacturer.

2) Hazardous mixtures:

- a) The common name, but if none exists, then the trade name,
- b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
- c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
- d) A hazard warning, and
- e) The name, address, and telephone number of the manufacturer.

3) Single chemicals:

- a) The chemical name or the common name,
- b) A hazard warning, if appropriate, and
- c) The name, address, and telephone number of the manufacturer.

4) Chemical Mixtures:

- a) The common name, but if none exists, then the trade name,
- b) A hazard warning, if appropriate,
- c) The name, address, and telephone number of the manufacturer, and
- d) The chemical name or common name of either the top five substances by volume or those substances

consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

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

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

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

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

b. Material Safety Data Sheet. The contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The contractor shall also notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

V.40 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)

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

V.41 CONTRACT-033.1 Applicable Law (Oct 2006)

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

V.42 CONTRACT- 034.1b Integration (Nov 30 2006)

This Contract, including the Invitation for Bids, the Contractor's bid, all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

V.43 CONTRACT-034.2b Order of Precedence - IFB (Dec 6 2006)

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

V.44 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011)

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the Commonwealth.

V.45 CONTRACT-035.1a Changes (Oct 2006)

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

V.46 CONTRACT-037.1a Confidentiality (Oct 2013)

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

(b) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:

- (1) already known to the recipient at the time of disclosure other than through the contractual relationship;
- (2) independently generated by the recipient and not derived by the information supplied by the disclosing party.
- (3) 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;
- (4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- (5) required to be disclosed by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

(c) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:

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

V.47 CONTRACT-043.1 Leasing Additional Terms and Conditions (Oct 2013)

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

A. Term of Lease

The Contractor may provide any Leased Property under the Contract for any term up to 60 months, including a Fair Market Value Option for Lease/Purchases. The Lessee shall identify the term selected, as well as its election of either a Lease or Lease/Purchase option, on the Lease PO. The Lease term shall commence on the date the Lessee accepts the Leased Property by executing the Acceptance Certificate, and the term shall continue for the length specified on the Lease PO. The form of the Acceptance Certificate can be found on the Forms page of the Department of General Services' webpage (www.dgs.state.pa.us).

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

B. Payments

1. Full Term Intention. The Lessee shall pay the applicable monthly or annual rent payment for the Leased Property for the full Lease term, unless the Lessee terminates the Lease, either for Contractor default as set forth in the Default provision of the Contract or for non-appropriation of funds as specified in this section.

2. Non-Appropriation. The Lessee's obligation is payable only and solely from funds allotted for the purpose of the Lease. If sufficient funds are not appropriated for continuation of performance under any Lease for any fiscal year subsequent to the one in which the Lessee issued the Lease PO, the Lessee may return the Leased Property to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee shall release the Lessee of all further obligations under the Lease, provided:

- a. The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
- b. The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
- c. The Lessee gives 30 days written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Leased Property is not being replaced by similar items from another vendor. In the event the Lessee returns the Leased Property for failure of appropriations, the Lessee shall pay all amounts then due under the Lease through the end of the fiscal year for which sufficient funds were appropriated for the Lease.

C. Title

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

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

D. Use And Location Of, and Alteration to Leased Property

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

E. Risk of Loss

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

F. Warranties

1. The Lessee shall have the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.

2. The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Lessee's quiet enjoyment of the Leased Property so long as no event of default as defined in Subsection J of this Section shall have occurred and be continuing.

G. Liability

1. The Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Lessee's possession, use, operation, condition, or storage of any Leased Property, whether such injury or death be of agents or employees of the Lessee or of third parties, and whether such property damage be to the Lessee's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Lessee, its agents or employees, and provided that judgment has been obtained against the Lessee, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Lessee.

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

H. Assignment

1. The Lessee shall not assign any Lease PO or other interest in the Leased Property without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Lease PO and Leased Property to an Initial Assignee, who in turn may further assign and/or grant a security interest in a Lease to a subsequent assignee without the Lessee's consent. Any other Contractor assignment shall require the Lessee's prior written consent. Upon written notice to the Lessee, the Contractor may assign payments under any Lease to a third party.

2. The Contractor may assign, without Lessee consent, any Lease PO to a third party ("Initial Assignee") who will fund the purchase of the Leased Property. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Leased Property. The Contractor shall notify the Lessee of any Lease PO assignment in its acknowledgment of the Lease PO to the Lessee, providing the Lessee with a copy of the assignment agreement between the Contractor and the Initial Assignee.

3. Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Leasing Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing a Lease PO, the Lessee waives any claims it may have under the Lease against the Initial Assignee for any loss, damage, or expense caused by, defect

in, or use or maintenance of any Leased Property. The Lessee acknowledges that the Initial Assignee is not the supplier of the Leased Property and is not responsible for their selection or installation. After the ordering Lessee executes, and the Initial Assignee receives, an Acceptance Certificate, if any portion of the Leased Property is unsatisfactory for any reason, the ordering Lessee shall, nevertheless, continue to make payments under the applicable Lease terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.

4. After a Lessee executes and the Initial Assignee receives an Acceptance Certificate:

a. The Lessee shall, regardless of whether any portion of the Leased Property is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Lease and shall make any claim relating to the Leased Property against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

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

5. Warranty Disclaimer

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

I. Financing and Prepayment

1. If the Contractor is not the supplier of the Leased Property, the Contractor will pay the charges for the Leased Property directly to the supplier. In the event the Contractor assigns the Lease to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned rental payments under the Lease to an Initial Assignee, the Lessee's obligation to make rental payments for the Leased Property for which the Lessee has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Lessee dissatisfaction with any Leased Property.

2. The Lessee may at any time terminate the financing for any Leased Property by prepaying its remaining rental payments. The Lessee shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining rental payments to reflect the requested prepayment and shall advise the Lessee of the balance to be paid.

3. If the Lessee purchases Contract items related to Leased Property prior to the expiration of the Lease term, or if the Lease is terminated for any reason except non-appropriation as described in Subsection B of this Subsection, and if the Leased Property has been delivered and the Lessee has executed and delivered to the Contractor an acceptance certificate, the Lessee shall prepay such Leased Property.

J. Remedies for Default

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

individually or collectively:

a. Terminate the applicable Lease.

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

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

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

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

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

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

K. Purchase Option

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

L. Extension

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

M. Return of Leased Property

At the expiration or termination of a Lease for any Leased Property, or upon Contractor/Initial Assignee demand pursuant to Subsection J. of this Section, the Lessee shall promptly return the Leased Property, freight prepaid, to

any location in the continental United States specified by the Contractor/Initial Assignee. The Lessee shall pay the required rent for the Leased Property until they have been shipped to the Contractor.

1. Since DGS has, as a matter of policy, determined that all hard drives contain information that is confidential or sensitive, the Contractor shall, at its discretion, either remove and destroy any hard drive from the Leased Property or clean the hard drive to Office of Administration/U.S. Department of Defense standards, and the Contractor shall provide written certification to the Lessee that the hard drive has been destroyed or cleaned to Office of Administration/U.S. Department of Defense standards.

2. Except in the event of a total loss of any or all Leased Property as described in Subsection E. of this Section, and except for any costs associated with the removal, destruction, and cleaning of any hard drives, the Lessee shall pay any costs the Contractor/Initial Assignee incurs to restore the Leased Property to good operating condition in accordance with the Contract specifications. All parts the Contractor/Initial Assignee may remove and replace shall become the Contractor's/Initial Assignee's property.

3. The Contractor's/Initial Assignee's costs associated with the cleaning of any hard drive to Office of Administration/U.S. Department of Defense standards and the removal and destruction of any hard drive(s) shall be included in the rental amount. The Lessee shall not be required to pay additional charges for the Contractor's/Initial Assignee's cleaning of a hard drive to Office of Administration/U.S. Department of Defense standards nor for the Contractor's/Initial Assignee's removal and destruction of any hard drive(s) upon the return of a Leased item.

N. Compliance with Internal Revenue Code

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

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

O. Governing Law

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

P. Notices

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

V.48 CONTRACT-046.1 Manufacturer's Price Reduction (Oct 2006)

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

V.49 CONTRACT-051.1 Notice (Dec 2006)

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

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

V.50 CONTRACT-052.1 Right to Know Law (Feb 2010)

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.

b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:

1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the 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
2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold

the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.



ELECTION TO PARTICIPATE FORM

COSTARS PROGRAM

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 at the beginning of each contract year and/or upon each contract renewal date:

\$166 for a Department of General Services-verified Small Diverse Business or
Small, Veteran Business Enterprise

\$500 for a Department of General Services Self-Certified Small Business

\$1,500 for all other businesses

*If you are a Department of General Services Self-Certified Small Business or
Department of General Services-verified Small Diverse Business,
you must submit a copy of your active **Small Business Contracting Program**
certificate with your bid response.*

Corporate or Legal Entity Name:	
Signature:	
Date:	
Contract Description:	

COSTARS PROGRAM CLAUSE

COSTARS Purchasers. Section 1902 of the Commonwealth Procurement Code, 62 Ph.C.'s. § 1902 (“Section 1902”), authorizes local public procurement units and state-affiliated entities (together, “COSTARS Members”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members’ participation.

A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A “local public procurement unit” is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission;
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
- Any tax-exempt, nonprofit educational institution or organization;
- Any tax-exempt, nonprofit public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as local public procurement units on a case-by-case basis.

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:

- The Pennsylvania Turnpike Commission;
- The Pennsylvania Housing Finance Agency;
- The Pennsylvania Municipal Retirement System;
- The Pennsylvania Infrastructure Investment Authority;
- The State Public School Building Authority;
- The Pennsylvania Higher Education Facilities Authority, and
- The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>.

- B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.
- C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.
- D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.
- E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
DGS-verified Small Diverse Business Bidder	\$166
DGS Self-Certified Small Business Bidder	\$500
All Other Bidders	\$1,500

- 1. Each bidder electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.
 - 2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.
- F. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.

1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.
 2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:
 - a. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.
 - b. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
 - c. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.
 - d. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.
 - e. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.
 - f. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.
- G. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.
1. The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/irj/portal/anonymous>, Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal

Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.
3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

H. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.costars.state.pa.us.

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.costars.state.pa.us, where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently registered COSTARS member entities, please visit the COSTARS website.
2. Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101
Telephone: 1-866-768-7827
E-mail GS-PACostars@pa.gov

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, which can be found at:

<https://www.gsa.gov/Forms/TrackForm/33144>

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under *Section 1352, Title 31, U. S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than **\$100,000** for such failure.

SIGNATURE: _____

TITLE: _____ DATE: _____



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania’s Unemployment Compensation Law, Workers’ Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee’s compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

<i>Signature</i>	<i>Date</i>
<i>Name (Printed)</i>	
<i>Title of Certifying Official (Printed)</i>	
<i>Contractor/Grantee Name (Printed)</i>	

PA Supplier ID Number: _____

**ENTERPRISE ON-PREMISE SOFTWARE/SERVICES LICENSE
REQUIREMENTS AGREEMENT
BETWEEN
THE COMMONWEALTH OF PENNSYLVANIA,
ACTING BY AND THROUGH
THE GOVERNOR’S OFFICE OF ADMINISTRATION
AND
[INSERT FULL NAME OF LICENSOR]**

This Enterprise On-Premise Software/Services License Requirements Agreement (“Agreement”) is entered into by and between **[insert full name of Licensor]** (“Licensor”) and the **Commonwealth of Pennsylvania**, acting by and through the Governor’s Office of Administration (“Commonwealth”).

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 Licensor **[insert the name of Licensor’s standard End User License/Software License Agreement]**, which is attached to this Agreement as Exhibit A. 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 maintenance, support and services for said products, shall be referred to as “Licensed Products.”
2. **Effective Date.** The effective date of this Agreement shall be the date that it has been fully executed by the Licensor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.
3. **Enterprise Language:**
 - (a) The parties agree that more than one agency of the Commonwealth (“Commonwealth Agency”) may license products subject to this Agreement, provided that the procurement of any Licensed Products by any Commonwealth Agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each Commonwealth Agency seeking to use the Licensed Products.
 - (b) The parties agree that, if the licensee is a “Commonwealth Agency” as defined by Section 103 of the [Commonwealth Procurement Code, 62 Pa. C. S. § 103](#), the terms and conditions of this Agreement apply to the procurement of any Licensed

Products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase order or other procurement document without further need for execution.

4. List of Licensed Products.

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

5. 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.

6. Indemnification/Immunity.

- (a) The Commonwealth does not have the authority to indemnify any entity. The Commonwealth shall 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.
- (b) Licensor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by Licensor and its employees, affiliates, subcontractors, and agents under this Agreement, provided the Commonwealth gives 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 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 Licensor, the Commonwealth will cooperate with all reasonable requests of the Licensor made in the defense of such suits.

- (c) 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 Licensor to control the defense and any related settlement negotiations.

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

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

incurred by the Commonwealth for such support. If the OAG does not delegate to the Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this section ceases. The Licensor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the suit.

- (b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all Licensed Products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties.
- (c) If the defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the Commonwealth or agreed to by the Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.
- (d) If any Licensed Product furnished hereunder is likely to (in the Licensor's opinion) or does become subject to a claim of infringement of a United States patent, copyright, trade dress or trademark, or for a misappropriation of trade secret, or is held to constitute infringement and the use of the Licensed Product is enjoined, without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (i) Replace or substitute functional equivalents for the Licensed Product;
 - (ii) Modify the Licensed Product so that it is no longer infringing;
 - (iii) Re-perform the Services in a non-infringing manner; or
 - (iv) Obtain the rights necessary for the Licensor to continue performance under this Agreement or obtain the rights for the Commonwealth to continue the use of the Licensed Product.
- (e) If the use of any Licensed Product is enjoined and the Licensor is unable to provide any remedy set forth in subsection (d) above, the Licensor, upon return of the Licensed Product, agrees to refund to the Commonwealth:
 - (i) the fee paid for the infringing Licensed Product, less the amount for the period of usage of the Licensed Product; and
 - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.

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

8. Virus, Malicious, Mischievous or Destructive Programming.

- (a) The Licensor warrants that the Licensed Products as delivered by the Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the Licensed Products (each a "Virus"). However, the Licensed Products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.
- (b) The Licensor shall be liable to the Commonwealth for any damages, costs, fines, remedial measures incurred by the Commonwealth and shall indemnify the Commonwealth against any Third Party claims (in accordance with Section 6,

Indemnification) if the Licensor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Licensed Product or the Commonwealth's or Third Party's software, data, systems or computer networks.

9. Limitation of Liability.

- (a) Except as otherwise provided in this Agreement, the Licensor's liability to the Commonwealth under this Agreement shall be limited to the greater of \$500,000 or the total dollar amount of purchase orders issued for Licensed Products and services covered by this Agreement during the twelve (12)-month period prior to the event giving rise to the damage claim. This limitation does not apply to damages:
 - (i) for bodily injury;
 - (ii) for death;
 - (iii) for gross negligence and willful or unlawful misconduct;
 - (iv) to real property or tangible personal property for which the Licensor is legally liable;
 - (v) under **Section 7**, Patent, Copyright, Trade Secret and Trademark Protection;
 - (vi) resulting from 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;
 - (vii) resulting from a breach of confidentiality;
 - (viii) for which the Licensor is responsible pursuant to any indemnification obligations it has under this Agreement; or
 - (ix) under **Section 8**, Virus, Malicious, Mischievous or Destructive Programming.
- (b) Except with respect to those damages enumerated in subsections 9(a)(i) through (ix) above, the Licensor shall not be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement.

10. 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.

11. 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").

12. 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 Confidential Information or Commonwealth 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 [Criminal History Background Check \(pa.gov\)](#). 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.

13. Confidentiality.

- (a) Definition. “Confidential Information:”
- (i) For the Commonwealth: Information, whether oral or written or via computer disk or electronic media, to which the Licensor is given access, or which is made available by the Commonwealth, whether directly or through a third party, is defined as "Confidential Information." Confidential Information shall include, without limitation, all technology, know-how, processes, software, databases, Trade Secrets (as defined by the Pennsylvania Uniform Trade Secret Act found at 12 Pa. Cons. Stats Secs. 5392 et. seq.), proprietary information, product and business requirements, and information about or from the Commonwealth’s vendors or employees whether received before or after the Effective Date of this Agreement. Confidential Information shall also include information and documentation that 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 the Commonwealth is a party. Sensitive information, as define in Section 14 below, shall be a subset of Confidential Information of the Commonwealth, and shall be subject to additional protections as set forth in Section 14 below.
- (ii) For the Licensor: All information identified in writing by the Licensor as confidential or proprietary to Licensor or its subcontractors.
- (b) Confidential Information. All Confidential Information of or relating to a party shall be held in confidence by the other party to the same extent and in at least the same manner as such party protects its own confidential or proprietary information. Neither party shall disclose, publish, release, transfer or otherwise make available any Confidential Information of the other party in any form to, or for the use or benefit of, any person or entity without the other party’s consent. Subject to the other provisions of this Agreement, each party shall, however, be permitted to disclose relevant aspects of the other party’s Confidential Information to its officers, agents, subcontractors and personnel and to the officers, agents, subcontractors and personnel of its corporate affiliates or subsidiaries to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement; provided, however, that such party shall take all reasonable measures to ensure that Confidential Information of the other party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, subcontractors and personnel and that such party shall be

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

- (i) is developed by the other party without violating the disclosing party's proprietary rights,
- (ii) is or becomes publicly known (other than through unauthorized disclosure),
- (iii) is disclosed by the owner of such information to a Third Party free of any obligation of confidentiality,
- (iv) is already known by such party without an obligation of confidentiality other than pursuant to this Agreement or any confidentiality contract entered into before the Effective Date of the Agreement between the Commonwealth and the Licensor, or
- (v) is rightfully received by the disclosing party free of any obligation of confidentiality.

(c) Obligations. Each party shall:

- (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.

14. Sensitive Information

- (a) “Sensitive Information” is a subcategory of Confidential Information of the Commonwealth and shall include, regardless of whether marked or identified by the Commonwealth as confidential:
- (i) Information related to the design or implementation of the Commonwealth’s technology and security infrastructure and architecture, including, but not limited to, Protected Critical Infrastructure Information (PCII) under the Cybersecurity Information Sharing Act (CISA) of 2015;
 - (ii) Information identified as Sensitive Security Information, Protected Information or Privileged Information as defined under ITP-SEC19;
 - (iii) Passwords, encryption keys, and other cyber security control design information;
 - (iv) Consumer and citizen information;
 - (v) Employee information;
 - (vi) Information that is either nonpublic personal information or personally identifiable information, including, without limitation, names, addresses, telephone numbers, fax numbers, electronic mail addresses, web universal resource locators (URLs), Internet Protocol (IP) addresses, vehicle identifiers, account numbers, birthdates, social security numbers, individual likeness or images, fingerprint or biometric data, genetic information, demographic, information contained in, relating to or deriving from medical or personal health records, criminal justice information and records, information relating to drivers licenses or other identification cards, financial and transactional information, tax information and any other information that is deemed to be nonpublic or protected under federal and state law, regulation, order or standard including, but not limited to, the Criminal History Record Information Act, the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), Confidentiality of HIV-Related Information Act, the Omnibus Reconciliation Act of 1990, Real ID Act of 2005, Tax Reform Act of 1976 the Internal Revenue Code and IRS Publication 1075, the Affordable Care Act, federal and state notification laws, The Driver’s Privacy Protection Act of 1994, Title V of the *Gramm-Leach-Bliley Act*, Section 628 of the *Fair Credit Reporting Act*, Section 216 of the Fair and Accurate Credit Transactions Act, the *Children’s Online Privacy Protection Act*, and any implementing regulations, guidelines and Commonwealth policies adopted under any of these or other related laws; and
 - (vii) Payment Card Industry Information (PCI).

- (b) The Licensor understands that its level of access may allow or require it to view or access Sensitive Information and Confidential Information. The Licensor shall hold all Commonwealth Sensitive Information in the strictest of confidence and shall use all protective measures to protect the Sensitive Information as prescribed by law, regulation and/or Commonwealth policies and standards. In addition, the Licensor shall only permit staff located in the United States to access Sensitive Information, Confidential Information and Commonwealth systems, data and services.
 - (c) Sensitive Information and Confidential Information may be subject to and governed by specific state and federal laws, regulations and policies that must be followed. If applicable, prior to deployment of the Products or Services, the Licensor may be required to sign off on particular instructions, restrictions and limitations as dictated by the Commonwealth, including, but not limited to, as necessary, HIPAA Business Associate Agreements. The Commonwealth's use of any sign off sheet shall create specificity in the Licensor's obligations with respect to certain Confidential Information, and this Section and the instructions within the sign-off sheet shall not, in any way, diminish the obligations of the Licensor under this Agreement with respect to Confidential Information generally and Sensitive Information specifically. The sign-off sheet shall be signed by at least one authorized signatory for the Licensor and incorporated into this Agreement.
- 15. Hyperlink Content.** Any terms and conditions contained in any hyperlink content referenced in this Agreement ("Hyperlink Content") shall not apply to the extent such terms and conditions are expressly prohibited by applicable law. In addition, no financial obligation of the Agency or Commonwealth to Licensor shall be affected by any change to information contained in a hyperlink, nor will any additional material obligations be placed on the Agency or Commonwealth as a result of any such changes to Hyperlink Content. Terms and conditions in the Hyperlink Content that are materially inconsistent with the Agreement are rejected, unenforceable by the Licensor, and shall not become part of this Agreement unless such terms and conditions are to the benefit of the Agency or Commonwealth.
- 16. 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.
- 17. 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.

18. 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).

19. Commonwealth Audit Responsibilities.

- (a) The Commonwealth will maintain, and promptly provide to the Licensor upon its request, accurate records regarding use of the Licensed Product by or for the Commonwealth. If the Commonwealth becomes aware of any unauthorized use of all or any part of the Licensed Product, the Commonwealth will notify the Licensor promptly, providing reasonable details. The limit of the Commonwealth's responsibility for use of the Licensed Products by more individuals than are permitted by the licensing terms applicable to the Licensed Products shall be to purchase additional licenses and Maintenance and Support (if applicable) for such Licensed Products through a reseller contract or procurement document.
- (b) The Commonwealth will perform a self-audit upon the request of the Licensor, which request may not occur more often than annually, and report any change in user count (hereinafter "True up number"). The Commonwealth shall notify the Licensor of the True up number no later than **45 calendar days** after the request that the Commonwealth perform a self-audit. If the user count has increased, the Commonwealth will make an additional purchase of the Licensed Products through a reseller contract or another procurement document, which is equivalent to the additional users. This section sets out the sole license audit right under this Agreement.

20. *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.

21. **Third-Party Software.** If a Licensed Product utilizes or includes third party software and other copyrighted material and is subject, therefore, to additional licensing terms, acknowledgements or disclaimers compliance with this Agreement constitutes compliance with those third-party terms. The parties agree that the Commonwealth, by acknowledging third-party software, does not agree to any terms and conditions of the third-party software agreements that are inconsistent with or supplemental to this Agreement.
22. **Attorneys' Fees.** The Commonwealth will not pay attorneys' fees incurred by or paid by the Licensor.
23. **Controversies.**
- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Agreement or a purchase order, the Licensor, within **six (6) months** after the claim accrues, must file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Licensor asserts a controversy exists. If the Licensor fails to file a claim or files an untimely claim, the Licensor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send a written determination to the Licensor. If the contracting officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Licensor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Licensor shall proceed diligently with the performance of the Agreement or purchase order in a manner consistent with the determination of the contracting

officer and the Commonwealth shall compensate the Licensor pursuant to the terms of the Agreement, purchase order or other procurement document.

24. **Signatures.** The parties agree that: (1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form; (2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; (3) if a law requires a record to be in writing, an electronic record satisfies the law; and (4) if law requires a signature, an electronic signature satisfies the law.

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

25. **Independent Contractor.** The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
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. No modification of this Agreement will be effective unless in writing and signed by both Parties.
28. **Assignment.** Either party may assign this Agreement in its entirety, but not in parts, on written notice to the other party to its parent company, affiliate or subsidiary, in connection with a merger, consolidation, or sale or other disposition of all or substantially all of its assets, or in the case of the Commonwealth to another Commonwealth entity. Any other assignment shall be null and void, except with the other party's prior written consent, which shall not be unreasonably withheld. This Agreement and all obligations shall be binding upon and inure to the benefit of the parties' successors and lawful assignees.

29. **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.
30. **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.
31. **Waiver.** Failure to enforce any provision will not constitute a waiver.
32. **Severability.** If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
33. **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.
34. **Integration.** This Agreement, including all exhibits and referenced documents, and any Purchase Orders referencing this Agreement, constitutes the entire agreement between the parties. No agent, representative, employee or officer of the Commonwealth or of Licensor has authority to make any statement, agreement, or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment executed by the parties.

[Reminder of Page Intentionally Left Blank]

The Parties to this Agreement have executed it, through their respective duly authorized representatives.

Witness:

Licensor:

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title

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

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR’S OFFICE OF ADMINISTRATION**

Electronically signed per Section 24

Agency Head or Designee

APPROVED AS TO FORM AND LEGALITY:

Electronically signed per Section 24

Office of Chief Counsel

Electronically signed per Section 24

Office of General Counsel

Electronically signed per Section 24

Office of Attorney General

APPROVED:

Electronically signed per Section 24

Office of the Budget, Office of Comptroller Operations

ATTACHMENT 1

LIST OF LICENSED PRODUCTS

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

Licensed Product:

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

PA Supplier ID Number: _____

**ENTERPRISE ON-PREMISE SOFTWARE/SERVICES LICENSE
REQUIREMENTS AGREEMENT
BETWEEN
THE COMMONWEALTH OF PENNSYLVANIA,
ACTING BY AND THROUGH
THE GOVERNOR’S OFFICE OF ADMINISTRATION
AND
[INSERT FULL NAME OF LICENSOR]**

This Enterprise On-Premise Software/Services License Requirements Agreement (“Agreement”) is entered into by and between **[insert full name of Licensor]** (“Licensor”) and the **Commonwealth of Pennsylvania**, acting by and through the Governor’s Office of Administration (“Commonwealth”).

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 Licensor **[insert the name of Licensor’s standard End User License/Software License Agreement]**, which is attached to this Agreement as Exhibit A. 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 maintenance, support and services for said products, shall be referred to as “Licensed Products.”
2. **Effective Date.** The effective date of this Agreement shall be the date that it has been fully executed by the Licensor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.
3. **Enterprise Language:**
 - (a) The parties agree that more than one agency of the Commonwealth (“Commonwealth Agency”) may license products subject to this Agreement, provided that the procurement of any Licensed Products by any Commonwealth Agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each Commonwealth Agency seeking to use the Licensed Products.
 - (b) The parties agree that, if the licensee is a “Commonwealth Agency” as defined by Section 103 of the [Commonwealth Procurement Code, 62 Pa. C. S. § 103](#), the terms and conditions of this Agreement apply to the procurement of any Licensed

Products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase order or other procurement document without further need for execution.

4. List of Licensed Products.

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

5. 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.

6. Indemnification/Immunity.

- (a) The Commonwealth does not have the authority to indemnify any entity. The Commonwealth shall 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.
- (b) Licensor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by Licensor and its employees, affiliates, subcontractors, and agents under this Agreement, provided the Commonwealth gives 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 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 Licensor, the Commonwealth will cooperate with all reasonable requests of the Licensor made in the defense of such suits.

- (c) 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 Licensor to control the defense and any related settlement negotiations.

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

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

incurred by the Commonwealth for such support. If the OAG does not delegate to the Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this section ceases. The Licensor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the suit.

- (b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all Licensed Products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties.
- (c) If the defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the Commonwealth or agreed to by the Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.
- (d) If any Licensed Product furnished hereunder is likely to (in the Licensor's opinion) or does become subject to a claim of infringement of a United States patent, copyright, trade dress or trademark, or for a misappropriation of trade secret, or is held to constitute infringement and the use of the Licensed Product is enjoined, without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (i) Replace or substitute functional equivalents for the Licensed Product;
 - (ii) Modify the Licensed Product so that it is no longer infringing;
 - (iii) Re-perform the Services in a non-infringing manner; or
 - (iv) Obtain the rights necessary for the Licensor to continue performance under this Agreement or obtain the rights for the Commonwealth to continue the use of the Licensed Product.
- (e) If the use of any Licensed Product is enjoined and the Licensor is unable to provide any remedy set forth in subsection (d) above, the Licensor, upon return of the Licensed Product, agrees to refund to the Commonwealth:
 - (i) the fee paid for the infringing Licensed Product, less the amount for the period of usage of the Licensed Product; and
 - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.

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

8. Virus, Malicious, Mischievous or Destructive Programming.

- (a) The Licensor warrants that the Licensed Products as delivered by the Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the Licensed Products (each a "Virus"). However, the Licensed Products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.
- (b) The Licensor shall be liable to the Commonwealth for any damages, costs, fines, remedial measures incurred by the Commonwealth and shall indemnify the Commonwealth against any Third Party claims (in accordance with Section 6,

Indemnification) if the Licensor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Licensed Product or the Commonwealth's or Third Party's software, data, systems or computer networks.

9. **Limitation of Liability.**

- (a) Except as otherwise provided in this Agreement, the Licensor's liability to the Commonwealth under this Agreement shall be limited to the greater of \$500,000 or the total dollar amount of purchase orders issued for Licensed Products and services covered by this Agreement during the twelve (12)-month period prior to the event giving rise to the damage claim. This limitation does not apply to damages:
- (i) for bodily injury;
 - (ii) for death;
 - (iii) for gross negligence and willful or unlawful misconduct;
 - (iv) to real property or tangible personal property for which the Licensor is legally liable;
 - (v) under **Section 7**, Patent, Copyright, Trade Secret and Trademark Protection;
 - (vi) resulting from 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;
 - (vii) resulting from a breach of confidentiality;
 - (viii) for which the Licensor is responsible pursuant to any indemnification obligations it has under this Agreement; or
 - (ix) under **Section 8**, Virus, Malicious, Mischievous or Destructive Programming.
- (b) Except with respect to those damages enumerated in subsections 9(a)(i) through (ix) above, the Licensor shall not be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement.

10. **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.

11. 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").

12. 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 Confidential Information or Commonwealth 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 [Criminal History Background Check \(pa.gov\)](http://pa.gov). 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.

13. Confidentiality.

- (a) Definition. “Confidential Information:”
- (i) For the Commonwealth: Information, whether oral or written or via computer disk or electronic media, to which the Licensor is given access, or which is made available by the Commonwealth, whether directly or through a third party, is defined as "Confidential Information." Confidential Information shall include, without limitation, all technology, know-how, processes, software, databases, Trade Secrets (as defined by the Pennsylvania Uniform Trade Secret Act found at 12 Pa. Cons. Stats Secs. 5392 et. seq.), proprietary information, product and business requirements, and information about or from the Commonwealth’s vendors or employees whether received before or after the Effective Date of this Agreement. Confidential Information shall also include information and documentation that 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 the Commonwealth is a party. Sensitive information, as define in Section 14 below, shall be a subset of Confidential Information of the Commonwealth, and shall be subject to additional protections as set forth in Section 14 below.
- (ii) For the Licensor: All information identified in writing by the Licensor as confidential or proprietary to Licensor or its subcontractors.
- (b) Confidential Information. All Confidential Information of or relating to a party shall be held in confidence by the other party to the same extent and in at least the same manner as such party protects its own confidential or proprietary information. Neither party shall disclose, publish, release, transfer or otherwise make available any Confidential Information of the other party in any form to, or for the use or benefit of, any person or entity without the other party’s consent. Subject to the other provisions of this Agreement, each party shall, however, be permitted to disclose relevant aspects of the other party’s Confidential Information to its officers, agents, subcontractors and personnel and to the officers, agents, subcontractors and personnel of its corporate affiliates or subsidiaries to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement; provided, however, that such party shall take all reasonable measures to ensure that Confidential Information of the other party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, subcontractors and personnel and that such party shall be

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

- (i) is developed by the other party without violating the disclosing party's proprietary rights,
- (ii) is or becomes publicly known (other than through unauthorized disclosure),
- (iii) is disclosed by the owner of such information to a Third Party free of any obligation of confidentiality,
- (iv) is already known by such party without an obligation of confidentiality other than pursuant to this Agreement or any confidentiality contract entered into before the Effective Date of the Agreement between the Commonwealth and the Licensor, or
- (v) is rightfully received by the disclosing party free of any obligation of confidentiality.

(c) Obligations. Each party shall:

- (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.

14. Sensitive Information

- (a) “Sensitive Information” is a subcategory of Confidential Information of the Commonwealth and shall include, regardless of whether marked or identified by the Commonwealth as confidential:
- (i) Information related to the design or implementation of the Commonwealth’s technology and security infrastructure and architecture, including, but not limited to, Protected Critical Infrastructure Information (PCII) under the Cybersecurity Information Sharing Act (CISA) of 2015;
 - (ii) Information identified as Sensitive Security Information, Protected Information or Privileged Information as defined under ITP-SEC19;
 - (iii) Passwords, encryption keys, and other cyber security control design information;
 - (iv) Consumer and citizen information;
 - (v) Employee information;
 - (vi) Information that is either nonpublic personal information or personally identifiable information, including, without limitation, names, addresses, telephone numbers, fax numbers, electronic mail addresses, web universal resource locators (URLs), Internet Protocol (IP) addresses, vehicle identifiers, account numbers, birthdates, social security numbers, individual likeness or images, fingerprint or biometric data, genetic information, demographic, information contained in, relating to or deriving from medical or personal health records, criminal justice information and records, information relating to drivers licenses or other identification cards, financial and transactional information, tax information and any other information that is deemed to be nonpublic or protected under federal and state law, regulation, order or standard including, but not limited to, the Criminal History Record Information Act, the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), Confidentiality of HIV-Related Information Act, the Omnibus Reconciliation Act of 1990, Real ID Act of 2005, Tax Reform Act of 1976 the Internal Revenue Code and IRS Publication 1075, the Affordable Care Act, federal and state notification laws, The Driver’s Privacy Protection Act of 1994, Title V of the *Gramm-Leach-Bliley Act*, Section 628 of the *Fair Credit Reporting Act*, Section 216 of the Fair and Accurate Credit Transactions Act, the *Children's Online Privacy Protection Act*, and any implementing regulations, guidelines and Commonwealth policies adopted under any of these or other related laws; and
 - (vii) Payment Card Industry Information (PCI).

- (b) The Licensor understands that its level of access may allow or require it to view or access Sensitive Information and Confidential Information. The Licensor shall hold all Commonwealth Sensitive Information in the strictest of confidence and shall use all protective measures to protect the Sensitive Information as prescribed by law, regulation and/or Commonwealth policies and standards. In addition, the Licensor shall only permit staff located in the United States to access Sensitive Information, Confidential Information and Commonwealth systems, data and services.
- (c) Sensitive Information and Confidential Information may be subject to and governed by specific state and federal laws, regulations and policies that must be followed. If applicable, prior to deployment of the Products or Services, the Licensor may be required to sign off on particular instructions, restrictions and limitations as dictated by the Commonwealth, including, but not limited to, as necessary, HIPAA Business Associate Agreements. The Commonwealth's use of any sign off sheet shall create specificity in the Licensor's obligations with respect to certain Confidential Information, and this Section and the instructions within the sign-off sheet shall not, in any way, diminish the obligations of the Licensor under this Agreement with respect to Confidential Information generally and Sensitive Information specifically. The sign-off sheet shall be signed by at least one authorized signatory for the Licensor and incorporated into this Agreement.

15. **Hyperlink Content.** Any terms and conditions contained in any hyperlink content referenced in this Agreement ("Hyperlink Content") shall not apply to the extent such terms and conditions are expressly prohibited by applicable law. In addition, no financial obligation of the Agency or Commonwealth to Licensor shall be affected by any change to information contained in a hyperlink, nor will any additional material obligations be placed on the Agency or Commonwealth as a result of any such changes to Hyperlink Content. Terms and conditions in the Hyperlink Content that are materially inconsistent with the Agreement are rejected, unenforceable by the Licensor, and shall not become part of this Agreement unless such terms and conditions are to the benefit of the Agency or Commonwealth.
16. **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.
17. **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.

18. 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).

19. Commonwealth Audit Responsibilities.

- (a) The Commonwealth will maintain, and promptly provide to the Licensor upon its request, accurate records regarding use of the Licensed Product by or for the Commonwealth. If the Commonwealth becomes aware of any unauthorized use of all or any part of the Licensed Product, the Commonwealth will notify the Licensor promptly, providing reasonable details. The limit of the Commonwealth's responsibility for use of the Licensed Products by more individuals than are permitted by the licensing terms applicable to the Licensed Products shall be to purchase additional licenses and Maintenance and Support (if applicable) for such Licensed Products through a reseller contract or procurement document.
- (b) The Commonwealth will perform a self-audit upon the request of the Licensor, which request may not occur more often than annually, and report any change in user count (hereinafter "True up number"). The Commonwealth shall notify the Licensor of the True up number no later than **45 calendar days** after the request that the Commonwealth perform a self-audit. If the user count has increased, the Commonwealth will make an additional purchase of the Licensed Products through a reseller contract or another procurement document, which is equivalent to the additional users. This section sets out the sole license audit right under this Agreement.

20. **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.

- 21. Third-Party Software.** If a Licensed Product utilizes or includes third party software and other copyrighted material and is subject, therefore, to additional licensing terms, acknowledgements or disclaimers compliance with this Agreement constitutes compliance with those third-party terms. The parties agree that the Commonwealth, by acknowledging third-party software, does not agree to any terms and conditions of the third-party software agreements that are inconsistent with or supplemental to this Agreement.
- 22. Attorneys' Fees.** The Commonwealth will not pay attorneys' fees incurred by or paid by the Licensor.
- 23. Controversies.**
- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Agreement or a purchase order, the Licensor, within **six (6) months** after the claim accrues, must file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Licensor asserts a controversy exists. If the Licensor fails to file a claim or files an untimely claim, the Licensor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send a written determination to the Licensor. If the contracting officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Licensor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Licensor shall proceed diligently with the performance of the Agreement or purchase order in a manner consistent with the determination of the contracting

officer and the Commonwealth shall compensate the Licensor pursuant to the terms of the Agreement, purchase order or other procurement document.

- 24. Signatures.** The parties agree that: (1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form; (2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; (3) if a law requires a record to be in writing, an electronic record satisfies the law; and (4) if law requires a signature, an electronic signature satisfies the law.

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

- 25. Independent Contractor.** The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- 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. No modification of this Agreement will be effective unless in writing and signed by both Parties.
- 28. Assignment.** Either party may assign this Agreement in its entirety, but not in parts, on written notice to the other party to its parent company, affiliate or subsidiary, in connection with a merger, consolidation, or sale or other disposition of all or substantially all of its assets, or in the case of the Commonwealth to another Commonwealth entity. Any other assignment shall be null and void, except with the other party's prior written consent, which shall not be unreasonably withheld. This Agreement and all obligations shall be binding upon and inure to the benefit of the parties' successors and lawful assignees.

29. **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.
30. **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.
31. **Waiver.** Failure to enforce any provision will not constitute a waiver.
32. **Severability.** If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
33. **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.
34. **Integration.** This Agreement, including all exhibits and referenced documents, and any Purchase Orders referencing this Agreement, constitutes the entire agreement between the parties. No agent, representative, employee or officer of the Commonwealth or of Licensor has authority to make any statement, agreement, or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment executed by the parties.

[Reminder of Page Intentionally Left Blank]

The Parties to this Agreement have executed it, through their respective duly authorized representatives.

Witness:

Licensor:

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title

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

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR’S OFFICE OF ADMINISTRATION**

Electronically signed per Section 24

Agency Head or Designee

APPROVED AS TO FORM AND LEGALITY:

Electronically signed per Section 24

Office of Chief Counsel

Electronically signed per Section 24

Office of General Counsel

Electronically signed per Section 24

Office of Attorney General

APPROVED:

Electronically signed per Section 24

Office of the Budget, Office of Comptroller Operations

ATTACHMENT 1

LIST OF LICENSED PRODUCTS

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

Licensed Product:

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

PA Supplier ID Number: _____

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



This Enterprise SaaS Software/Services License Requirements Agreement (“Agreement”) is entered into by and between [redacted] (“Licensor”) and the **Commonwealth of Pennsylvania**, acting by and through the **Governor’s Office of Administration** (“Commonwealth”).

The parties intending to be legally bound, agree as follows:

1. **Order of Precedence.** The terms and conditions of this Agreement, to the extent a conflict exists, supersede and take precedence over the terms and conditions of the Licensor [insert the name of Licensor’s standard End User License/Software License Agreement], which is attached to this Agreement as Exhibit A. 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 maintenance, support and services for said products, shall be referred to as “Licensed Products.”
2. **Effective Date.** The effective date of this Agreement shall be the date that it has been fully executed by the Licensor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.
3. **Enterprise Language.**
 - (a) The parties agree that more than one agency of the Commonwealth (“Commonwealth Agency”) may license products subject to this Agreement, provided that the procurement of any Licensed Products by any Commonwealth Agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each Commonwealth Agency seeking to use the Licensed Products.
 - (b) The parties agree that, if the licensee is a “Commonwealth Agency” as defined by Section 103 of the *Commonwealth Procurement Code*, 62 Pa. C. S. § 103, the terms and conditions of this Agreement apply to the procurement of any Licensed Products made by the Commonwealth, and that the terms and conditions of this

Agreement become part of the purchase order or other procurement document without further need for execution.

4. List of Licensed Products.

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

5. 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 Agreement and the resolution of those disputes.

6. Indemnification/Immunity.

- (a) Neither the Commonwealth nor any Commonwealth Agency have the authority to indemnify any entity. The Commonwealth shall 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 or any Commonwealth Agency.
- (b) Licensor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by Licensor and its employees, affiliates, subcontractors, and agents under this Agreement, provided the Commonwealth gives 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 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 Licensor, the Commonwealth will cooperate with all reasonable requests of Licensor made in the defense of such suits.

- (c) 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 Licensor to control the defense and any related settlement negotiations.

7. 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 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 shall 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. The Licensor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the Claim.

- (b) The Licensor shall 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 of a Claim is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded against the Commonwealth or agreed to by the Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's sole expense.
- (d) If any Licensed Product furnished hereunder is likely to (in the Licensor's opinion) or does become subject to a claim of infringement of a United States patent, copyright, trade dress or trademark, or for a misappropriation of trade secret, or is held to constitute infringement and the use of the Licensed Product is enjoined, without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (i) Replace or substitute functional equivalents for the Licensed Product;
 - (ii) Modify the Licensed Product so that it is no longer infringing;
 - (iii) Re-perform the Services in a non-infringing manner; or
 - (iv) obtain the rights necessary for the Licensor to continue performance under this Agreement or obtain the rights for the Commonwealth to continue the use of the Licensed Product.
- (e) If the use of any Licensed Product is enjoined and the Licensor is unable to provide any remedy set forth in subsection (d) above, the Licensor, upon return of the Licensed Product, shall refund to the Commonwealth:
 - (i) the fee paid for the infringing Licensed Product, less the amount for the period of usage of the Licensed Product; and
 - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.
- (f) The obligations of the Licensor under this section survive the termination of this Agreement.

- (g) Notwithstanding the above, the Licensor shall have no obligation under this section to the extent a Claim arises from:
- (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 Product in other than the specified operating environment;
 - (v) the combination, operation, or use of the Licensed Products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the Licensed Products, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (vi) infringement of a non-Licensed Product alone;
 - (vii) the Commonwealth's use of any Licensed Product beyond the scope contemplated by the Agreement; or
 - (viii) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Licensor at no charge.

8. 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 to the Commonwealth for any damages, costs, fines, remedial measures incurred by the Commonwealth and shall indemnify the Commonwealth against any Third Party claims (in accordance with Section 5, Indemnification) if the Licensor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Licensed Product or the Commonwealth's or Third Party's software, data, systems or computer networks.

9. Limitation of Liability.

- (a) Except as otherwise provided in this Agreement, the Licensor's liability to the Commonwealth under this Agreement shall be limited to the greater of \$500,000 or the total dollar amount of purchase orders issued for Licensed Products and services covered by this Agreement during the twelve (12)-month period prior to the event giving rise to the damage claim. This limitation does not apply to damages:
- (i) for bodily injury;
 - (ii) for death;
 - (iii) for gross negligence and willful or unlawful misconduct;
 - (iv) to real property or tangible personal property for which the Licensor is legally liable;
 - (v) under Section 7, [Patent, Copyright, Trade Secret and Trademark Protection](#);
 - (vi) resulting from 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;
 - (vii) resulting from a breach of confidentiality;
 - (viii) for which the Licensor is responsible pursuant to any indemnification obligations it has under this Agreement; or
 - (ix) under Section 8, [Virus, Malicious, Mischievous or Destructive Programming](#).
- (b) Except with respect to those damages enumerated in subsection 9(a)(i) through (ix) above, the Licensor shall not be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement.

10. 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.

11. Termination.

- (a) The Licensor may not terminate for non-payment 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").

12. 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 Commonwealth Confidential Information or Commonwealth 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 [Criminal History Background Check \(pa.gov\)](https://www.pa.gov). 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 Confidential Information or Commonwealth 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, systems or Confidential Information, 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.

13. Confidentiality.

- (a) Definition. "Confidential Information:"
 - (i) For the Commonwealth: Information, whether oral or written or via computer disk or electronic media, to which the Licensor is given access, or which is made available by the Commonwealth, whether directly or through a third party, is defined as "Confidential Information." Confidential

Information shall include, without limitation, all technology, know-how, processes, software, databases, Trade Secrets (as defined by the Pennsylvania Uniform Trade Secret Act found at 12 Pa. Cons. Stats Secs. 5392 et. seq.), proprietary information, product and business requirements, and information about or from the Commonwealth's vendors or employees whether received before or after the Effective Date of this Agreement. Confidential Information shall also include information and documentation that 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 the Commonwealth is a party. Sensitive information, as define in Section 14 below, shall be a subset of Confidential Information of the Commonwealth, and shall be subject to additional protections as set forth in Section 14 below.

(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 the disclosing party shall be held in confidence by the receiving party to the same extent and in at least the same manner as the receiving party protects its own confidential or proprietary information, using no less than commercially reasonable standards or higher or more stringent standards required by law, including those laws governing Sensitive Information, and those standard specified in this Agreement. The receiving party shall not disclose, publish, release, transfer or otherwise make available any Confidential Information of the disclosing party in any form to, or for the use or benefit of, any person or entity without the disclosing party's consent. Subject to the other provisions of this Agreement, receiving party shall be permitted to disclose relevant aspects of the disclosing party's Confidential Information to the receiving party's officers, agents, subcontractors and personnel and to the officers, agents, subcontractors and personnel of the receiving party's corporate affiliates or subsidiaries to the extent that such disclosure is reasonably necessary for the performance of the receiving party's duties and obligations under this Agreement; provided, however, that the receiving party shall take all reasonable measures to ensure that Confidential Information of the disclosing party is not disclosed or duplicated in violation of the provisions of this Agreement by such officers, agents, subcontractors and personnel and that the receiving party shall be responsible for any unauthorized disclosure of the Confidential Information by the receiving party's 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 for Sensitive Information (which shall be protected in all circumstances), and except to the extent provided otherwise by any applicable law, the obligations of this subsection (b) shall not apply with respect to information that:

- (i) is developed by the other party without violating the disclosing party's proprietary rights;
 - (ii) is or becomes publicly known,
 - (iii) is disclosed by the owner of such information to a third party free of any obligation of confidentiality;
 - (iv) is already known by the receiving 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 receiving 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; and
 - (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 receiving party shall give prompt notice to the non-disclosing party of such disclosure or order in a timeframe to allow the 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 that 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 receiving party must promptly return to the disclosing party all of the disclosing party's Confidential Information and Data (and all copies of this information) that is in the receiving party's possession or control, regardless of form.
- (g) Not confidential. Additionally, neither this Agreement nor any pricing information related to this Agreement, nor purchase orders issued pursuant to this Agreement, will be deemed confidential.

14. Sensitive Information.

- (a) "Sensitive Information" is a subcategory of Confidential Information of the Commonwealth and shall include, regardless of whether marked or identified by the Commonwealth as confidential:
- (i) Information related to the design or implementation of the Commonwealth's technology and security infrastructure and architecture,

including, but not limited to, Protected Critical Infrastructure Information (PCII) under the Cybersecurity Information Sharing Act (CISA) of 2015;

- (ii) Information identified as Sensitive Security Information, Protected Information or Privileged Information as defined under ITP-SEC19;
 - (iii) Passwords, encryption keys, and other cyber security control design information;
 - (iv) Consumer and citizen information;
 - (v) Employee information;
 - (vi) Information that is either nonpublic personal information or personally identifiable information, including, without limitation, names, addresses, telephone numbers, fax numbers, electronic mail addresses, web universal resource locators (URLs), Internet Protocol (IP) addresses, vehicle identifiers, account numbers, birthdates, social security numbers, individual likeness or images, fingerprint or biometric data, genetic information, demographic, information contained in, relating to or deriving from medical or personal health records, criminal justice information and records, information relating to drivers licenses or other identification cards, financial and transactional information, tax information and any other information that is deemed to be nonpublic or protected under federal and state law, regulation, order or standard including, but not limited to, the Criminal History Record Information Act, the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), Confidentiality of HIV-Related Information Act, the Omnibus Reconciliation Act of 1990, Real ID Act of 2005, Tax Reform Act of 1976 the Internal Revenue Code and IRS Publication 1075, the Affordable Care Act, federal and state notification laws, The Driver's Privacy Protection Act of 1994, Title V of the *Gramm-Leach-Bliley Act*, Section 628 of the *Fair Credit Reporting Act*, Section 216 of the Fair and Accurate Credit Transactions Act, the *Children's Online Privacy Protection Act*, and any implementing regulations, guidelines and Commonwealth policies adopted under any of these or other related laws; and
 - (vii) Payment Card Industry Information (PCI).
- (b) The Licensor understands that its level of access may allow or require it to view or access Sensitive Information and Confidential Information. The Licensor shall hold all Commonwealth Sensitive Information in the strictest of confidence and shall use all protective measures to protect the Sensitive Information as prescribed by law, regulation and/or Commonwealth policies and standards. In addition, the Licensor shall only permit staff located in the United States to access Sensitive

Information, Confidential Information and Commonwealth systems, data and services.

- (c) Sensitive Information and Confidential Information may be subject to and governed by specific state and federal laws, regulations and policies that must be followed. If applicable, prior to deployment of the Products or Services, the Licensor may be required to sign off on particular instructions, restrictions and limitations as dictated by the Commonwealth, including, but not limited to, as necessary, HIPAA Business Associate Agreements. The Commonwealth's use of any sign off sheet shall create specificity in the Licensor's obligations with respect to certain Confidential Information, and this Section and the instructions within the sign-off sheet shall not, in any way, diminish the obligations of the Licensor under this Agreement with respect to Confidential Information generally and Sensitive Information specifically. The sign-off sheet shall be signed by at least one authorized signatory for the Licensor and incorporated into this Agreement.

15. Data Breach or Loss.

- (a) Compliance with Laws. The Licensor 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) Control of Licensor. For Data and Confidential Information in the possession, custody, and control of the Licensor or its employees, agents, and/or subcontractors:
 - (i) The Licensor shall report unauthorized access, acquisition, use, release, loss, destruction or disclosure of Data or Confidential Information (“Incident”) to the Commonwealth within one (1) hour of when the Licensor knows of or reasonably suspects such Incident, and the Licensor must immediately take all reasonable steps to mitigate any potential harm or further access, acquisition, use, release, loss, destruction or disclosure of such Data or Confidential Information.
 - (ii) The Licensor 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, the Licensor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.
 - (iii) The Licensor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents, which shall be reimbursed upon invoice received from the Commonwealth.

- (iv) The Licensor shall indemnify the Commonwealth against any third party claims arising out of an Incident.
 - (c) **Security Breach.** Licensor agrees that it shall not inform any third party of any Security Breach without first obtaining the Commonwealth's prior, written consent, other than to inform a complainant that the matter has been forwarded to the Commonwealth's legal counsel. Further, the Licensor agrees that the Commonwealth shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others as required by law or regulation, or otherwise in the Commonwealth's discretion; and (ii) the contents of such notice, whether any type or remediation may be offered to affected persons, and the nature and extent of any such remediation.
 - (d) **Diligent Performance and Cooperation.** The Licensor shall diligently perform all of the duties required in this Section in cooperation with the Commonwealth.
 - (e) The requirements of this section are in addition to and not in lieu of other requirements of this Agreement and its Attachments and Exhibits having to do with data privacy and security, including but not limited to the requirement that the Licensor comply with Attachment 2, *Requirements for Non-Commonwealth Hosting Applications/Services*, and all applicable Commonwealth Information Technology Policies (ITPs), which can be found at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- 16. Hyperlink Content.** Any terms and conditions contained in any hyperlink content referenced in this Agreement ("Hyperlink Content") shall not apply to the extent such terms and conditions are expressly prohibited by applicable law. In addition, no financial obligation of the Commonwealth to Licensor shall be affected by any change to information contained in a hyperlink, nor will any additional material obligations be placed on the Commonwealth as a result of any such changes to Hyperlink Content. Terms and conditions in the Hyperlink Content that are materially inconsistent with the Agreement are rejected, unenforceable by the Licensor, and shall not become part of this Agreement unless such terms and conditions are to the benefit of the Commonwealth.
- 17. 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.
- 18. 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.

19. Taxes-Federal, State and Local; Interest.

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

20. Commonwealth Audit Responsibilities.

- (a) The Commonwealth shall maintain, and promptly provide to the Licensor upon request, accurate records regarding use of the Licensed Products by or for the Commonwealth. If the Commonwealth becomes aware of any unauthorized use of all or any part of the Licensed Products, the Commonwealth shall 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 shall 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 shall make an additional purchase of the Licensed Products through a reseller contract or another procurement document, which is equivalent to the additional users. This section sets out the sole software license audit right under this Agreement.

21. **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.
22. **Third-Party Software.** If a Licensed Product utilizes or includes third party software and other copyrighted material, any additional licensing terms, acknowledgements or disclaimers associated with the third-party software and materials shall not be applicable to the Commonwealth unless agreed to in writing. 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.
23. **Attorneys’ Fees.** The Commonwealth is not responsible for and shall not pay attorneys’ fees incurred by or paid by the Licensor.
24. **Controversies.**
 - (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Agreement or a purchase order, the Licensor, within **six (6) months** after the claim accrues, must file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Licensor asserts a controversy exists. If the Licensor fails to file a claim or files an untimely claim, the Licensor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
 - (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send his/her written determination to the Licensor. If the contracting officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer’s determination shall be the final order of the purchasing agency.
 - (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Licensor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the

Licensor shall proceed diligently with the performance of the Agreement or purchase order in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Licensor pursuant to the terms of the Agreement, purchase order or other procurement document.

25. Insurance.

- (a) The Licensor shall maintain at its expense, and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:
 - (i) Workers' Compensation Insurance for all of the employees engaged in performing Services in accordance with the *Worker's Compensation Act*, the Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 101—2708.
 - (ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death (including bodily injury), sickness or disease, accidental death and damage to and property of others, including loss of use resulting from any property damage which may arise from the Licensor's operations under this Agreement, whether such operation be by the Licensor, its agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for or supplies provided to the Commonwealth.
 - (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.
 - (iv) Technology Products Liability/Professional Liability/Errors & Omissions Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
 - (v) Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.

- (vi) Information Security and Privacy Liability Insurance including Privacy Notification Costs (including coverage for Technology Professional Liability if not covered under Licensor's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (b) Certificate of Insurance. Prior to providing Licensed Products under this Agreement, and annually thereafter, the Licensor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been received by the Commonwealth. Such cancellation or change shall not relieve the Licensor of its continuing obligation to maintain insurance coverage in accordance with this section.
- (c) Insurance coverage length. The Licensor shall maintain such insurance for the life of any applicable purchase order issued pursuant to the Agreement.

26. Signatures.

- (a) The parties agree that: (1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form; (2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; (3) if a law requires a record to be in writing, an electronic record satisfies the law; and (4) if law requires a signature, an electronic signature satisfies the law.
- (b) The fully executed Agreement may not contain ink signatures by the Commonwealth. If this Agreement does not contain ink signatures by the Commonwealth, the Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in this Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.

27. Independent Contractor. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

28. Travel. The Licensor shall not be allowed or paid travel or per diem expenses except as specifically set forth in this 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](#).

- 29. Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes and integrates all prior discussions, agreements and understandings pertaining thereto. No modification of this Agreement will be effective unless in writing and signed by both Parties. Other terms and conditions or additional terms and conditions included or referenced in the Licensor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Licensor and not binding on the Commonwealth. No modification of this Agreement will be effective unless in writing and signed by both Parties.
- 30. Assignment.** Either party may assign this Agreement in its entirety, but not in parts, on written notice to the other party to its parent company, affiliate or subsidiary, in connection with a merger, consolidation, or sale or other disposition of all or substantially all of its assets, or in the case of the Commonwealth to another Commonwealth entity. Any other assignment shall be null and void, except with the other party's prior written consent, which shall not be unreasonably withheld. This Agreement and all obligations shall be binding upon and inure to the benefit of the parties' successors and lawful assignees.
- 31. Notice.** Any written notice to either 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.
- 32. 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.
- 33. Waiver.** Failure to enforce any provision will not constitute a waiver.
- 34. Severability.** If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 35. 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.
- 36. Integration.** This Agreement, including all exhibits and referenced documents, and any Purchase Orders referencing this Agreement, constitutes the entire agreement between the

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

[Reminder of Page Intentionally Left Blank]

The parties to this Agreement have executed it, through their respective duly authorized representatives.

Witness:

Licensor:

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title

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

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF ADMINISTRATION**

Electronically signed per Section 26

Agency Head or Designee

APPROVED AS TO FORM AND LEGALITY:

Electronically signed per Section 26

Office of Chief Counsel

Electronically signed per Section 26

Office of General Counsel

Electronically signed per Section 26

Office of Attorney General

APPROVED:

Electronically signed per Section 26

Comptroller

ATTACHMENT 1

LIST OF LICENSED PRODUCTS

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

Licensed Products:

The Licensed Products include (list all titles covered by this Agreement):

ATTACHMENT 2
Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this Attachment is to define requirements for business or technology solutions and services procured by the Commonwealth that are hosted within the Licensor's or its subcontractor's managed 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 components of the hosted solution with commercially reasonable support and replace as necessary to maintain compliance.
5. The Licensor shall monitor, prevent and deter unauthorized system access. The Licensor shall use all commercially reasonable methods to confirm suspected breaches. 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 with 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.

Requirements for non-Commonwealth Hosted Applications Services

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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. System and Organization Controls (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; and
 - (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 Class "C" Classified Records or Closed Records, as defined in ITP-SEC019, or in compliance with mandates by federal or state audit requirements and/or policy.

The Licensor shall receive and review their subcontractor's relevant SOC reports, and the Licensor shall provide the Commonwealth with a Letter of Attestation that includes an analysis of their subcontractor's SOC report.

2. Unless otherwise agreed to in writing by the Commonwealth, the Licensor's SOC Report(s) 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.

3. 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.

4. At the request of the Commonwealth, the Licensor shall, and shall require its subcontractors, as applicable, complete a SOC for Cybersecurity audit 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 SOC for Cybersecurity report shall detail the controls used by the Licensor or its subcontractor setting forth the description and effectiveness of the Licensor's or subcontractor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

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

5. The Commonwealth may specify other or additional standards, certifications or audits it requires under any Purchase Orders or within an ITP.

6. The Licensor shall adhere to Statement on Standards for Attestation Engagements (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.

7. In the event an audit reveals any non-conformity to SSAE standards, the Licensor shall provide the Commonwealth, within **45 days** of the issuance of the SOC report, a documented corrective action plan that addresses each non-conformity that is identified within the SOC report, including any subcontractor's SOC report. 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).
8. The Commonwealth may in its sole discretion agree, in writing, to accept alternative security report 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 or compensating controls on all servers and network components.
6. The Licensor shall limit access to Commonwealth-specific systems, data and services and provide access only to those staff, located within CONUS (any of the Continental United States and Hawaii) 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 Protection

1. The Licensor shall only host, store or backup Commonwealth Data in physical locations within CONUS.

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.
3. 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.
4. The Licensor shall be solely responsible for applicable data storage required.
5. The Licensor shall encrypt all Commonwealth data in transit and at rest. The Licensor shall comply with ITP-SEC031, and ITP-SEC019, encryption policies and minimum standards or stronger.
6. The Licensor shall take all commercially viable and applicable measures to protect the data availability including, but not limited to, real-time replication, traditional backup, and/or georedundant storage of Commonwealth data in accordance with industry best practices and encryption techniques.
7. The Licensor shall 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.
8. The Licensor shall utilize a secured backup solution to prevent loss of data. Stored backups must be kept in an all-hazards protective storage environment at the primary location and any additional locations where the data is being maintained. All back up data and media shall be encrypted.

E. Adherence to Policy

1. The 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. 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.

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 within **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.

Upon confirmation that Commonwealth data is in possession or control of the Commonwealth, the Licensor shall ensure all residual user account(s) are promptly deleted or reset in the solution. The Licensor shall notify the Commonwealth within **10 business days** that all user account(s) have been deleted or reset.

ATTACHMENT 2-A

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

ITP Number - Name	Policy Link
ITP_ACC001 - Accessibility Policy	https://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf
ITP_APP030 - Active Directory Architecture	https://www.oa.pa.gov/Policies/Documents/itp_app030.pdf
ITP_BUS007 - Enterprise Service Catalog	https://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf
ITP_BUS010 - Business Process Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf
ITP_BUS012 -Artificial Intelligence General Policy	https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf
ITP_INF000 - Enterprise Data and Information Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf
ITP_INF001 - Database Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf
ITP_INF006 - Commonwealth County Code Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf
ITP_INF009 - e-Discovery Technology Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf
ITP_INF010 - Business Intelligence Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf
ITP_INF011 - Reporting Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf
ITP_INF012 - Dashboard Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf
ITP_INFRM001 - The Life Cycle of Records: General Policy Statement	https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf
ITP_INFRM004 - Management of Web Records	https://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf
ITP_INFRM005 - System Design Review of Electronic Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf
ITP_INFRM006 - Electronic Document Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf
ITP_INT_B_1 - Electronic Commerce Formats and Standards	https://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf
ITP_INT_B_2 - Electronic Commerce Interface Guidelines	https://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf
ITP_INT006 - Business Engine Rules	https://www.oa.pa.gov/Policies/Documents/itp_int006.pdf
ITP_NET004 - Internet Protocol Address Standards	https://www.oa.pa.gov/Policies/Documents/itp_net004.pdf
ITP_NET005 - Commonwealth External and Internal Domain Name Services (DNS)	https://www.oa.pa.gov/Policies/Documents/itp_net005.pdf
ITP_PRV001 - Commonwealth of Pennsylvania Electronic Information Privacy Policy	https://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf
ITP_SEC000 - Information Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf
ITP_SEC001 - Enterprise Host Security Software Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec001.pdf
ITP_SEC002 - Internet Accessible Proxy Servers and Services	https://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf
ITP_SEC003 - Enterprise Security Auditing and Monitoring	https://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf
ITP_SEC004 - Enterprise Web Application Firewall	https://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf
ITP_SEC006 - Commonwealth of Pennsylvania Electronic Signature Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf
ITP_SEC007 - Minimum Standards for IDs, Passwords and Multi-Factor Authentication	https://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf
ITP_SEC008 - Enterprise E-mail Encryption	https://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf
ITP_SEC009 - Minimum Contractor Background Checks Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf
ITP_SEC010 - Virtual Private Network Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf

ITP Number - Name	Policy Link
ITP_SEC011 - Enterprise Policy and Software Standards for Agency Firewalls	https://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf
ITP_SEC012 - System Logon Banner and Screensaver Requirements	https://www.oa.pa.gov/Policies/Documents/itp_sec012.pdf
ITP_SEC015 - Data Cleansing	https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf
ITP_SEC016 - Information Security Officer Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec016.pdf
ITP_SEC017 - Copa Policy for Credit Card Use for e-Government	https://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf
ITP_SEC019 - Policy and Procedures for Protecting Commonwealth Electronic Data	https://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf
ITP_SEC021 - Security Information and Event Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf
ITP_SEC023 - Information Technology Security Assessment and Testing Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf
ITP_SEC024 - IT Security Incident Reporting Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf
ITP_SEC025 - Proper Use and Disclosure of Personally Identifiable Information (PII)	https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf
ITP_SEC029 - Physical Security Policy for IT Resources	https://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf
ITP_SEC031 - Encryption Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf
ITP_SEC032 - Enterprise Data Loss Prevention (DLP) Compliance Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf
ITP_SEC034- Enterprise Firewall Rule Set	https://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf
ITP_SEC035 - Mobile Device Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec035.pdf
ITP_SEC038 - Commonwealth Data Center Privileged User IAM Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf
ITP-SEC039 - Keystone Login and Identity Proofing	https://www.oa.pa.gov/Policies/Documents/itp-sec039.pdf
ITP_SEC040 - Commonwealth Cloud Computing Services Requirements	https://www.oa.pa.gov/Policies/Documents/itp_sec040.pdf
ITP_SFT000 - Software Development Life Cycle (SDLC) Policy	https://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf
ITP_SFT001 - Software Licensing	https://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf
ITP_SFT002 - Commonwealth of PA Website Standards	https://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf
ITP_SFT003 - Geospatial Enterprise Service Architecture	https://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf
ITP_SFT004 - Geospatial Information Systems (GIS)	https://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf
ITP_SFT005 - Managed File Transfer (MFT)	https://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf
ITP_SFT007 - Office Productivity Policy	https://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf
ITP_SFT008 - Enterprise Resource Planning (ERP) Management	https://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf
ITP_SFT009 - Application Development	https://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf
ITP_SYM003 - Off-Site Storage for Commonwealth Agencies	https://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf
ITP_SYM004 - Policy for Establishing Alternate Processing Sites for Commonwealth Agencies	https://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf
ITP_SYM006 - Commonwealth IT Resources Patching Policy	https://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf
ITP_SYM008 - Server Virtualization Policy	https://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf
ITP_SYM010 - Enterprise Services Maintenance Scheduling	https://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf

Attachment 3

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

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

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be used or disclosed only in accordance with this Agreement and the standards established by applicable laws and agency guidance; and

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI must be handled in accordance with this Agreement and the standards established by HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and other applicable laws and agency guidance.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions.

- (a) **“Business Associate”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.
- (b) **“Covered Entity”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.

- (c) “**HIPAA**” shall mean the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191.
- (d) “**HITECH Act**” shall mean the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).
- (e) “**Privacy Rule**” shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164, as amended, and related agency guidance.
- (f) “**Protected Health Information**” or “**PHI**” shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule (all as amended) and agency guidance.
- (g) “**Security Rule**” shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- (h) “**Unsecured PHI**” shall mean PHI that is not secured through the use of a technology or methodology as specified in HITECH Act regulations, as amended, and agency guidance or as otherwise defined in the HITECH Act, as amended.

2. Stated Purposes for Which Business Associate May Use or Disclose PHI. The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided by or obtained on behalf of Covered Entity for the following stated purposes, except as otherwise stated in this Agreement:

NO OTHER DISCLOSURES OF PHI OR OTHER INFORMATION ARE PERMITTED.

3. BUSINESS ASSOCIATE OBLIGATIONS.

- (a) **Limits on Use and Further Disclosure.** Business Associate shall not further use or disclose PHI provided by, or created or obtained on behalf of, Covered Entity

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

- (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](#).

4. OBLIGATIONS OF COVERED ENTITY.

- (a) **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with applicable law and agency guidance, as well as changes to such notice. Covered Entity will post on its website any material changes to its notice of privacy practices by the effective date of the material change.
- (b) **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) **Restrictions.** Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, as amended, and other applicable laws and applicable agency guidance, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) **Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, HITECH and

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

5. MISCELLANEOUS.

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

Attachment 4

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

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

Scope of Deployment (need not be entire agency):

Nature of Data implicated or potentially implicated:

Agency Policies to which Licensor. is subject (incorporated by reference):

Background checks (describe if necessary):

Additional requirements (describe with specificity):

Is Licensor. a Business Associate (yes or no)?

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

Agency Contact Person signature and Date: _____

[Licensor _____]
Authorized Signatory and Date: _____

PA Supplier ID Number: _____

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

This Enterprise SaaS Software/Services License Requirements Agreement (“Agreement”) is entered into by and between _____ (“Licensor”) and the **Commonwealth of Pennsylvania**, acting by and through the **Governor’s Office of Administration** (“Commonwealth”).

The parties intending to be legally bound, agree as follows:

- 1. Order of Precedence.** The terms and conditions of this Agreement, to the extent a conflict exists, supersede and take precedence over the terms and conditions of the Licensor [insert the name of Licensor’s standard End User License/Software License Agreement], which is attached to this Agreement as Exhibit A. 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 maintenance, support and services for said products, shall be referred to as “Licensed Products.”
- 2. Effective Date.** The effective date of this Agreement shall be the date that it has been fully executed by the Licensor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.
- 3. Enterprise Language.**
 - (a) The parties agree that more than one agency of the Commonwealth (“Commonwealth Agency”) may license products subject to this Agreement, provided that the procurement of any Licensed Products by any Commonwealth Agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each Commonwealth Agency seeking to use the Licensed Products.
 - (b) The parties agree that, if the licensee is a “Commonwealth Agency” as defined by Section 103 of the *Commonwealth Procurement Code*, 62 Pa. C. S. § 103, the terms and conditions of this Agreement apply to the procurement of any Licensed Products made by the Commonwealth, and that the terms and conditions of this

Agreement become part of the purchase order or other procurement document without further need for execution.

4. List of Licensed Products.

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

5. 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 Agreement and the resolution of those disputes.

6. Indemnification/Immunity.

- (a) Neither the Commonwealth nor any Commonwealth Agency have the authority to indemnify any entity. The Commonwealth shall 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 or any Commonwealth Agency.
- (b) Licensor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by Licensor and its employees, affiliates, subcontractors, and agents under this Agreement, provided the Commonwealth gives 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 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 Licensor, the Commonwealth will cooperate with all reasonable requests of Licensor made in the defense of such suits.

- (c) 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 Licensor to control the defense and any related settlement negotiations.

7. 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 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 shall 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. The Licensor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the Claim.

- (b) The Licensor shall 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 of a Claim is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded against the Commonwealth or agreed to by the Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's sole expense.
- (d) If any Licensed Product furnished hereunder is likely to (in the Licensor's opinion) or does become subject to a claim of infringement of a United States patent, copyright, trade dress or trademark, or for a misappropriation of trade secret, or is held to constitute infringement and the use of the Licensed Product is enjoined, without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (i) Replace or substitute functional equivalents for the Licensed Product;
 - (ii) Modify the Licensed Product so that it is no longer infringing;
 - (iii) Re-perform the Services in a non-infringing manner; or
 - (iv) obtain the rights necessary for the Licensor to continue performance under this Agreement or obtain the rights for the Commonwealth to continue the use of the Licensed Product.
- (e) If the use of any Licensed Product is enjoined and the Licensor is unable to provide any remedy set forth in subsection (d) above, the Licensor, upon return of the Licensed Product, shall refund to the Commonwealth:
 - (i) the fee paid for the infringing Licensed Product, less the amount for the period of usage of the Licensed Product; and
 - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.
- (f) The obligations of the Licensor under this section survive the termination of this Agreement.

- (g) Notwithstanding the above, the Licensor shall have no obligation under this section to the extent a Claim arises from:
 - (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 Product in other than the specified operating environment;
 - (v) the combination, operation, or use of the Licensed Products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the Licensed Products, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (vi) infringement of a non-Licensed Product alone;
 - (vii) the Commonwealth's use of any Licensed Product beyond the scope contemplated by the Agreement; or
 - (viii) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Licensor at no charge.

8. 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 to the Commonwealth for any damages, costs, fines, remedial measures incurred by the Commonwealth and shall indemnify the Commonwealth against any Third Party claims (in accordance with Section 5, Indemnification) if the Licensor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Licensed Product or the Commonwealth's or Third Party's software, data, systems or computer networks.

9. Limitation of Liability.

- (a) Except as otherwise provided in this Agreement, the Licensor's liability to the Commonwealth under this Agreement shall be limited to the greater of \$500,000 or the total dollar amount of purchase orders issued for Licensed Products and services covered by this Agreement during the twelve (12)-month period prior to the event giving rise to the damage claim. This limitation does not apply to damages:
- (i) for bodily injury;
 - (ii) for death;
 - (iii) for gross negligence and willful or unlawful misconduct;
 - (iv) to real property or tangible personal property for which the Licensor is legally liable;
 - (v) under Section 7, [Patent, Copyright, Trade Secret and Trademark Protection](#);
 - (vi) resulting from 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;
 - (vii) resulting from a breach of confidentiality;
 - (viii) for which the Licensor is responsible pursuant to any indemnification obligations it has under this Agreement; or
 - (ix) under Section 8, [Virus, Malicious, Mischievous or Destructive Programming](#).
- (b) Except with respect to those damages enumerated in subsection 9(a)(i) through (ix) above, the Licensor shall not be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement.

10. 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.

11. Termination.

- (a) The Licensor may not terminate for non-payment 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").

12. 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 Commonwealth Confidential Information or Commonwealth 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 [Criminal History Background Check \(pa.gov\)](#). 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 Confidential Information or Commonwealth 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, systems or Confidential Information, 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.

13. Confidentiality.

- (a) Definition. "Confidential Information:"
 - (i) For the Commonwealth: Information, whether oral or written or via computer disk or electronic media, to which the Licensor is given access, or which is made available by the Commonwealth, whether directly or through a third party, is defined as "Confidential Information." Confidential

Information shall include, without limitation, all technology, know-how, processes, software, databases, Trade Secrets (as defined by the Pennsylvania Uniform Trade Secret Act found at 12 Pa. Cons. Stats Secs. 5392 et. seq.), proprietary information, product and business requirements, and information about or from the Commonwealth's vendors or employees whether received before or after the Effective Date of this Agreement. Confidential Information shall also include information and documentation that 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 the Commonwealth is a party. Sensitive information, as define in Section 14 below, shall be a subset of Confidential Information of the Commonwealth, and shall be subject to additional protections as set forth in Section 14 below.

- (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 the disclosing party shall be held in confidence by the receiving party to the same extent and in at least the same manner as the receiving party protects its own confidential or proprietary information, using no less than commercially reasonable standards or higher or more stringent standards required by law, including those laws governing Sensitive Information, and those standard specified in this Agreement. The receiving party shall not disclose, publish, release, transfer or otherwise make available any Confidential Information of the disclosing party in any form to, or for the use or benefit of, any person or entity without the disclosing party's consent. Subject to the other provisions of this Agreement, receiving party shall be permitted to disclose relevant aspects of the disclosing party's Confidential Information to the receiving party's officers, agents, subcontractors and personnel and to the officers, agents, subcontractors and personnel of the receiving party's corporate affiliates or subsidiaries to the extent that such disclosure is reasonably necessary for the performance of the receiving party's duties and obligations under this Agreement; provided, however, that the receiving party shall take all reasonable measures to ensure that Confidential Information of the disclosing party is not disclosed or duplicated in violation of the provisions of this Agreement by such officers, agents, subcontractors and personnel and that the receiving party shall be responsible for any unauthorized disclosure of the Confidential Information by the receiving party's 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 for Sensitive Information (which shall be protected in all circumstances), and except to the extent provided otherwise by any applicable law, the obligations of this subsection (b) shall not apply with respect to information that:

- (i) is developed by the other party without violating the disclosing party's proprietary rights;
 - (ii) is or becomes publicly known,
 - (iii) is disclosed by the owner of such information to a third party free of any obligation of confidentiality;
 - (iv) is already known by the receiving 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 receiving 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; and
 - (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 receiving party shall give prompt notice to the non-disclosing party of such disclosure or order in a timeframe to allow the 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 that 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 receiving party must promptly return to the disclosing party all of the disclosing party's Confidential Information and Data (and all copies of this information) that is in the receiving party's possession or control, regardless of form.
- (g) Not confidential. Additionally, neither this Agreement nor any pricing information related to this Agreement, nor purchase orders issued pursuant to this Agreement, will be deemed confidential.

14. Sensitive Information.

- (a) "Sensitive Information" is a subcategory of Confidential Information of the Commonwealth and shall include, regardless of whether marked or identified by the Commonwealth as confidential:
- (i) Information related to the design or implementation of the Commonwealth's technology and security infrastructure and architecture,

including, but not limited to, Protected Critical Infrastructure Information (PCII) under the Cybersecurity Information Sharing Act (CISA) of 2015;

- (ii) Information identified as Sensitive Security Information, Protected Information or Privileged Information as defined under ITP-SEC19;
 - (iii) Passwords, encryption keys, and other cyber security control design information;
 - (iv) Consumer and citizen information;
 - (v) Employee information;
 - (vi) Information that is either nonpublic personal information or personally identifiable information, including, without limitation, names, addresses, telephone numbers, fax numbers, electronic mail addresses, web universal resource locators (URLs), Internet Protocol (IP) addresses, vehicle identifiers, account numbers, birthdates, social security numbers, individual likeness or images, fingerprint or biometric data, genetic information, demographic, information contained in, relating to or deriving from medical or personal health records, criminal justice information and records, information relating to drivers licenses or other identification cards, financial and transactional information, tax information and any other information that is deemed to be nonpublic or protected under federal and state law, regulation, order or standard including, but not limited to, the Criminal History Record Information Act, the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), Confidentiality of HIV-Related Information Act, the Omnibus Reconciliation Act of 1990, Real ID Act of 2005, Tax Reform Act of 1976 the Internal Revenue Code and IRS Publication 1075, the Affordable Care Act, federal and state notification laws, The Driver's Privacy Protection Act of 1994, Title V of the *Gramm-Leach-Bliley Act*, Section 628 of the *Fair Credit Reporting Act*, Section 216 of the Fair and Accurate Credit Transactions Act, the *Children's Online Privacy Protection Act*, and any implementing regulations, guidelines and Commonwealth policies adopted under any of these or other related laws; and
 - (vii) Payment Card Industry Information (PCI).
- (b) The Licensor understands that its level of access may allow or require it to view or access Sensitive Information and Confidential Information. The Licensor shall hold all Commonwealth Sensitive Information in the strictest of confidence and shall use all protective measures to protect the Sensitive Information as prescribed by law, regulation and/or Commonwealth policies and standards. In addition, the Licensor shall only permit staff located in the United States to access Sensitive

Information, Confidential Information and Commonwealth systems, data and services.

- (c) Sensitive Information and Confidential Information may be subject to and governed by specific state and federal laws, regulations and policies that must be followed. If applicable, prior to deployment of the Products or Services, the Licensor may be required to sign off on particular instructions, restrictions and limitations as dictated by the Commonwealth, including, but not limited to, as necessary, HIPAA Business Associate Agreements. The Commonwealth's use of any sign off sheet shall create specificity in the Licensor's obligations with respect to certain Confidential Information, and this Section and the instructions within the sign-off sheet shall not, in any way, diminish the obligations of the Licensor under this Agreement with respect to Confidential Information generally and Sensitive Information specifically. The sign-off sheet shall be signed by at least one authorized signatory for the Licensor and incorporated into this Agreement.

15. Data Breach or Loss.

- (a) Compliance with Laws. The Licensor 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) Control of Licensor. For Data and Confidential Information in the possession, custody, and control of the Licensor or its employees, agents, and/or subcontractors:
 - (i) The Licensor shall report unauthorized access, acquisition, use, release, loss, destruction or disclosure of Data or Confidential Information (“Incident”) to the Commonwealth within one (1) hour of when the Licensor knows of or reasonably suspects such Incident, and the Licensor must immediately take all reasonable steps to mitigate any potential harm or further access, acquisition, use, release, loss, destruction or disclosure of such Data or Confidential Information.
 - (ii) The Licensor 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, the Licensor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.
 - (iii) The Licensor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents, which shall be reimbursed upon invoice received from the Commonwealth.

- (iv) The Licensor shall indemnify the Commonwealth against any third party claims arising out of an Incident.
 - (c) **Security Breach.** Licensor agrees that it shall not inform any third party of any Security Breach without first obtaining the Commonwealth's prior, written consent, other than to inform a complainant that the matter has been forwarded to the Commonwealth's legal counsel. Further, the Licensor agrees that the Commonwealth shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others as required by law or regulation, or otherwise in the Commonwealth's discretion; and (ii) the contents of such notice, whether any type or remediation may be offered to affected persons, and the nature and extent of any such remediation.
 - (d) **Diligent Performance and Cooperation.** The Licensor shall diligently perform all of the duties required in this Section in cooperation with the Commonwealth.
 - (e) The requirements of this section are in addition to and not in lieu of other requirements of this Agreement and its Attachments and Exhibits having to do with data privacy and security, including but not limited to the requirement that the Licensor comply with Attachment 2, *Requirements for Non-Commonwealth Hosting Applications/Services*, and all applicable Commonwealth Information Technology Policies (ITPs), which can be found at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- 16. Hyperlink Content.** Any terms and conditions contained in any hyperlink content referenced in this Agreement ("Hyperlink Content") shall not apply to the extent such terms and conditions are expressly prohibited by applicable law. In addition, no financial obligation of the Commonwealth to Licensor shall be affected by any change to information contained in a hyperlink, nor will any additional material obligations be placed on the Commonwealth as a result of any such changes to Hyperlink Content. Terms and conditions in the Hyperlink Content that are materially inconsistent with the Agreement are rejected, unenforceable by the Licensor, and shall not become part of this Agreement unless such terms and conditions are to the benefit of the Commonwealth.
- 17. 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.
- 18. 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.

19. Taxes-Federal, State and Local; Interest.

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

20. Commonwealth Audit Responsibilities.

- (a) The Commonwealth shall maintain, and promptly provide to the Licensor upon request, accurate records regarding use of the Licensed Products by or for the Commonwealth. If the Commonwealth becomes aware of any unauthorized use of all or any part of the Licensed Products, the Commonwealth shall 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 shall 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 shall make an additional purchase of the Licensed Products through a reseller contract or another procurement document, which is equivalent to the additional users. This section sets out the sole software license audit right under this Agreement.

21. **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.
22. **Third-Party Software.** If a Licensed Product utilizes or includes third party software and other copyrighted material, any additional licensing terms, acknowledgements or disclaimers associated with the third-party software and materials shall not be applicable to the Commonwealth unless agreed to in writing. 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.
23. **Attorneys’ Fees.** The Commonwealth is not responsible for and shall not pay attorneys’ fees incurred by or paid by the Licensor.
24. **Controversies.**
- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Agreement or a purchase order, the Licensor, within **six (6) months** after the claim accrues, must file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Licensor asserts a controversy exists. If the Licensor fails to file a claim or files an untimely claim, the Licensor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send his/her written determination to the Licensor. If the contracting officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer’s determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Licensor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the

Licensor shall proceed diligently with the performance of the Agreement or purchase order in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Licensor pursuant to the terms of the Agreement, purchase order or other procurement document.

25. Insurance.

- (a) The Licensor shall maintain at its expense, and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:
 - (i) Workers' Compensation Insurance for all of the employees engaged in performing Services in accordance with the *Worker's Compensation Act*, the Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 101—2708.
 - (ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death (including bodily injury), sickness or disease, accidental death and damage to and property of others, including loss of use resulting from any property damage which may arise from the Licensor's operations under this Agreement, whether such operation be by the Licensor, its agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for or supplies provided to the Commonwealth.
 - (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.
 - (iv) Technology Products Liability/Professional Liability/Errors & Omissions Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
 - (v) Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.

- (vi) Information Security and Privacy Liability Insurance including Privacy Notification Costs (including coverage for Technology Professional Liability if not covered under Licensor's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (b) Certificate of Insurance. Prior to providing Licensed Products under this Agreement, and annually thereafter, the Licensor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been received by the Commonwealth. Such cancellation or change shall not relieve the Licensor of its continuing obligation to maintain insurance coverage in accordance with this section.
- (c) Insurance coverage length. The Licensor shall maintain such insurance for the life of any applicable purchase order issued pursuant to the Agreement.

26. Signatures.

- (a) The parties agree that: (1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form; (2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; (3) if a law requires a record to be in writing, an electronic record satisfies the law; and (4) if law requires a signature, an electronic signature satisfies the law.
- (b) The fully executed Agreement may not contain ink signatures by the Commonwealth. If this Agreement does not contain ink signatures by the Commonwealth, the Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in this Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.

27. Independent Contractor. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

28. Travel. The Licensor shall not be allowed or paid travel or per diem expenses except as specifically set forth in this 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](#).

- 29. Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes and integrates all prior discussions, agreements and understandings pertaining thereto. No modification of this Agreement will be effective unless in writing and signed by both Parties. Other terms and conditions or additional terms and conditions included or referenced in the Licensor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Licensor and not binding on the Commonwealth. No modification of this Agreement will be effective unless in writing and signed by both Parties.
- 30. Assignment.** Either party may assign this Agreement in its entirety, but not in parts, on written notice to the other party to its parent company, affiliate or subsidiary, in connection with a merger, consolidation, or sale or other disposition of all or substantially all of its assets, or in the case of the Commonwealth to another Commonwealth entity. Any other assignment shall be null and void, except with the other party's prior written consent, which shall not be unreasonably withheld. This Agreement and all obligations shall be binding upon and inure to the benefit of the parties' successors and lawful assignees.
- 31. Notice.** Any written notice to either 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.
- 32. 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.
- 33. Waiver.** Failure to enforce any provision will not constitute a waiver.
- 34. Severability.** If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 35. 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.
- 36. Integration.** This Agreement, including all exhibits and referenced documents, and any Purchase Orders referencing this Agreement, constitutes the entire agreement between the

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

[Reminder of Page Intentionally Left Blank]

The parties to this Agreement have executed it, through their respective duly authorized representatives.

Witness:

Licensor:

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title

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

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF ADMINISTRATION**

Electronically signed per Section 26

Agency Head or Designee

APPROVED AS TO FORM AND LEGALITY:

Electronically signed per Section 26

Office of Chief Counsel

Electronically signed per Section 26

Office of General Counsel

Electronically signed per Section 26

Office of Attorney General

APPROVED:

Electronically signed per Section 26

Comptroller

ATTACHMENT 1

LIST OF LICENSED PRODUCTS

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

Licensed Products:

The Licensed Products include (list all titles covered by this Agreement):

ATTACHMENT 2
Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this Attachment is to define requirements for business or technology solutions and services procured by the Commonwealth that are hosted within the Licensor's or its subcontractor's managed 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 components of the hosted solution with commercially reasonable support and replace as necessary to maintain compliance.
5. The Licensor shall monitor, prevent and deter unauthorized system access. The Licensor shall use all commercially reasonable methods to confirm suspected breaches. 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 with 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.

Requirements for non-Commonwealth Hosted Applications Services

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- 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. System and Organization Controls (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; and
 - (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 Class “C” Classified Records or Closed Records, as defined in ITP-SEC019, or in compliance with mandates by federal or state audit requirements and/or policy.

The Licensor shall receive and review their subcontractor’s relevant SOC reports, and the Licensor shall provide the Commonwealth with a Letter of Attestation that includes an analysis of their subcontractor’s SOC report.

- 2.□ Unless otherwise agreed to in writing by the Commonwealth, the Licensor’s SOC Report(s) 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.

3. 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.
4. At the request of the Commonwealth, the Licensor shall, and shall require its subcontractors, as applicable, complete a SOC for Cybersecurity audit 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 SOC for Cybersecurity report shall detail the controls used by the Licensor or its subcontractor setting forth the description and effectiveness of the Licensor's or subcontractor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

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

5. The Commonwealth may specify other or additional standards, certifications or audits it requires under any Purchase Orders or within an ITP.
6. The Licensor shall adhere to Statement on Standards for Attestation Engagements (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.
7. In the event an audit reveals any non-conformity to SSAE standards, the Licensor shall provide the Commonwealth, within **45 days** of the issuance of the SOC report, a documented corrective action plan that addresses each non-conformity that is identified within the SOC report, including any subcontractor's SOC report. 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).
8. The Commonwealth may in its sole discretion agree, in writing, to accept alternative security report 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 or compensating controls on all servers and network components.
- 6. The Licensor shall limit access to Commonwealth-specific systems, data and services and provide access only to those staff, located within CONUS (any of the Continental United States and Hawaii) 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 Protection

- 1. The Licensor shall only host, store or backup Commonwealth Data in physical locations within CONUS.

- 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.
- 3.□ 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.
- 4.□ The Licensor shall be solely responsible for applicable data storage required.
- 5.□ The Licensor shall encrypt all Commonwealth data in transit and at rest. The Licensor shall comply with ITP-SEC031, and ITP-SEC019, encryption policies and minimum standards or stronger.
- 6.□ The Licensor shall take all commercially viable and applicable measures to protect the data availability including, but not limited to, real-time replication, traditional backup, and/or georedundant storage of Commonwealth data in accordance with industry best practices and encryption techniques.
- 7.□ The Licensor shall 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.
- 8.□ The Licensor shall utilize a secured backup solution to prevent loss of data. Stored backups must be kept in an all-hazards protective storage environment at the primary location and any additional locations where the data is being maintained. All back up data and media shall be encrypted.

E. Adherence to Policy

- 1.□ The 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.□ 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.

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 within **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.

Upon confirmation that Commonwealth data is in possession or control of the Commonwealth, the Licensor shall ensure all residual user account(s) are promptly deleted or reset in the solution. The Licensor shall notify the Commonwealth within **10 business days** that all user account(s) have been deleted or reset.

ATTACHMENT 2-A

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

ITP Number - Name	Policy Link
ITP_ACC001 - Accessibility Policy	https://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf
ITP_APP030 - Active Directory Architecture	https://www.oa.pa.gov/Policies/Documents/itp_app030.pdf
ITP_BUS007 - Enterprise Service Catalog	https://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf
ITP_BUS010 - Business Process Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf
ITP_BUS012 -Artificial Intelligence General Policy	https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf
ITP_INF000 - Enterprise Data and Information Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf
ITP_INF001 - Database Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf
ITP_INF006 - Commonwealth County Code Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf
ITP_INF009 - e-Discovery Technology Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf
ITP_INF010 - Business Intelligence Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf
ITP_INF011 - Reporting Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf
ITP_INF012 - Dashboard Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf
ITP_INFRM001 - The Life Cycle of Records: General Policy Statement	https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf
ITP_INFRM004 - Management of Web Records	https://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf
ITP_INFRM005 - System Design Review of Electronic Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf
ITP_INFRM006 - Electronic Document Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf
ITP_INT_B_1 - Electronic Commerce Formats and Standards	https://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf
ITP_INT_B_2 - Electronic Commerce Interface Guidelines	https://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf
ITP_INT006 - Business Engine Rules	https://www.oa.pa.gov/Policies/Documents/itp_int006.pdf
ITP_NET004 - Internet Protocol Address Standards	https://www.oa.pa.gov/Policies/Documents/itp_net004.pdf
ITP_NET005 - Commonwealth External and Internal Domain Name Services (DNS)	https://www.oa.pa.gov/Policies/Documents/itp_net005.pdf
ITP_PRV001 - Commonwealth of Pennsylvania Electronic Information Privacy Policy	https://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf
ITP_SEC000 - Information Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf
ITP_SEC001 - Enterprise Host Security Software Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec001.pdf
ITP_SEC002 - Internet Accessible Proxy Servers and Services	https://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf
ITP_SEC003 - Enterprise Security Auditing and Monitoring	https://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf
ITP_SEC004 - Enterprise Web Application Firewall	https://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf
ITP_SEC006 - Commonwealth of Pennsylvania Electronic Signature Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf
ITP_SEC007 - Minimum Standards for IDs, Passwords and Multi-Factor Authentication	https://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf
ITP_SEC008 - Enterprise E-mail Encryption	https://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf
ITP_SEC009 - Minimum Contractor Background Checks Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf
ITP_SEC010 - Virtual Private Network Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf

ITP Number - Name	Policy Link
ITP_SEC011 - Enterprise Policy and Software Standards for Agency Firewalls	https://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf
ITP_SEC012 - System Logon Banner and Screensaver Requirements	https://www.oa.pa.gov/Policies/Documents/itp_sec012.pdf
ITP_SEC015 - Data Cleansing	https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf
ITP_SEC016 - Information Security Officer Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec016.pdf
ITP_SEC017 - Copa Policy for Credit Card Use for e-Government	https://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf
ITP_SEC019 - Policy and Procedures for Protecting Commonwealth Electronic Data	https://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf
ITP_SEC021 - Security Information and Event Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf
ITP_SEC023 - Information Technology Security Assessment and Testing Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf
ITP_SEC024 - IT Security Incident Reporting Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf
ITP_SEC025 - Proper Use and Disclosure of Personally Identifiable Information (PII)	https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf
ITP_SEC029 - Physical Security Policy for IT Resources	https://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf
ITP_SEC031 - Encryption Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf
ITP_SEC032 - Enterprise Data Loss Prevention (DLP) Compliance Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf
ITP_SEC034- Enterprise Firewall Rule Set	https://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf
ITP_SEC035 - Mobile Device Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec035.pdf
ITP_SEC038 - Commonwealth Data Center Privileged User IAM Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf
ITP_SEC039 - Keystone Login and Identity Proofing	https://www.oa.pa.gov/Policies/Documents/itp_sec039.pdf
ITP_SEC040 - Commonwealth Cloud Computing Services Requirements	https://www.oa.pa.gov/Policies/Documents/itp_sec040.pdf
ITP_SFT000 - Software Development Life Cycle (SDLC) Policy	https://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf
ITP_SFT001 - Software Licensing	https://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf
ITP_SFT002 - Commonwealth of PA Website Standards	https://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf
ITP_SFT003 - Geospatial Enterprise Service Architecture	https://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf
ITP_SFT004 - Geospatial Information Systems (GIS)	https://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf
ITP_SFT005 - Managed File Transfer (MFT)	https://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf
ITP_SFT007 - Office Productivity Policy	https://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf
ITP_SFT008 - Enterprise Resource Planning (ERP) Management	https://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf
ITP_SFT009 - Application Development	https://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf
ITP_SYM003 - Off-Site Storage for Commonwealth Agencies	https://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf
ITP_SYM004 - Policy for Establishing Alternate Processing Sites for Commonwealth Agencies	https://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf
ITP_SYM006 - Commonwealth IT Resources Patching Policy	https://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf
ITP_SYM008 - Server Virtualization Policy	https://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf
ITP_SYM010 - Enterprise Services Maintenance Scheduling	https://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf

Attachment 3

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

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

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be used or disclosed only in accordance with this Agreement and the standards established by applicable laws and agency guidance; and

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI must be handled in accordance with this Agreement and the standards established by HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and other applicable laws and agency guidance.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions.

- (a) **“Business Associate”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.
- (b) **“Covered Entity”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.

- (c) “**HIPAA**” shall mean the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191.
- (d) “**HITECH Act**” shall mean the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).
- (e) “**Privacy Rule**” shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164, as amended, and related agency guidance.
- (f) “**Protected Health Information**” or “**PHI**” shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule (all as amended) and agency guidance.
- (g) “**Security Rule**” shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- (h) “**Unsecured PHI**” shall mean PHI that is not secured through the use of a technology or methodology as specified in HITECH Act regulations, as amended, and agency guidance or as otherwise defined in the HITECH Act, as amended.

2. Stated Purposes for Which Business Associate May Use or Disclose PHI. The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided by or obtained on behalf of Covered Entity for the following stated purposes, except as otherwise stated in this Agreement:

NO OTHER DISCLOSURES OF PHI OR OTHER INFORMATION ARE PERMITTED.

3. BUSINESS ASSOCIATE OBLIGATIONS.

- (a) **Limits on Use and Further Disclosure.** Business Associate shall not further use or disclose PHI provided by, or created or obtained on behalf of, Covered Entity

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

- (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](#).

4. OBLIGATIONS OF COVERED ENTITY.

- (a) **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with applicable law and agency guidance, as well as changes to such notice. Covered Entity will post on its website any material changes to its notice of privacy practices by the effective date of the material change.
- (b) **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) **Restrictions.** Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, as amended, and other applicable laws and applicable agency guidance, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) **Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, HITECH and

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

5. MISCELLANEOUS.

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

Attachment 4

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

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

Scope of Deployment (need not be entire agency):

Nature of Data implicated or potentially implicated:

Agency Policies to which Licensor. is subject (incorporated by reference):

Background checks (describe if necessary):

Additional requirements (describe with specificity):

Is Licensor. a Business Associate (yes or no)?

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

Agency Contact Person signature and Date: _____

[Licensor _____]
Authorized Signatory and Date: _____

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>

LEASE ACCEPTANCE CERTIFICATE

Purchase order number _____ dated _____ 20 _____ , by and between _____ (Contractor) and _____ (Commonwealth Agency).

ACCEPTANCE CERTIFICATE

The undersigned hereby certifies and represents to, and agrees with, the contractor or its assignee as follows:

1. A unit(s) of the equipment and/or financed item(s) identified on the attached schedule have/has been delivered to _____ and accepted on the date indicated below.
2. The Commonwealth agency had conducted such inspection and/or testing of the unit(s) of the equipment and/or financed item(s) as it deems necessary and appropriate and hereby acknowledges that it accepts the such unit(s) of equipment.
3. The Commonwealth agency is not in any event of default as defined in RFP 6100051157 and no event which, with notice or lapse of item, or both, would become an event of default, has occurred and is continuing at the date thereof.

Commonwealth Agency

Name

Title

Date

Enhanced Minimum Wage Provisions (July 2022)

- 1. Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$15.00 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.
- 2. Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate shall 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.
- 3. Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:

 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. 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
 - d. required to be paid a higher wage under any state or local policy or ordinance.
- 4. 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.
- 5. 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.
- 6. 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.
- 7. 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.

APPENDIX O -STATEMENT OF WORK TEMPLATE

CONTRACT #
Statement of Work

for

Commonwealth of PA – (Insert Agency Name)

PO Number: _____

AGENCY CONTACT:
AGENCY ADDRESS:

PHONE:
E-MAIL:

APPENDIX O -STATEMENT OF WORK TEMPLATE

A. Introduction

This Statement of Work ("SOW") is made ("Effective Date"), by and between the Commonwealth of PA – ("Agency"), with its principal office located at (Address) (hereinafter referred to as "Customer") and Insert full Supplier name, with its principal place of business at Insert Address (hereinafter referred to as "Supplier"). Supplier and Customer may also be referred individually as "Party" or collectively as "Parties."

Agency is responsible for promptly obtaining all required consents necessary for the Supplier to provide the services described in this Statement of Work. A required consent means any consent or approval required to give the Supplier access to Agency or third-party software, firmware, data or other products to enable Supplier and Supplier's approved subcontractors to perform the services set forth in this Statement of Work without infringing on the ownership or license rights (including patent and copyright) of the providers or owners of such products.

The terms and conditions of contract #XXXXXXXXXX shall govern this SOW.

B. Project Overview and Tasks

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

Supplier to insert exact description of work to be performed

Agency Requirements & Room Preparation:

Any requirements for the agency must be inserted here

C. Time Estimates / Delivery Schedule

The actual Project start date will depend on following:

(below are examples only, ensure dates are provided)

- 1.) Scheduled availability of a qualified systems engineer. 5/10/06
- 2.) Receipt of equipment. 5/20/06
- 3.) Completion necessary cabling, ISP connection, etc. by other vendors if applicable. 5/20/06
- 4.) Receipt of signed SOW from Customer prior to proposed start date. 5/5/06

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

D. Project Cost

Project Cost is: \$

All work associated with the Project is performed during Mondays through Fridays, between the hours of 8am and 5pm local time, excluding holidays.

(Ensure an exact costing breakdown is provided)

APPENDIX O -STATEMENT OF WORK TEMPLATE

E. SOW Acceptance

This SOW is acceptable. The Parties hereby acknowledge and confirm that the scope of work and related terms of this SOW have been read and are accepted and approved. If additional work is required that by its nature was not known or determined at the time this SOW was executed, a written change order describing the additional work and any related expenses is required prior to commencing in any work outside the scope of the original SOW.

Please sign and email to **Supplier** at **email address**

Supplier

Commonwealth of PA – “**Agency**”

Approved (date): _____

Print Name of Authorized Signatory

Authorized **Supplier** Signature

Authorized **Agency** Signature

Authorized **Supplier** Signature

Title

F. Project Completed and Accepted

The Project was completed in accordance with this SOW. The Parties hereby accept as completed all work indicated in this SOW. The Parties acknowledge at there is nothing that should prevent prompt payment in accordance with the terms indicated above.

Approved (date): _____

Print Name of Authorized Signatory

Authorized **Supplier** Signature

Authorized **Agency** Signature

Authorized **Supplier** Signature

Title

PLEASE ATTACH HARD COPY OF PURCHASE ORDER
REFERENCING THIS SOW



SOLICITATION ADDENDUM

Date: **11/28/2022**
Subject: **Questions and Answers**
Solicitation Number: **6100056936**
Due Date/Time: **12/19/2022/ 3:00 PM**
Addendum Number: **1**

To All Suppliers:

The Commonwealth of Pennsylvania defines a solicitation “Addendum” as an addition to or amendment of the original terms, conditions, specifications, or instructions of a procurement solicitation (e.g., Invitation for Bids or Request for Proposals).

Question and Answers:

- The Microfilm Equipment, Supplies and Services IFB 6100056936 Questions and Answers have been posted to the emarketplace portal.

Type of Solicitation: Electronic Bid (SRM) - Review the Questions section of your solicitation response to ensure you have responded, as required, to any questions relevant to solicitation addenda issued subsequent to the initial advertisement of the solicitation opportunity.

Except as clarified and amended by this Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation addenda, remain as originally written.

Respectfully,

Name: **Raymond A. Jaime**
Title: Commodity Specialist
Phone: 717-346-3827
Email: rjaime@pa.gov

Questions and Answers

IFB # 6100056936 Microfilm Equipment, Supplies and Services

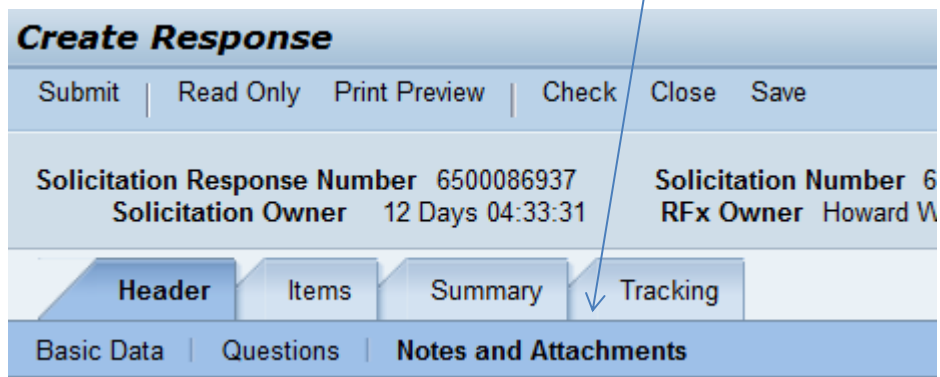
No.	Questions	Answers
1.	Regarding Section H, what is considered "commercially available software"?	The commercially available software can be considered as software that's designed and developed for licensing or serves as a commercial purpose. The Microsoft products such as the Windows Operating System and MS Office are some of the most well-known examples of commercial software
2.	If a piece of equipment we include in our response requires software to run, does the software manufacturer (or equipment manufacturer if they provide the software) need to have an agreement in place with the Commonwealth before we can submit our response?	No, the software manufacturer (or equipment manufacturer if they provide the software) does not require an agreement in place with the Commonwealth before a response is to be submitted.
3.	If we include scanning software in our response that is not directly related to a specific manufacturer's piece of hardware, but works with it, does the software manufacturer need to have an agreement in place with the Commonwealth?	No

<p>4.</p>	<p>Under "Delivery of Equipment", it is difficult to commit to the 10-day delivery time particularly with today's supply chain issues. Even under normal supply chain circumstances, we typically cannot control the lead times of our manufacturers. If they have supply chain or manufacturing issues, we would be penalized when they exceed the 10-day requirement. Does the clause "This SLA may be waived by the ordering agency if an agreed upon date is established as part of the purchase order. If the agreed upon date is missed, a service credit request will be issued" give us the latitude to provide a delivery time with each quote based upon the manufacturers prevailing lead time when the order is placed?</p>	<p>The SLA delivery of equipment response times can be discussed with the specific agency.</p>
<p>5.</p>	<p>Under "Fix-Time", 12 business hours may be difficult to achieve if the equipment is a significant distance from the service provider. Can this be increased to 24 or 36 hours but with best efforts still in place to achieve 12 hours?</p>	<p>No. The 12 business hours under "Fix Time" shall remain as is.</p>

ATTACHING DOCUMENTS TO A BID AT WWW.PASUPPLIERPORTAL.STATE.PA.US

After you have begun your response to a solicitation, answered the mandatory questions under the Header Tab and entered pricing under the Items tab (if applicable) and need to upload documents to your response, follow this step by step guide:

1. Under the Header Tab, Select Notes and Attachments:



2. Scroll down to see all the documents the Purchasing Agent/Commodity Specialist attached to the solicitation, **please review all documents.**

Example:

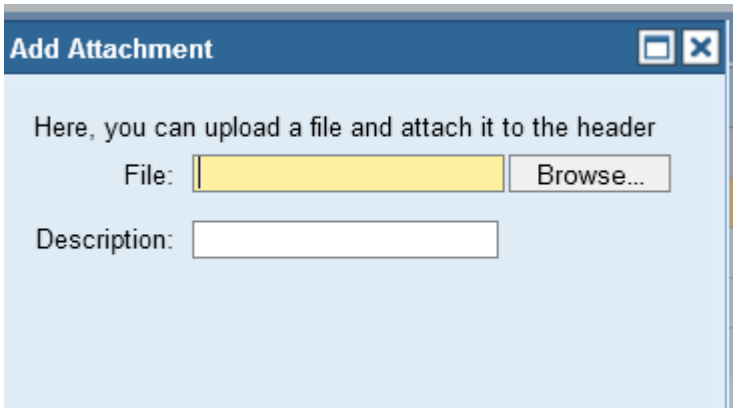
▼ Attachments									
Add Attachment Edit Description Versioning Delete									Filter Setting
Category	Description	File Name	Version	Processor	Checked Out	Type	Size (KB)	Changed by	Changed on
Standard Attachment	Reciprocal Limitations	Rec Limbs.doc	1		<input type="checkbox"/>	doc	72	P00046012	02/24/2015
Legal Document	Terms & Conditions	Document	1		<input type="checkbox"/>	pdf	83	SRMRFC	02/24/2015

3. Determine which documents must be completed and attached to your response.
4. After completing documents that must be included with your response, save them to your computer so you can easily find them later.
5. When responding to the solicitation and ready to submit your documents, go to Header Tab, Notes and Attachments and select ADD ATTACHMENT:

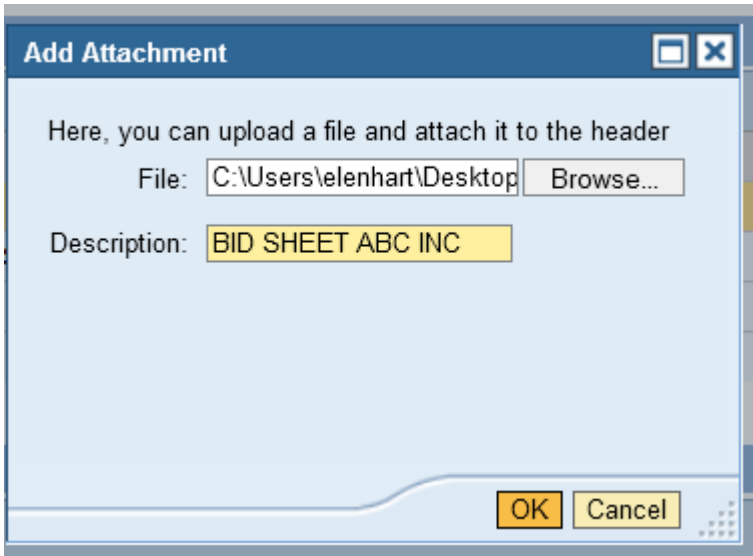
▼ Attachments									
Add Attachment Edit Description Versioning Delete									Filter Setting
Category	Description	File Name	Version	Processor	Checked Out	Type	Size (KB)	Changed by	Changed on
Standard Attachment	Reciprocal Limitations	Rec Limbs.doc	1		<input type="checkbox"/>	doc	72	P00046012	02/24/2015
Legal Document	Terms & Conditions	Document	1		<input type="checkbox"/>	pdf	83	SRMRFC	02/24/2015

If Add Attachment is not available, make sure you are in Edit Mode and not Display mode.

6. This pop up window will appear:



7. Using the Browse field, find your saved document.
Type in your description of the document and select OK.



8. When successfully attached, your document will appear as an attachment:

▼ Attachments	
Add Attachment Edit Description Versioning ▲ Delete	
Category	Description
Standard Attachment	BID SHEET ABC INC
Standard Attachment	Reciprocal Limitations
Legal Document	Terms & Conditions

9. Note: system will only allow one document to be attached at a time, repeat as necessary.

Under the Summary Tab, attachment(s) will also be listed.

Create Response			
Submit	Read Only	Print Preview	Check Close Save
Solicitation Response Number 6500086937	Solicitation Number 6100033022	Status In Process	Submission Deadline 03/1
Solicitation Owner 12 Days 04:22:39	RFX Owner Howard Walk	Response Version Number	0.00 USD Versi
Header	Items	Summary	Tracking
RFX Response Number: 6500086937			
Items with Response: 2 out of 2 items responded to			
Questions: 2 out of 2 questions answered (2 out of 2 mandatory)			
Notes: 3 notes added			
Attachments: 1 attachments added			
Conditions: No Conditions Added			
Total RFX Response Value: 0.00 USD			

10. When response is complete, select CHECK and SUBMIT to transmit your response (bid) to the purchasing agent.
11. If assistance is required, contact the help desk at 877-435-7363 option 2.



End User Procedures for the **E-Alerts System**

Includes

Accessing the E-Alerts System

Completing E-Alerts Registration

Updating E-mail Addresses

Changing Your E-Alerts Categories

Unsubscribing From E-Alerts

REVISED MAY 2015

Department of General Services eAlerts

Important Points

- E-Alerts is an e-mail based system that notifies suppliers of new bids issued by the Department of General Services. This program can be accessed through the PA Supplier Portal at www.pasupplierportal.state.pa.us (for registered suppliers) or through the [DGS Procurement website](#) (for unregistered suppliers).

- E-Alerts are notifications for solicitations issued only by the Department of General Services - Bureau of Procurement (DGS-BOP). DGS-BOP manages procurements for services in excess of \$250,000 and materials in excess of \$20,000.

- Bidding opportunities under \$10,000 are not posted online, and therefore do not fall under the E-Alerts system. Suppliers interested in bid opportunities through other departments or under \$10,000 must still search [PA E-Marketplace](#) or contact the agency's [purchasing agent](#).

- **We recommend that you still check [PA E-Marketplace](#) website on a daily basis.** These E-Alerts are not meant to be the only notification of bidding opportunities. The Department of General Services assumes no risk or liability for any delays, errors or failures in suppliers' receipt of these E-Alerts.

Accessing the E-Alerts System - Overview

The E-Alerts system can be accessed two separate ways.

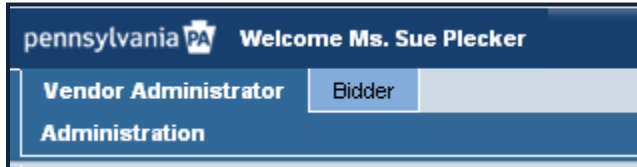
- Suppliers who have not registered at the PA Supplier Portal (www.pasupplierportal.state.pa.us) may access the E-Alerts system at the [DGS Procurement website](#).
NOTE: Please proceed to page 4 for instructions on how to access the E-Alerts system.
- Suppliers who have registered at the PA Supplier Portal may access the E-Alerts system after logging in to their account (www.pasupplierportal.state.pa.us).
NOTE: Please proceed to page 5 for instructions on how to access the E-Alerts system.

Department of General Services eAlerts

Accessing the E-Alerts System (for registered suppliers)

1. Go to www.pasupplierportal.state.pa.us and log in with your user name and password.

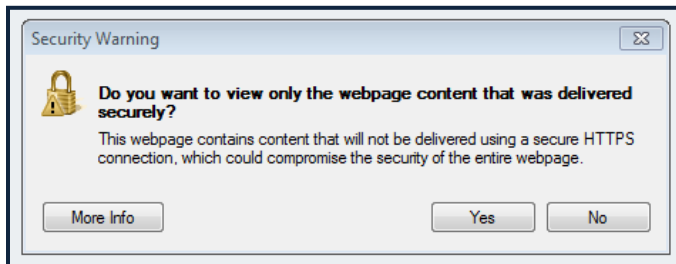
2. Select the "Bidder Tab".



3. Select "Enterprise Applications".



4. If a Security Information box pops up, select "No".



5. Select the DGS e-mail Notifications (eAlerts) link.



6. Please enter additional company contact information as requested below.

Department of General Services eAlerts

Completing E-Alerts Registration

1. Upon reaching the E-Alerts welcome page, please choose one of the following options below to select your categories (Materials or Services). **If you wish to select categories for both, you must open each link to select your categories.**



2. Select your categories by placing a checkmark in the appropriate boxes or by clicking on "Select All" and click submit. **If you do not select any categories, you will not receive any E-Alerts.**

The screenshot shows the 'Department of General Services E-Alert Subscription Service' registration page. At the top left is the state seal. The page title is 'Department of General Services E-Alert Subscription Service'. Below the title, it says 'Bureau of Procurement - Services' and 'Select the E-Alert topics you wish to receive emails about and then click the "Submit" button at the bottom of the page to save your selections.' There are two buttons: 'Select All' and 'Clear All'. Below these are several rows of service categories, each with a description and a checkmark in a box on the right. The categories are:

70000000- Farming and Fishing and Forestry and Wildlife Contracting Services: This segment includes services associated with the production, management and protection of plants, soil and land resources as well as those related to the breeding of animals and services related to wildlife.	<input checked="" type="checkbox"/>
71000000- Mining and oil and gas services: Services provided to the mining and oil and gas industries.	<input checked="" type="checkbox"/>
72000000- Building and Construction and Maintenance Services: This segment includes services associated with the construction and maintenance of buildings, structures and roads. This segment also includes trades such as general contractors, electricians, plumbers, carpenters, painters, and roofing, landscaping, gardening and pest control.	<input checked="" type="checkbox"/>
73000000- Industrial Production and Manufacturing Services: This segment includes contracted services associated with industrial and manufacturing processes.	<input checked="" type="checkbox"/>
76000000- Industrial Cleaning Services: This segment includes services associated with wastewater management. This segment also includes industrial cleaning services such as building site cleanup or janitorial services.	<input checked="" type="checkbox"/>
77000000- Environmental Services: This segment includes services associated with environmental protection and management as well as environmental science and technology. This segment also includes pollution control.	<input checked="" type="checkbox"/>
78000000- Transportation and Storage and Mail Services: This segment includes services associated with cargo and personal transportation.	<input checked="" type="checkbox"/>
80000000- Management and Business Professionals and Administrative Services: This segment includes services associated with the management and administrative functions of an organization or business. This segment also includes business administration, human resources, marketing, management consulting, legal, and real estate services.	<input checked="" type="checkbox"/>
81000000- Engineering and Research and Technology Based Services: This segment includes services associated with professional engineering, information and computer technology, economic analysis, and manufacturing production planning and control as well as cartographic, weather forecasting, and other earth science services.	<input checked="" type="checkbox"/>

Department of General Services eAlerts

3. □ The e-mail address used upon Supplier Registration will automatically receive notifications. You may update your company's default e-mail by following the instructions on the next page.

The screenshot shows the 'Department of General Services E-Alert Subscription Service' interface. At the top left is the state seal. The main header reads 'Department of General Services E-Alert Subscription Service'. Below the header are two links: 'Unsubscribe to All E-Alerts' and 'Set alternate e-mail address.' (the latter is highlighted with a red box). A personalized welcome message follows: 'Heidi Gast, Welcome to the DGS E-Alerts Subscription Manager!' with a small red dot above the 'i' in 'Manager!'. Below this is the instruction: 'Please choose from the available E-Alerts listed below.' The interface is divided into two columns. The left column is titled 'Bureau of Procurement' and contains two expandable items: 'Materials' and 'Services', each with a plus sign icon. The right column is titled 'Public Works - Construction Bid Opportunities' and contains one expandable item: 'View All Public Works - Construction Bid Op', also with a plus sign icon.

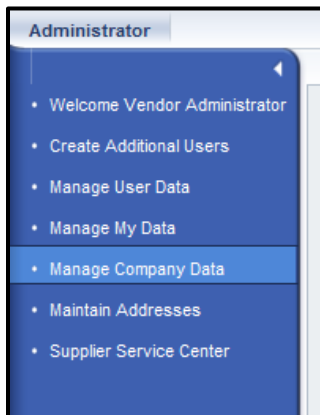
Updating Company E-mail Addresses (registered suppliers only)

To change your company e-mail address, you must go back into the PA Supplier Portal at www.pasupplierportal.state.pa.us.

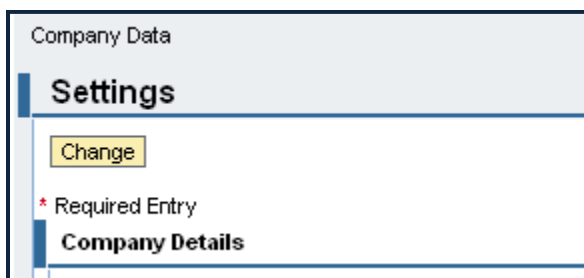
1. Log in using your PA Supplier Portal registration information.



2. Select the "Manage Company Data" tab.



3. Select the "Change" button.



Department of General Services eAlerts

4. □ Scroll down to the email address section. Click in the 1st box on the left and delete the listed e-mail address.

E-Mail Addresses		
	Standard Address *	E-Mail Address
<input type="checkbox"/>	<input checked="" type="radio"/>	splecker@state.pa.us
<input type="checkbox"/>	<input type="radio"/>	pchapman@state.pa.us
<input type="checkbox"/>	<input type="radio"/>	

5. □ Scroll back to top of page and click "Save".

Company Data

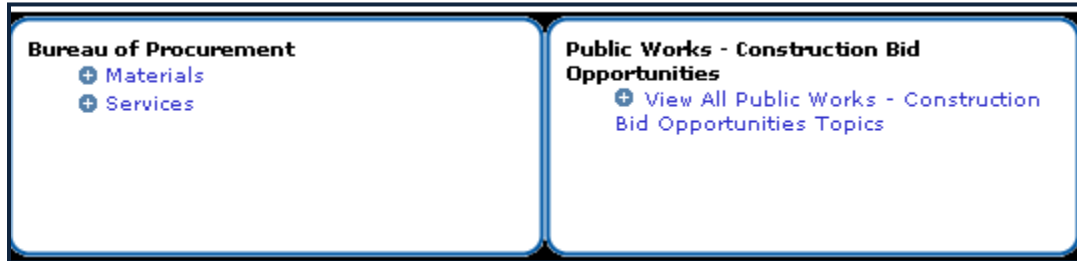
Settings

* Required Entry

Department of General Services eAlerts

Updating Your E-Alerts Categories

1. Return to the E-Alerts welcome page via www.pasupplierportal.state.pa.us (registered suppliers) or www.dgs.state.pa.us (unregistered suppliers).
2. Select the "Materials" or "Services" sections, seen below.



3. Select your categories by placing/removing a check mark on each one and click "Submit".

The screenshot shows the "Department of General Services E-Alert Subscription Service" interface. At the top left is the state seal. The title "Department of General Services E-Alert Subscription Service" is centered. Below the title, it says "Bureau of Procurement - Services" and "Select the E-Alert topics you wish to receive emails about and then click the 'Submit' button at the bottom of the page to save your selections." There are two buttons: "Select All" and "Clear All". Below these is a table of service categories, each with a description and a checkmark in a box.

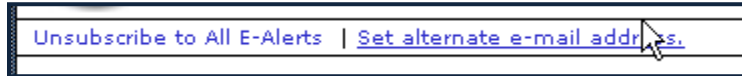
70000000- Farming and Fishing and Forestry and Wildlife Contracting Services: This segment includes services associated with the production, management and protection of plants, soil and land resources as well as those related to the breeding of animals and services related to wildlife.	<input checked="" type="checkbox"/>
71000000- Mining and oil and gas services: Services provided to the mining and oil and gas industries.	<input checked="" type="checkbox"/>
72000000- Building and Construction and Maintenance Services: This segment includes services associated with the construction and maintenance of buildings, structures and roads. This segment also includes trades such as general contractors, electricians, plumbers, carpenters, painters, and roofing, landscaping, gardening and pest control.	<input checked="" type="checkbox"/>
73000000- Industrial Production and Manufacturing Services: This segment includes contracted services associated with industrial and manufacturing processes.	<input checked="" type="checkbox"/>
76000000- Industrial Cleaning Services: This segment includes services associated with wastewater management. This segment also includes industrial cleaning services such as building site cleanup or janitorial services.	<input checked="" type="checkbox"/>
77000000- Environmental Services: This segment includes services associated with environmental protection and management as well as environmental science and technology. This segment also includes pollution control.	<input checked="" type="checkbox"/>
78000000- Transportation and Storage and Mail Services: This segment includes services associated with cargo and personal transportation.	<input checked="" type="checkbox"/>
80000000- Management and Business Professionals and Administrative Services: This segment includes services associated with the management and administrative functions of an organization or business. This segment also includes business administration, human resources, marketing, management consulting, legal, and real estate services.	<input checked="" type="checkbox"/>
81000000- Engineering and Research and Technology Based Services: This segment includes services associated with professional engineering, information and computer technology, economic analysis, and manufacturing production planning and control as well as cartographic, weather forecasting, and other earth science services.	<input checked="" type="checkbox"/>

Department of General Services eAlerts

Unsubscribing From E-Alerts

1. □ Return to the E-Alerts welcome page via www.pasupplierportal.state.pa.us (registered suppliers) or www.dgs.state.pa.us (unregistered suppliers).

2. □ Select "Unsubscribe to all E-Alerts".



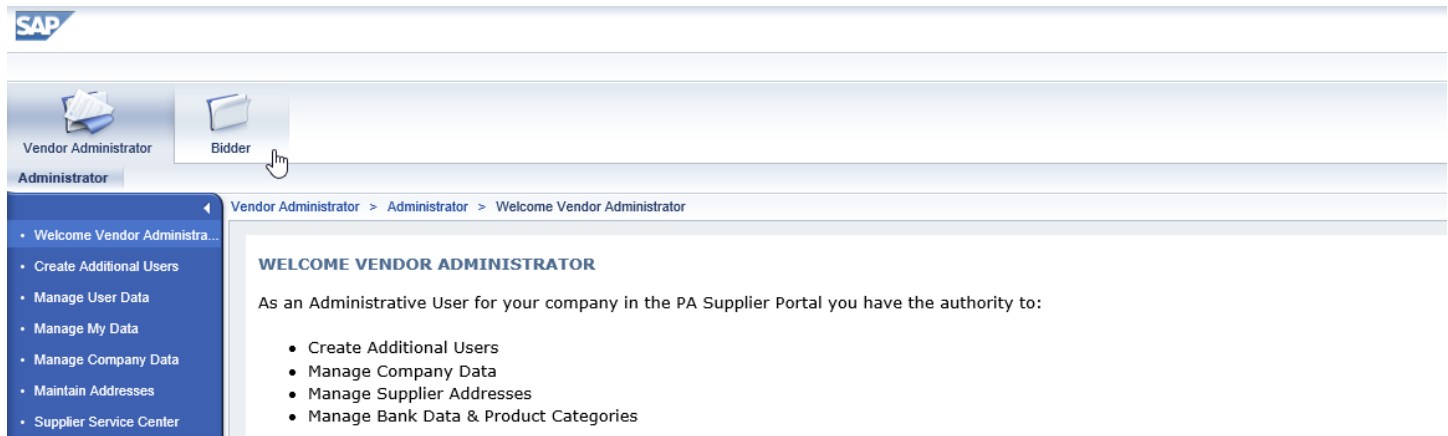
2. □ Select the "Unsubscribe" button.



Locating and Responding to a Solicitation

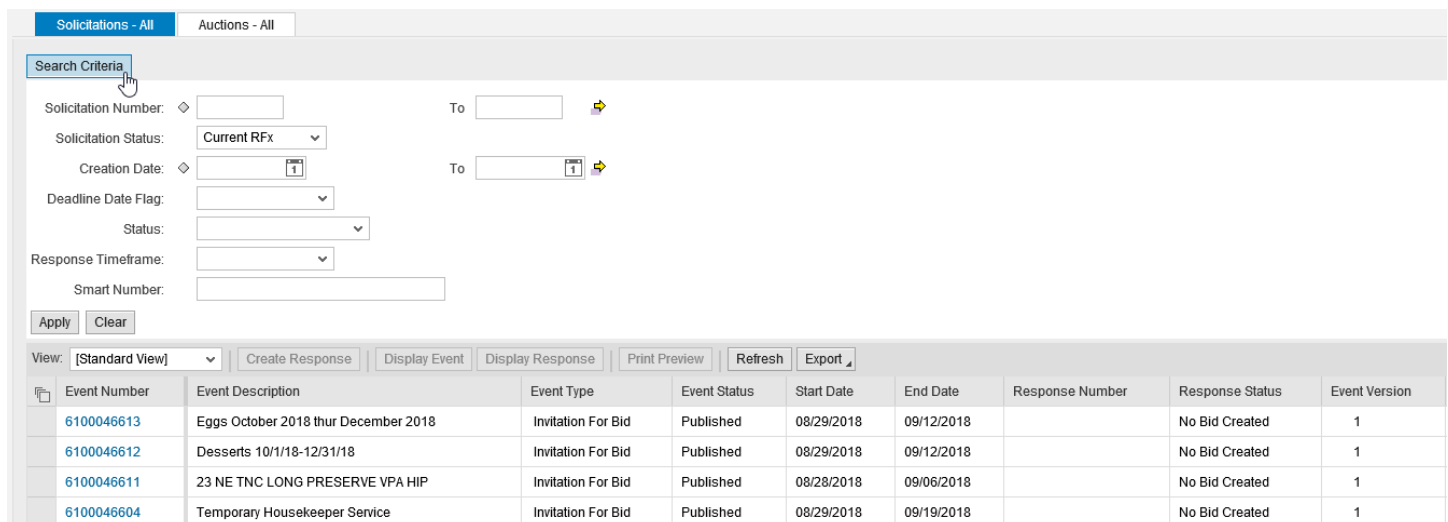
Locating a Solicitation

1. Open your web browser and go to www.pasupplierportal.state.pa.us. Please note the important information regarding compatible browsers for the PA Supplier Portal website.
2. Select the **Log on** button at the top right of the page.
3. Enter the **User ID** and **Password** you created when you registered as a supplier and log on. If you are unable to log in, please call the Help Desk at (877) 435-7363 and selection Option #1.
4. Choose the **Bidder** tab to begin. If you do not see a Bidder tab, another person at your company with separate log-in credentials may have been assigned the Bidder role.



The screenshot shows the SAP Vendor Administrator interface. The top navigation bar includes 'Vendor Administrator' and 'Bidder' tabs. The 'Bidder' tab is active. Below the navigation bar, there is a breadcrumb trail: 'Vendor Administrator > Administrator > Welcome Vendor Administrator'. The main content area is titled 'WELCOME VENDOR ADMINISTRATOR' and contains the following text: 'As an Administrative User for your company in the PA Supplier Portal you have the authority to:' followed by a bulleted list of permissions: 'Create Additional Users', 'Manage Company Data', 'Manage Supplier Addresses', and 'Manage Bank Data & Product Categories'. A left-hand sidebar contains a menu with items like 'Welcome Vendor Administra...', 'Create Additional Users', 'Manage User Data', 'Manage My Data', 'Manage Company Data', 'Maintain Addresses', and 'Supplier Service Center'.

5. The **Bid Processing** screen will open and will display all Events currently open for responses. If the search fields seen below are not visible, select the **Search Criteria** button to display them.



The screenshot shows the Bid Processing screen. At the top, there are tabs for 'Solicitations - All' and 'Auctions - All'. Below the tabs is a 'Search Criteria' button. The search fields include: 'Solicitation Number' (with a dropdown arrow), 'Solicitation Status' (set to 'Current RFx'), 'Creation Date' (with a dropdown arrow and a calendar icon), 'Deadline Date Flag' (with a dropdown arrow), 'Status' (with a dropdown arrow), 'Response Timeframe' (with a dropdown arrow), and 'Smart Number' (with a text input field). Below the search fields are 'Apply' and 'Clear' buttons. At the bottom of the search area, there are buttons for 'View: [Standard View]', 'Create Response', 'Display Event', 'Display Response', 'Print Preview', 'Refresh', and 'Export'. Below the buttons is a table with the following data:

Event Number	Event Description	Event Type	Event Status	Start Date	End Date	Response Number	Response Status	Event Version
6100046613	Eggs October 2018 thru December 2018	Invitation For Bid	Published	08/29/2018	09/12/2018		No Bid Created	1
6100046612	Desserts 10/1/18-12/31/18	Invitation For Bid	Published	08/29/2018	09/12/2018		No Bid Created	1
6100046611	23 NE TNC LONG PRESERVE VPA HIP	Invitation For Bid	Published	08/28/2018	09/06/2018		No Bid Created	1
6100046604	Temporary Housekeeper Service	Invitation For Bid	Published	08/29/2018	09/19/2018		No Bid Created	1

6. To search for and respond to a specific Solicitation, enter the **Solicitation Number** in the appropriate field and select the **Apply** button. The Solicitation will appear below. *Please ensure all fields below "Solicitation Status" are blank, as extra information such as "Status" or "Response Timeframe" may cause the system to skip over the desired Solicitation.*

Event Number	Event Description	Event Type	Event Status	Start Date	End Date	Response Number	Response Status	Event Version
6100046601	PSP Mercer Station Snow Removal	Invitation For Bid	Published	08/28/2018	09/12/2018		No Bid Created	1

7. Click the blue **Event Number** link to open the Solicitation in a new window. *If your browser asks to allow pop-ups, select "Always Allow". If the window still does not open, ensure all pop-up blockers are disabled.*

Viewing and Responding to a Solicitation

Before creating a response, browse the **Header** and **Items** tabs for bid information.

1. If you have not downloaded any bid documents, they can be found under the **Header** tab in the **Notes and Attachments** section. A description for the Solicitation can be found at the **Tendering Text** link. *Any questions about the attachments or description can be directed to the Solicitation Owner.*

Category	Description	File Name	Version	Processor	Checked Out	Type	Size (KB)
Standard Attachment	Bid Specification	SNOW SPECIFICATIONS-2018.doc	1		<input type="checkbox"/>	doc	33
Standard Attachment	Proof of Visit Form	PROOF OF VISIT FORM- SR Mercer Station.doc	1		<input type="checkbox"/>	doc	27
Legal Document	Terms and Conditions	Document	1		<input type="checkbox"/>	pdf	83

2. Download all required attachments (if necessary) by clicking the linked **Description** of each one. *It is highly recommended that you download and complete all required documents before creating a response.*

3. To begin your response, select **Register** to register your company for any potential change notices, then select the **Create Response** button.

Display Solicitation :

Print Preview | | Close | **Register** | Export

Solicitation Number 6100046601 Description PSP Mercer Station Snow Removal Status Published Start Date 12:00:00 EST
Version Type Active Version

Display Solicitation :

Print Preview | | Close | **Create Response** | Export

✔ You are registered to the RFX and will be informed of changes

Solicitation Number 6100046601 Description PSP Mercer Station Snow Removal Status Published Start Date 12:00:00 EST
Version Type Active Version

4. A new **Create Response** window will open (see below). To complete your response, a maximum of three steps must be completed before submitting. These can be done in any order.

Create Response

Submit | Read Only | Print Preview | Check | Close | Save | Questions and Answers (0)

Solicitation Response Number 6500122510 Solicitation Number 6100046601 Status In Process Submission Deadline 09/12/2018 13:30:00 EST Opening Date 09/12/2018 13:35:00 EST
Response Version Number 0.00 USD Version Number Active Version RFX Version Number 1

Header Items Summary Tracking

Basic Data Questions Notes and Attachments

Event Parameters

Currency: United States Dollar

Status and Statistics

Created On: 08/29/2018 11:42:25 EST
Created By: Mr. Randall Miller
Last Processed On: 08/29/2018 11:42:25 EST
Last Processed By: Mr. Randall Miller

5. Under the default **Header** tab, select **Questions** to answer two mandatory questions. Select "Yes" from the **Reply** drop-down menu on each one to indicate that you have read and understood the listed attachments.

Header Items Summary Tracking

Basic Data **Questions** Notes and Attachments

Question **Reply**

* Is the offer in accordance with the "Representations and Authorizations" listed in section "Submission – 001.1" of the attached solicitation document?: Y: Yes ▾

* Has the submitter read, and does the submitter understand, the "Representations and Authorizations" listed in section "Submission – 001.1" of the attached solicitation document?: ▾

Y: Yes

6. Under the **Header** tab section **Notes and Attachments**, select the **Header Bidder's Remarks** link to add any additional notes or select the **Add Attachment** button (highlighted below) to add any additional documents.

Header Items Summary Tracking

Basic Data Questions **Notes and Attachments**

▼ Notes

Clear

Category	Description
Conditions of Participation	-Empty-
Bid Invitation/Auction Text	THIS BID IS SET ASIDE FOR SMALL BUSINESS. YOU MUST TO S...
Purchaser's Remarks	-Empty-
Header Bidder's Remarks	-Empty-

▼ Attachments

Add Attachment Edit Description Versioning Delete

Category	Description	File Name	Version	Processor	Checked Out	Type	Size (KB)
Standard Attachment	Bid Specification	SNOW SPECIFICATIONS-2018.doc	1		<input type="checkbox"/>	doc	33
Standard Attachment	Proof of Visit Form	PROOF OF VISIT FORM- SR Mercer Station.doc	1		<input type="checkbox"/>	doc	27
Legal Document	Terms and Conditions	Document	1		<input type="checkbox"/>	pdf	83

7. When the **Add Attachment window** pops up, select **Browse** to search your computer for a completed attachment, open the file, and click "OK" to add it to the list (see below). If you have more than one completed attachment to add, repeat this step as necessary. *If no attachments are required, skip this step.*

-Empty-	
THIS BID IS SET ASIDE FOR	
-Empty-	
-Empty-	

Add Attachment □ ×

Here, you can upload a file and attach it to the header

File: C:\Users\randmiller\De

Description:

File Name	Processor	Checked Out	Type
SNOW SPECIFICATIONS-2018.doc		<input type="checkbox"/>	doc
PROOF OF VISIT FORM- SR Mercer Stat		<input type="checkbox"/>	doc

8. Select the **Items** tab to enter line item prices. Prices should be entered in the **Price** column per unit of measure. Pressing Enter after each price will update the **Total Value** amount at the bottom right. If there are more than 10 total line items, scroll down to complete them all. *If a price sheet was completed as an attachment, skip this step.*

Header **Items** Summary Tracking

▼ Item Overview

Details Add New Copy Paste Delete Calculate Value Filter Expand All Collapse All Settings

Line Number	Description	Item Type	Product ID	Product Category	Product Category Description	Required Quantity	Unit	Price	Currency	Price Per	Delivery Date	Total Value	RFx / Response @	RFx / Response	Internal Item Number
	FY18 Snow Removal/Plowing	Material	72102901	SNOW REMOVAL SVCS		25,000	H	50.00	USD	1	On 11/01/2018	1,250.00	0/0	0/0	1
	FY18 Granular Deicing Material	Material	72102901	SNOW REMOVAL SVCS		25,000	TON	320.00	USD	1	On 11/01/2018	8,000.00	0/0	0/0	2
	FY18 Snow Removal/Sidewalks	Material	72102901	SNOW REMOVAL SVCS		25,000	H	40.00	USD	1	On 11/01/2018	1,000.00	0/0	0/0	3
	FY18 Deicing Material/Bags	Material	72102901	SNOW REMOVAL SVCS		15,000	EA	13.00	USD	1	On 11/01/2018	195.00	0/0	0/0	4
	FY18 Application Deicing Material	Material	72102901	SNOW REMOVAL SVCS		25,000	H	20.00	USD	1	On 11/01/2018	500.00	0/0	0/0	5
	FY19 Snow Removal/Plowing	Material	72102901	SNOW REMOVAL SVCS		25,000	H	65.00	USD	1	On 11/01/2019	1,625.00	0/0	0/0	6
	FY19 Granular Deicing Material	Material	72102901	SNOW REMOVAL SVCS		25,000	TON	300.00	USD	1	On 11/01/2019	7,500.00	0/0	0/0	7
	FY19 Snow Removal/Sidewalks	Material	72102901	SNOW REMOVAL SVCS		25,000	H	20.00	USD	1	On 11/01/2019	500.00	0/0	0/0	8
	FY19 Deicing Material/Bags	Material	72102901	SNOW REMOVAL SVCS		15,000	EA	15.00	USD	1	On 11/01/2019	225.00	0/0	0/0	9
	FY19 Application of Deicing Material	Material	72102901	SNOW REMOVAL SVCS		25,000	H	0.00	USD	1	On 11/01/2019	0.00	0/0	0/0	10

Total Value 20,795.00 USD

9. Before submitting your response, select the **Summary** tab (see below) to review. Ensure that all applicable steps have been completed: all **Items** are responded to (if necessary), all **Questions** are answered (mandatory), all **Notes and Attachments** are included (if necessary), and the **Total Response Value** is accurate.

Header	Items	Summary	Tracking
RFx Response Number:		6500122510	
Items with Response:		25 out of 25 items responded to	
Questions:		2 out of 2 questions answered (2 out of 2 mandatk	
Notes:		1 notes added	
Attachments:		No Attachments Added	
Conditions:		25 conditions added	
Total RFx Response Value:		60,220.00 USD	

10. When all information is correct, click the **Check** button at top. You will be prompted to submit the response.

Create Response

⚠ In order to complete your bid as a valid bid response, you must select the Submit button.

Solicitation Response Number	6500122510	Solicitation Number	6100046601	Status	Saved	Submission Deadline
Response Version Number	60,220.00 USD	Version Number	Active Version	RFx Version Number		1

11. Finally, click the **Submit** button. An approval message will appear below.

Create Response

Solicitation Response Number	6500122510	Solicitation Number	6100046601	Status	In Process	Submission Deadline
Response Version Number	60,220.00 USD	Version Number	C1	RFx Version Number		1

✔ RFx response 6500122510 submitted

12. If desired, a PDF copy of your bid can be viewed or saved by clicking the **Print Preview** button. Any attached documents will not be included. *You do not need to print or mail this file.*

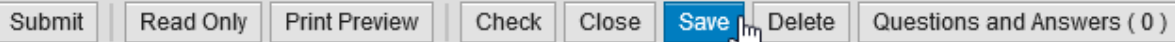
Create Response

13. **Close** and **Log Off** to exit the PA Supplier Portal.

Saving a Solicitation Response

1. To save a response, click the **Save** button at any time when working on it. *Please note that this will simply "freeze" the response until you are ready to resume work.*

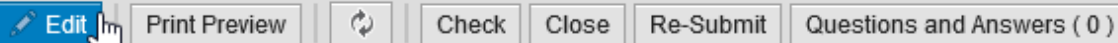
Create Response



Submit | Read Only | Print Preview | Check | Close | **Save** | Delete | Questions and Answers (0)

2. When ready to resume work, click the **Edit** button to pick up where you left off. *If you have logged off between sessions, open the Response Number link to find the Edit button.*

Create Response

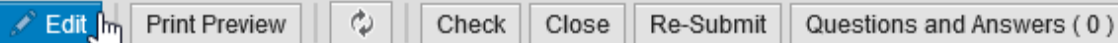


Edit | Print Preview | Refresh | Check | Close | Re-Submit | Questions and Answers (0)

Editing or Withdrawing a Response

1. To edit your response after submitting, open the **Response Number** link and click the **Edit** button. Make any desired changes and click the **Check** and **Submit** buttons as before. Your new response will overwrite the previous one. This can be done an unlimited number of times before the bid deadline.

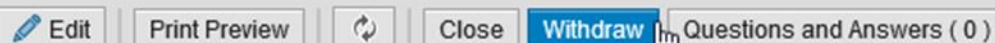
Create Response



Edit | Print Preview | Refresh | Check | Close | Re-Submit | Questions and Answers (0)

2. To withdraw a submitted bid response, open the **Response Number** link and click the **Withdraw** button any time after submitting. If desired, a withdrawn bid can still be re-submitted by clicking the **Re-Submit Bid** button on the same menu.

Create Response



Edit | Print Preview | Refresh | Close | **Withdraw** | Questions and Answers (0)

Any additional questions about locating or responding to PA Supplier Portal Solicitations can be directed to the Help Desk at (877) 435-7363, Option #2.



REGISTERING AS A SUPPLIER



**The Commonwealth of Pennsylvania
Department of General Services
Bureau of Procurement**

www.dgs.pa.gov

REGISTERING AS A SUPPLIER

If you have never done business with the Commonwealth of Pennsylvania, by following the four steps described in this guide, your company will become registered with us. These four steps are as follows:

STEP 1 - VENDOR IDENTIFICATION

The screenshot shows the PA Supplier Portal interface. At the top, there is a search bar and links for 'New Session' and 'Log in'. Below the search bar, the user is logged in as 'Welcome: PA Suppliers'. The main content area is titled 'Vendor Registration, Commonwealth of Pennsylvania.' and features a progress bar with four steps: 1. Vendor Identification (highlighted), 2. Vendor Details, 3. Submit Registration Form, and 4. Create User ID. Below the progress bar, there are two sections: 'Instructions' and 'Vendor Identification'. The 'Vendor Identification' section contains the following text: 'Employer Identification Number: [input field] OR Social Security Number: [input field]'. A 'Next' button is located below the input fields.

- A. Begin by going to www.pasupplierportal.state.pa.us.
- B. Select Supplier Registration from the left sidebar menu.
- C. Enter your Employer Identification Number (EIN) or your Social Security Number (SSN), then select the Next button.

STEP 2 - VENDOR DETAILS

Vendor Registration, Commonwealth of Pennsylvania.



Instructions

Complete the registration form below and select the **Next** button. Please do not use Parentheses to separate the area code within the telephone or fax numbers. Enter entire number as a string of 10 numbers or use dashes to separate the groups of numbers. Important: Fields with a * indicate that an entry is required.

Vendor Identification

Employer Identification Number (EIN): Social Security Number (SSN): 183645104

Address Data

Disregarded Entity: Yes No

* Legal Name:

Name of the Company (if different than Legal Name):

* Name of Person Creating Registration:

* Business Type:

This text will appear on the W-9 Form

Exempt payee code (if any):

Exemption from FATCA reporting code (if any):

* E-Mail Address:

* Telephone:

Extension:

Fax:

Extension:

Street Number and Name: If PO Box is used then Street Number and Name cannot be used

Street 2 (apt. or suite no., room no., floor no. etc.):

* City:

* County:

* State: Pennsylvania

* Zip:

* Country: USA

PO BOX:

If Street Number and Name are used then PO Box cannot be used

PO Box Country: USA

Which Product Categories can you Deliver?

At least one product category must be selected

* Select the language in which you want to send the questionnaires: English

BUILDING & CONSTRUCT MATERIAL/SERVICES

Data Privacy Statement

Data Privacy Statement Terms must be accepted before being able to move to the next page

DISCLAIMER: Registering as a Commonwealth SRM vendor does not guarantee that your business will be awarded any contract or purchase order to provide supplies to or perform services for the Commonwealth of Pennsylvania. Further, registering does not guarantee that your business or organization will receive any financial assistance including state or federal grant monies from the Commonwealth of Pennsylvania. Registering as a Commonwealth SRM vendor should not be construed as applying for any necessary license to deliver supplies or perform services in a regulated industry in Pennsylvania. Your business would need to seek such a license from the appropriate Commonwealth Agency.

DATA PRIVACY: Information provided through the PA Vendor Portal will be used in the purchasing and accounting activities of the Commonwealth and will not be limited in its use to one Commonwealth agency. Information is retained in accordance with existing Commonwealth policy and laws, including the Pennsylvania Right to Know Law, 65 P.S. Section 66.1 et seq.

TERMS: By submitting information through the PA Supplier Portal, you are agreeing on behalf of the person or entity identified to one (1) default remit to address and one (1) Automatic Clearing House (ACH) bank account.

CERTIFICATION: By submitting information through the PA Vendor Portal, you certify that: (1) you are authorized to submit the information for, or on behalf of, the person or entity identified; and, (2) all of the information is true and correct to the best of your knowledge, information, and belief. Any false statements made by you on or in the PA Vendor Portal are subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Yes, I have read the data privacy statement and accept the terms.

A. Complete the following fields in the Address Data section:

- **Legal Name:** The primary name by which your company (OR the individual's name if registering with a social security number) is currently listed with the IRS.

- **Name of the Company:** Complete this field if the name of your company is different than the legal name listed above. Note clearly if this is a DBA (doing business as), a Disregarded Entity, etc.

- **Name of the Person Creating Registration**
- **Business Type:** Select the legal description of your business.
- **Exempt payee code or Exemption from FATCA reporting code** (if any)
- E-Mail Address:** Enter a valid e-mail address for the person who will set up the Administrative User account for your company.
- **Telephone and Fax:** These fields are each 10 digits and may
 not contain any dashes.
- **Street:** Enter your company street address. If you use a PO
 Box, please enter your PO Box in the “PO Box” field further down.
 The system will not accept both fields being completed.
- City, State, and Country:** Where your company is located.
- **ZIP Code:** Enter your state and entire nine-digit ZIP+4 code.
 The ZIP+4 can be found at www.USPS.com.
- **PO Box:** Enter your company’s PO Box. If none exists, please
 enter your street address in the “Street” field. *The system will not accept both fields being completed.*

B. Complete the Product Categories section by choosing *Building & Construct and/or Materials/Services* for your company type.

- Below, carefully read the **Disclaimer, Data Privacy, Terms** and
 Certification Notices, and check the box stating that you
 accept the terms and conditions.
- Look over the responses carefully.
- Click the “Next” box once.

C. Carefully review the information on the W9 form displayed on the next page. If the information is correct, select the checkbox to confirm your electronic signature on the form and then select the “Submit W9” button to proceed to the confirmation screen. If the information is not correct, select the “Back” button to revise it.

D. Upon submission, an e-mail acknowledgement will be sent that verifies your company information has been successfully received.

After your information has been submitted, check the specified e-mail account for a message from **SRMSVC@pa.gov**. This e-mail should arrive within one business day. *If you do not receive the e-mail within this timeframe, contact the **Help Desk** at (877) 435-7363 and select **Option #1** from the menu.*

A. When you receive your e-mail, read it carefully.

The link contained in this e-mail can only be used once. This e-mail can not be forwarded, copied or pasted, or the link will not work.

B. Follow the link within the e-mail and complete the following fields:

- **User Name:** Create a user name of your choice.
- **Password:** Create a temporary password that must have at least 7 characters (including at least one upper case letter, one lower case letter, one number and one special character). Special characters are the symbols created by holding the SHIFT key and typing any number from 0-9, such as \$, #, @, or *. *This password will need to be changed after the Administrative User is created and may not be re-used. It also cannot contain elements of the User Name.*
- **Confirm Password:** Re-enter the temporary password.
- **Salutation:** Select an option from the drop-down menu.
- **First Name / Last Name:** Enter the administrator's first / last name.
- **E-Mail Address:** Enter a valid e-mail address.
- **Country:** Select from the drop-down menu, if necessary.
- **Language:** Select from the drop-down menu, if necessary.
- **Telephone and Fax:** These fields are each 10 digits and may not contain any dashes.
- **Item and Department:** Use these two fields to help identify additional personnel and items.
- **Date Format:** Select your preferred date format from the drop-down menu.
- **Decimal Format:** Allow the default option to remain.
- **Time Zone:** Select your region's official time zone.
- **Registration ID:** PLEASE DO NOT ENTER OR CHANGE ANYTHING IN THIS FIELD. It contains a default from your encrypted e-mail. *If this field is blank, please call the Help Desk at (877) 435-7363 and select Option #1 from the menu.*

Review your selections to ensure everything is correct. Select the checkbox to confirm that you have read the statements and accept the terms.

C. Select the Create button located below the checkbox. This will complete the "Create Administrative User" process.

Upon submission, a confirmation message displays and states that the User and Password were successfully created. *This message will also contain your newly-assigned Vendor Number and a link to redirect you back to the PA Supplier Portal login page.*

pennsylvania Welcome PA Suppliers Help | Log On

SUPPLIER LOGON

Supplier
Supplier Registration

Detailed Navigation

- PA Supplier Portal Home
- New Supplier Registration
- Existing Supplier Registration
- Supplier Service Center

PLEASE WRITE DOWN OR PRINT THE FOLLOWING INFORMATION:

- * Your User Name
- * Your Temporary Password
- * Vendor Number 0000

THIS INFORMATION WILL BE NEEDED IN PHASE 3.

FIRST, you should Log In to the Supplier Portal at <http://www.pasupplierportal.state.pa.us>, to change your Temporary Password to a New Password.

NEXT, Log Out of the Supplier Portal and wait up to 20 minutes for the system to recognize your Administrative User information.

Once the system has recognized your Administrative User information, you may Log Back In to the PA Supplier Portal to Update your Company Data, Add Bank Data, Create Additional Users and Respond to Solicitations.

PHASE 2 IS COMPLETE.

Select "SUPPLIER LOGON" located in the upper left corner of the screen to begin PHASE 3.

STEP 3 - SUBMIT REGISTRATION LOG IN / MANAGE BIDDER

Welcome Pennsylvania Suppliers! If you are using a screen reader and would like to request the enhanced accessibility option for this website, please call the toll free number 877-435-7363, option 1, between 8:00 AM and 4:30 PM, Monday thru Friday.

The PA Supplier Portal is a secure site. The PA Supplier Portal certified browsers are Internet Explorer 8.0 through 11.0. Other products may work; however, full functionality cannot be assured.

User *

Password *

Logon Problems? [Reset Password](#) Forgot your User ID? Contact the Payable Service Call Center at 877-435-7363, option 1
Or email PA-PSC-SRMPORTAL@pa.gov

- Follow the Supplier Portal link (www.pasupplierportal.state.pa.us) and log in using your User Name and temporary password.
- When prompted, change your temporary password to a new one. Your User Name will default in the User ID field. Please complete the following three fields to complete the process:

- **Old Password:** Type in your temporary password.
- **New Password:** Enter a new password, making sure to follow the previously outlined requirements (see Phase #2, section B).
- **Confirm Password:** Re enter your new password.

Select the **Change** button to complete the password change. *You will now be logged in as the Vendor Administrator and taken to the welcome screen.*

C. Once your password is changed, you will need to click “Log Out” in the upper right-hand corner and wait at least 30 minutes for the system to refresh your registration data before attempting to log in again or change any information.

An e-mail titled “W9 Form for Vendor” will be sent to the e-mail address submitted in Phase 1 requesting a signed and dated IRS W9 form. Please be sure to write the vendor number at the top of the W9 prior to returning it via fax or include the vendor number somewhere within the returning email.

-
-

Once these three steps are completed, you’ll be officially registered with us. Congratulations on becoming a new supplier, and welcome to the Commonwealth of Pennsylvania!

Now that you are registered with the PA Supplier Portal, please enter and update your Company Data and Administrative Information including the default remit-to address for receipt of payments as applicable. Please click <http://www.pasupplierportal.state.pa.us> to get started. The following actions are also recommended:

-
- **Enter Bank Data**
This section can be found under the **Manage Bank Data & Product Categories** tab on the left navigation pane, and will enable your company to receive payments via ACH.
- **Register for E-Alerts**
This valuable feature will enable you to “subscribe” to all upcoming solicitations applicable to your company. For more information on E Alerts or to register online, please visit <http://www.dgsweb.state.pa.us/EAlerts/>.

-
-

□

**For more information about Registering
as a Supplier, please contact:**

**Customer Support Center
(877) 435-7363, Option #1**

**Department of General Services
Bureau of Procurement
555 Walnut Street, 6th Floor
Harrisburg, PA 17101**

www.dgs.state.pa.us/procurement

**Janice Pistor
*Chief Procurement Officer***

**Kenneth Hess
*Deputy Secretary, Procurement***

**Curtis Topper
*Secretary, Department of General Services***

**Tom Wolf
*Governor***

Revised April 2019

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FOR

MICROFILM EQUIPMENT, SUPPLIES AND SERVICES

ISSUING OFFICE

**Department of General Services
Bureau of IT Procurement**

IFB NUMBER

6100056936

DATE OF ISSUANCE

November 17, 2022

**SPECIFICATIONS
FOR
MICROFILM EQUIPMENT, SUPPLIES AND SERVICES**

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APPENDIX I – ENTERPRISE SAAS SOFTWARE SERVICES LICENSE REQUIREMENTS AGREEMENT

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APPENDIX M – MONTHLY REPORT TEMPLATE

APPENDIX N – QUARTERLY REPORT TEMPLATE

APPENDIX O- STATEMENT OF WORK

CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Deadline to submit questions via email to: RA-GSITPROCUREMENT@pa.gov with the subject line "IFB 610056936 Question"	Bidders	11/22/2022 12:00 PM
Answers to potential questions posted to the eMarketplace website (http://www.emarketplace.state.pa.us) no later than this date.	Issuing Office	11/28/2022 3:00 PM
Please monitor the eMarketplace website for all communications regarding this IFB.	Bidders	On Going
Bids must be received by the Issuing Office at: PASupplierPortal website (http://www.pasupplierportal.state.pa.us) no later than this date."	Bidders	12/19/2022 3:00 PM

PART I
SPECIFICATIONS

I-1. Objectives.

- A. General.** The Commonwealth intends to satisfy the need for Microfilm Equipment, Supplies and Services from those interested in submitting bids (Bidders) for this Invitation for Bids (IFB).
- B. Specific.** The Commonwealth intends to award multiple statewide contracts for the procurement and leasing of new Microfilm Equipment, Maintenance, Repairs, Supplies, Accessories, Software and related Services to responsive Bidders who meet the requirements of this IFB. The Commonwealth is seeking Bidders who offer the best discounts from the manufacturer's nationally publicized price list and respond to purchase orders in a timely fashion.

I-2. Nature and Scope of the Project. This IFB involves the delivery of Microfilm Equipment, Supplies and Services to all executive agencies at locations across the Commonwealth. Items covered by the contract include:

- Microfilm Microfiche Readers and associated supplies
- Microfilm/Microfiche camera lenses and associated Supplies
- Microfilm and Microfiche film and supplies (lamps, processing supplies, microfilm jackets)
- Roll Film Readers and associated supplies
- Aperture Card Scanning equipment and associated supplies
- Scanning for Paper and Books
- All sundry supplies associated with Microfilm / Microfiche Reader / Roll Film Readers
- Related Software and software upgrades
- Maintenance and service repairs of new and existing microfilm equipment.
- Document Conversion Services for converting, but not limited to Microfilm and Microfiche (16mm, 35mm, Aperture Cards, and Books etc.) to the agency's desired format (PDF, Jpeg, Tiff, etc.).

I-3. Requirements.

- A. ITPs.** This IFB is subject to the Information Technology Policies (ITP's) {formerly known as Information Technology Bulletins} issued by the Office of Administration, Office for Information Technology (OA-OIT). ITP's may be found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.

All bids must be submitted on the basis that all ITPs are applicable to this procurement. It is the responsibility of the Bidder to read and be familiar with the ITPs. Notwithstanding

the foregoing, if the Bidder believes that any ITP is not applicable to this procurement, it must list all such ITPs in its bid, 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 Bidder'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.

B. Bid Submission. Bids must be submitted electronically via the PA Supplier Portal website on or before the due date specified in the Calendar of Events. Any bid submitted to the Issuing Office in hardcopy format will be rejected. The following documentation must be completed and submitted with a bid:

- Appendix A – Manufactures Discount Sheet
- Appendix B –GSPUR-89 Reciprocal Limitations Act Requirements
- Appendix D – COSTARS Program Election to Participate Form
- Appendix F – Lobbying Certification Form
- Appendix G – BOP-2201-06 Workers Protection and Investment Certification Form
- Appendix H – Enterprise On-Premise Software Services License Requirements Agreement (If Applicable)
- Appendix I- Enterprise SaaS Software Services License Requirements Agreement (If applicable)
- Appendix J- Iran Free Procurement Certification Form

- **Manufactures Authorization Letter** (if applicable). If a Bidder is submitting as a reseller, it must submit a Manufacturers Authorization Letter which clearly states the Bidder is authorized to provide the Original Equipment Manufacturers (“OEM”) equipment and services to the Commonwealth for this IFB. The Manufacturers Authorization Letter must reference the Commonwealths IFB 6100056936 for Microfilm Equipment, Supplies and Services.

- **Price lists.** Price lists must be submitted with the bid proposal for the sole purpose of providing a reference to the various items on the Price list and the Manufacturers price for each item.

C. Bidder Eligibility. To be eligible to submit a Bid, a Bidder must:

1. Be an OEM or an authorized Reseller having at least 5 years of experience selling or servicing the items covered under the contract. All installations and service personnel must be certified by the OEM for installation and repair, where applicable.

D. Pricing.

1. A single percentage discount shall be offered for each category with the manufacturer's product line and shall be based on the manufacturer's nationally published price list in effect at the time of the IFB. Please reference *Appendix A – Manufacturers Discount Sheet*.
2. Bidders are required to submit Price List with their bids for the sole purpose of providing a reference to the various items on the Price List and the Manufacturer's Price and percentage discount for each item.
3. Any replacement models shall be offered at the same discount as the model being replaced. If the model being replaced is no longer available, a new model of equal or better quality and performance will be offered; being compatible with the system(s). Discounts shall be taken off the nationally published price list referenced below.
4. **Manufacturer's Suggested Retail Price List (MSRP)**
5. In the event that more than one version of a price list is received from Multiple Bidders for the same manufacturer's product line, the bidder offering the older price list must update their price list to the most recent version at the same discounts initially offered or each category. Failure of the Bidders to comply with this requirement may result in rejection of their bid.

E. Price List Changes. Awarded contractors may update their contract price list every quarter or biannually, beginning with the contract date to reflect new products, manufacturer's price changes, deletion of discontinued products, etc.

F. Price List and Catalogs. Awarded contractors shall be required to furnish, without charge, price lists and catalogs identical to those accepted with their bid, including changes (additions, deletions, etc.) pursuant to the contract, to authorize users which request them. Price lists and catalogs must be furnished in an electronic format agreed to by the Commonwealth. If the awarded contractor(s) has an active website, ensure you include this within your bid.

G. Price Changes Applicable only to Term Contracts. This is a term contract for commodities or services, the following provision apply:

1. **Quantity Discounts.** Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions for quantity purchases of any products offered under the contract(s).
2. **Best Pricing Offer.** During the contract term, if a customer becomes aware of better pricing offered by the contractor for substantially the same or smaller

quantity of product outside the contract, but upon the same or similar terms of the contract, then at the discretion of the customer the price under the contract shall be immediately reduced to the lower price.

3. **Sales Promotions.** In addition to decreasing prices for the balance of the contract term due to a change in market conditions, a contractor may conduct sales promotions involving price reductions for a specific lesser period. Promotional prices shall be available to all customers. A contractor shall submit to the Contract Specialist documentation identifying the proposed:

- a. Starting and end dates of the promotion.
- b. Products involved; and
- c. Promotional prices compared to then authorized prices.

4. **Trade-In.** Customers may trade-in equipment when making purchases from the contract(s). A Trade-In shall be negotiated between the customer and contractor. Customers are obligated to actively seek current fair market value when trading equipment.

- Commonwealth Agencies are to utilize the Pennsylvania Automated Surplus System (P.A.S.S) [Pennsylvania Automated Surplus System \(P.A.S.S\)](#) through the Department of General Services Supplies and Surplus Operations to confirm the Trade In value. Agencies may contact DGS Supplies and Surplus Operations at 717-787-4083.

H. Software. The Contractor may not offer microfilm equipment which requires commercially available software for its use, unless and until the Commonwealth has entered into the appropriate software license agreement with the software licensor depending on if the software is On-Premise or Software as a Service. The Contractor must inform any such software licensor that it must enter into a software license agreement with the Commonwealth that incorporates *Appendix H - Enterprise On-Premise Software Services License Requirements Agreement* or *Appendix I - Enterprise SaaS Software Services License Requirements Agreement* as a material part of the licensor's software license agreement.

I. Related Services. The Commonwealth will purchase the following optional Related Services on a per order basis at its discretion.

The Commonwealth will develop a statement of work (SOW) for optional Related Services utilizing *Appendix O – Statement of Work Template*, which will be attached to the associated purchase order. The Contractor must identify if any subcontractors will be used along with a brief description of the services.

1. **Maintenance /Extended Warranty Services.**

- a. The Contractor must, if requested by the Commonwealth, provide maintenance/extended warranty services for all equipment being offered.
- b. The Contractor must provide a written quote for all maintenance /extended warranty services orders, which the Commonwealth will attach to the associated SRM purchase order.
- c. Orders for maintenance/extended warranty services made during the term of the contract may extend up to three (3) years past the expiration date of the contract.

2. **Training.** The Contractor must provide training upon installation of a new product and as requested thereafter by the Commonwealth. All training services performed during normal business hours must be provided by the Contractor, at no cost to the Commonwealth. The Contractor must provide on-site training to users as identified by the requesting agency.

Training must include, but is not limited to, hands-on activities, videos, and manuals. The Contractor must provide users with hands-on training and materials including a detailed walk-through of all machine features. In addition, if the product is connected to the network, the Contractor must demonstrate remote printing capabilities.

3. **Maintenance, Repairs and Support.**

- a. **For Lease Equipment.** The Original contractor supplying equipment must provide routine and preventative maintenance as well as repair services for the term of the lease. The costs shall be included in the monthly lease cost of the equipment. The maintenance service shall include such service as is necessary to keep the equipment operating satisfactorily.
- b. **For Purchased Equipment.** The Contractor must provide full-service maintenance and repairs to cover all of the specified manufacturer's equipment procured through outright purchase. The Contractor may provide full-service maintenance and repairs for other manufacturer's equipment already owned by the commonwealth agency. Full-service maintenance and repairs must include replacement of all parts and provide all labor for maintenance necessary to keep the equipment in good operating condition. All replacement parts shall be covered by the contract. Replacement parts will be furnished on an exchange basis. Genuine manufacturer's replacement parts shall be used exclusively unless a letter of exception is approved by the manufacturer and commonwealth agency contact person.

4. **Installation.** The Contractor must install equipment if requested by the Commonwealth.

5. **De-Installation.**

- a. The Contractor must de-install and pack the equipment at the operational location
- b. De-installation of Equipment for the purpose of this IFB entails cleaning the hard drive to DOD standards or allowing the Commonwealth to keep the hard drive and packaging the Equipment for storage or removal.

6. **Relocation.**

- a. The Contractor must provide relocation of Equipment with three service levels.
 - i. Within the same building
 - ii. Within twenty- five (25) miles
 - iii. Beyond a twenty –five-mile radius
- b. The Contractor must unpack and re-install the Equipment at the new designated location specified by the Commonwealth. Damages resulting from the relocation of the Equipment is the responsibility of the Contractor.
- c. The Contractor must perform visual and physical system check that can be performed with an operating system.

7. **Asset Tagging.**

- a. The Contractor must affix an identification tag number and the Commonwealth agency inventory tag to the equipment.
- b. Each identification tag must be located such that it is easily accessible and readable by the Commonwealth. Identification numbers will be used as a reference for service calls.
- c. Identification numbers, serial numbers, Commonwealth agency inventory asset tag numbers and other identification information must be provided to the Commonwealth in an electronic format, which can be incorporated into existing equipment databases. The Commonwealth will provide database formats to be used by the Contractor.

J. Service level Agreements (SLAs)/ Liquidated Damages (LDSs)

The following SLAs and LDs apply to the contractor’s performance with each agency.

<u>Performance Metric</u>	<u>Performance Target</u>	<u>Definition</u>	<u>Frequency of Review</u>	<u>Liquidated Damages</u>
Delivery of Equipment.	100%	<p>The Contractor must make the required delivery time within ten (10) business days after receipt of an order.</p> <p>Calculation: (Each Order Delivered after the standard fulfillment time of ten (10) business days = Missed Order)</p> <p>“This SLA may be waived by the ordering agency if an agreed upon date is established as part of the purchase order. If the agreed upon date is missed, a service credit request will be issued.”</p>	Per Order Assessed Monthly	5% of the cost of the order.
Shipment Correction.	100%	<p>The Contractor must correct any incorrect shipment within ten (10) business days after receipt of an order.</p> <p>Calculation: (Each Incorrect Order Corrected after the standard correction time of ten (10) business days = Missed Correction)</p> <p>“This SLA may be waived by the ordering agency if an agreed upon date is established as part of the purchase</p>	Per Order Assessed Monthly	5% of the cost of the order.

		order. If the agreed upon date is missed, a service credit request will be issued.”		
Fix-time. (Measured from the time the Commonwealth submits a trouble ticket to the Contractor, to the time the equipment is returned to full and complete working order during the original warranty period).	95%	Resolve the trouble tickets submitted by each agency, each month, in a fix-time of no more than twelve (12) business hours from the time the trouble ticket was submitted. Calculation: = ((Sum of tickets resolved within 12 defined business hours within measurement window)/ (Total number of tickets opened during 12 defined business hours within measurement window)) expressed as a percentage	Monthly	If the Contractor fails to meet the SLA for two (2) consecutive months, or for a total of three (3) non-consecutive months within a calendar year, the Contractor will be ineligible to receive orders from any agency in the Commonwealth for six (6) months.
Quarterly Report Delivery. (The Contractor must provide the Commonwealth with quarterly reports detailing equipment purchasing activity performance and customer satisfaction).	100%	The reports must be provided to the Commonwealth no later than fifteen (15) business days after the end of the quarter. Calculation: (Each Quarterly Report received after the standard reporting time of fifteen (15) business days = Missed Report delivery)	Quarterly	If the Contractor fails to meet the SLA for two (2) quarters within a calendar year, the Contractor will be ineligible to receive orders from any agency in the Commonwealth for six (6) months.
Monthly Report Delivery. (The Contractor must provide the Commonwealth with monthly reports detailing delivery metrics, response/fix-	100%	The reports must be provided to the Commonwealth no later than ten (10) business days after the end of the month.	Monthly	If the Contractor fails to meet the SLA for two (2) consecutive months or three (3) months within a calendar year, the Contractor

time metrics, and the status of outstanding issues.)		<p>Calculation: (Each Monthly Report received after the standard reporting time of ten (10) business days = Missed Report delivery)</p>	will be ineligible to receive orders from any agency in the Commonwealth for six (6) months.
------------------------------------------------------	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------

Note: Business Days/Hours are Monday – Friday from 7am – 7pm Eastern Time.

The Contractor must reimburse the Commonwealth within 45 days of the missed SLA. The Contractor must pay the LDs by deducting the amount from invoices submitted under this Contract or by sending a check addressed to the Commonwealth of Pennsylvania for the amount of the LDs. All checks must be sent to the following address:

Comptroller’s Office
 Attn: Revenue Accounting
 555 Walnut St., 9th Floor
 Harrisburg PA 17101

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

K. Reporting.

1. **Monthly Reports.** The Contractor must provide monthly reports to each using Commonwealth agency and a consolidated monthly report to the Office of Administration, Office for Information Technology, Bureau of IT Procurement. The Contractor must utilize *Appendix M – Monthly Report Template*. A monthly report must consist of, and include at a minimum:

- a. Ordering and delivery report of microfilm equipment, supplies and services purchases which includes at a minimum: Agency Information, Equipment, Supplies or Services information, Order Information, Shipment and Delivery Information and Invoice information.
- b. Problem and response report which includes, at a minimum: Agency Information, Product or Services Information and Problem/Response Information.
- c. Outstanding Issues report which includes, at a minimum Requestor Information and Outstanding Issue Summary.

d. □ The monthly reports must include all activity by the Commonwealth, as well as for external procurement activity by other state entities.

e. □ The Contractor must provide monthly reports to the Commonwealth no later than ten (10) business days after the end of the month.

2. □ **Quarterly Reports.** The Contractor must provide quarterly reports to the Department of General Services Bureau of IT Procurement.

The quarterly customer satisfaction report must be delivered in the format approved separately by the Commonwealth which includes, at a minimum: performance of the Contractor in the areas of: quality assurance, accuracy of orders shipped, professionalism, flexibility, competence, timeliness of delivery and response to question.

The Contractor must utilize *Appendix N – Quarterly Report Template* for the remainder of the quarterly report, which must consist of, and include at a minimum:

a. □ Sales Summary report which inc.

b. □ Includes, at a minimum: Agency Information, Equipment, Supplies or Services information and Order Information.

c. □ Outstanding Issues Summary report which includes, at a minimum: Agency Information and Outstanding Issue Summary.

Appendix A - MANUFACTURERS DISCOUNT SHEET

In order to complete the Bid sheet correctly , please follow the instructions below

1. Please enter a discount rate off list price for each Manufacture your company would like to provide equipment and accessories for in the PERCENT OF DISCOUNT FROM REFERENCED PRICE LIST column.
2. Please enter the Date of the price List your discount will apply to in the Price List Identification Date column.

* Your Company must provide Manufacturers Authorization Letter(s) for all Manufacturers your company will choose to be resellers for .

**** Your company must provide a price Lists for All Manufacturers for which the Discount Rate will apply to.**

APPENDIX A - MANUFACTURERS DISCOUNT SHEET- IFB 6100056936

Microfilm Equipment Supplies and Services			
COMPANY NAME -			
DESCRIPTION	PRICE LIST IDENTIFICATION DATE	WILL YOU OFFER LEASING OF YOUR EQUIPMENT UNDER THE COMMONWEALTHS TERMS AND CONDITIONS ? Y=YES N=NO	PERCENT OF DISCOUNT FROM REFERENCED PRICE LIST
Microfilm Equipment			
Microfilm Equipment Maintenance/Repairs			
Microfilm Equipment Supplies			
Accessories which are not covered or included in other purchases, including Software and Software Maintenance/Upgrades			

Rate Card

Instructions: A bidder must provide an hourly cost to perform the Related Services listed below

Related Services	Hourly Rate
Installation	\$-
De-Installation	\$-
Transportation to DGS	\$-
Relocation of Equipment (Within the same building)	\$-
Relocation of Equipment (Within a twenty-five (25) mile Radius)	\$-
Relocation of Equipment (Within beyond a twenty-five (25) mile Radius)	\$-
Training	\$-
Asset Tagging	\$-
Document Conversion	\$-

RECIPROCAL LIMITATIONS ACT REQUIREMENTS

Please Complete Applicable Portion of Pages 3 & 4 and Return with Bid.

NOTE: These Requirements Do Not Apply To Bids Under \$10,000.00

I. REQUIREMENTS

- A.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering supplies produced, manufactured, mined or grown in Pennsylvania as against those bidders offering supplies produced, manufactured, mined or grown in any state that gives or requires a preference to supplies produced, manufactured, mined or grown in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state supplies and the amount of the preference:

	STATE	PREFERENCE
1.	Alaska	7% (applies only to timber, lumber, and manufactured lumber products originating in the state)
2.	Arizona	5% (construction materials produced or manufactured in the state only)
3.	Hawaii	10%
4.	Illinois	10% for coal only
5.	Iowa	5% for coal only
6.	Louisiana	4% meat and meat products 4% catfish 10% milk & dairy products 10% steel rolled in Louisiana 7% all other products
7.	Montana	5% for residents * 3% for non-residents* *offering in-state goods, supplies, equipment and materials
8.	New Mexico	5%
9.	New York	3% for purchase of food only
10.	Oklahoma	5%
11.	Virginia	4% for coal only
12.	Washington	5% (fuels mined or produced in the state only)
13.	Wyoming	5%

- B.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering printing performed in Pennsylvania as against those bidders offering printing performed in any state that gives or requires a preference to printing performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular category of printing.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state printing and the amount of the preference:

	STATE	PREFERENCE
1.	Hawaii	15%
2.	Idaho	10%
3.	Louisiana	3%
4.	Montana	8%
5.	New Mexico	5%
6.	Wyoming	10%

- C.** The Reciprocal Limitations Act, also requires the Commonwealth to give resident bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidders from that state or exclude bidders from states that exclude nonresident bidders. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder. The following is a list of the states which have been found by the Department of General Services to have applied a preference for in-state bidders and the amount of the preference:

STATE	PREFERENCE
1. Alaska	5% (supplies only)
2. Arizona	5% (construction materials from Arizona resident dealers only)
3. California	5% (for supply contracts only in excess of \$100,000.00)
4. Connecticut	10% (for supplies only)
5. Montana	3%
6. New Mexico	5% (for supplies only)
7. South Carolina	2% (under \$2,500,000.00) 1% (over \$2,500,000.00)
	This preference does not apply to construction contracts nor where the price of a single unit exceeds \$10,000.
8. West Virginia	2.5% (for the construction, repair or improvement of any buildings)
9. Wyoming	5%

STATE	PROHIBITION
1. New Jersey	For supply procurements or construction projects restricted to Department of General Services Certified Small Businesses, New Jersey bidders shall be excluded from award even if they themselves are Department of General Services Certified Small Businesses.

D. The Reciprocal Limitations Act also requires the Commonwealth not to specify, use or purchase supplies which are produced, manufactured, mined or grown in any state that prohibits the specification for, use, or purchase of such items in or on its public buildings or other works, when such items are not produced, manufactured, mined or grown in such state. The following is a list of the states which have been found by the Department of General Services to have prohibited the use of out-of-state supplies:

STATE	PROHIBITION
1. Alabama	Only for printing and binding involving "messages of the Governor to the Legislature", all bills, documents and reports ordered by and for the use of the Legislature or either house thereof while in session; all blanks, circulars, notices and forms used in the office of or ordered by the Governor, or by any state official, board, commission, bureau or department, or by the clerks of the supreme court . . ./and other appellate courts/; and all blanks and forms ordered by and for the use of the Senate and Clerk or the House of Representatives, and binding the original records and opinions of the Supreme Court . . . /and other appellate courts/
2. Georgia	Forest products only
3. Indiana	Coal
4. Michigan	Printing
5. New Mexico	Construction
6. Ohio	Only for House and Senate bills, general and local laws, and joint resolutions; the journals and bulletins of the Senate and house of Representatives and reports, communications, and other documents which form part of the journals; reports, communications, and other documents ordered by the General Assembly, or either House, or by the executive department or elective state officers; blanks, circulars, and other work for the use of the executive departments, and elective state officers; and opinions of the Attorney General.
7. Rhode Island	Only for food for state institutions.

*If the bid discloses that the bidder is offering to supply one of the above-listed products that is manufactured, mined, or grown in the listed state, it shall be rejected. Contractors are prohibited from supplying these items from these states.

II. CALCULATION OF PREFERENCE

In calculating the preference, the amount of a bid submitted by a Pennsylvania bidder shall be reduced by the percentage preference which would be given to a nonresident bidder by its state of residency (as found by the Department of General Services in Paragraph C_{above}). Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment or materials shall be reduced by the percentage preference which would be given to another bidder by the state where the goods, supplies, equipment or materials are produced, manufactured, mined or grown (as found by the Department of General Services in Paragraphs A and B above).

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE BID

III. STATE OF MANUFACTURE

All bidders must complete the following chart by listing the name of the manufacturer and the state (or foreign country) of manufacture for each item. If the item is domestically produced, the bidder must indicate the state in the United States where the item will be manufactured. **This chart must be completed and submitted with the bid or no later than two (2) business days after notification from the Issuing Office to furnish the information. Failure to complete this chart and provide the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid.**

ITEM NUMBER	NAME OF MANUFACTURER	STATE (OR FOREIGN COUNTRY) OF MANUFACTURE

IV. BIDDER'S RESIDENCY

A. In determining whether the bidder is a nonresident bidder from a state that gives or requires a preference to bidders from that state, the address given on the first page of this invitation to bid shall be used by the Commonwealth. If that address is incorrect, or if no address is given, the correct address should be provided in the space below:

Correct Address: _____

B. In order to claim the preference provided under Section I.B., Pennsylvania resident bidders must complete the following or have such information on file with the Issuing Office:

1. Address of bidder's bona fide establishment in Pennsylvania at which it was transacting business on the date when bids for this contract/requisition were first solicited: _____

2. a. If the bidder is a corporation:

(1) The corporation is or is not incorporated under the laws of the Commonwealth of Pennsylvania.

(a) If the bidder is incorporated under the laws of the Commonwealth of Pennsylvania, provide date of incorporation: _____

(b) If the bidder is not incorporated under the laws of the Commonwealth of Pennsylvania, it must have a certificate of authority to do business in the Commonwealth of Pennsylvania from the Pennsylvania Department of State as required by the Pennsylvania Business Corporation Law (15 P.S. §2001). Provide date of issuance of certificate of authority: _____

(2) The corporation is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must register the fictitious name with the Secretary of the Commonwealth and the office of the prothonotary of the county wherein the registered office of such corporation is located as required by the Fictitious Corporate Name Act, as amended 15 P.S. §51 et seq. Corporate bidders conducting business under an assumed or fictitious name must provide date of registry of the assumed or fictitious name: _____

b. If the bidder is a partnership:

(1) The partnership is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must file with the Secretary of the Commonwealth and the office of the prothonotary the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended 54 P.S. §28.1. Partnerships conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____

(2) The partnership is or is not a limited partnership formed under the laws of any jurisdiction other than the Commonwealth of Pennsylvania. If the bidder is an Out-of-state limited partnership, it must register with the Pennsylvania Department of State as required by the Act of July 10, 1981, P.L. 237, as amended, 59 Pa. C.S.A. §503. Out-of-state limited partnerships must provide the date of registry with the Pennsylvania Department of State: _____

c. If the bidder is an individual:

He or she is or is not conducting business under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, he or she must file with the Secretary of the Commonwealth and the office of the prothonotary in the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended, 54 P.S. §28.1. Individuals conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____

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PART I - GENERAL INFORMATION

PART I - GENERAL INFORMATION

I.1 IFB-001.1 Purpose (Oct 2006)

The Commonwealth of Pennsylvania (Commonwealth) is issuing this Invitation for Bids (IFB) to meet the needs of DGS to satisfy a need for MICROFILM EQUIPMENT, SUPPLIES AND SERVICES.

I.2 IFB-005.1 Type of Contract (Oct. 2006)

If the Issuing Office enters into a contract as a result of this IFB, it will be a contract containing the Contract Terms and Conditions as shown in Part V of this IFB.

I.3 IFB-008.1C No Pre-bid Conference (Oct. 2006)

There will be no pre-bid conference for this IFB. If there are any questions, please forward them to the Issuing Office prior to the bid opening date and time.

I.4 IFB-009.1 Questions (February 2012)

All questions regarding the IFB must be submitted in writing to the email address of the Issuing Officer provided in the solicitation. While there is no set timeline for the submittal of questions, questions received within 48 hours prior to the bid due date and time will be answered at the discretion of the Commonwealth. All questions received will be answered, in writing, and such responses shall be posted to eMarketplace as an addendum to the IFB. The Issuing Officer shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the IFB or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation.

I.5 IFB-010.1 Addenda to the IFB (Oct. 2006)

If the Issuing Office deems it necessary to revise any part of this IFB before the bid response date, the Issuing Office will post an addendum to its website at <HTTPS://WWW.DGS.PA.GOV/PAGES/DEFAULT.ASPX> it is the Bidder's responsibility to periodically check the website for any new information or addenda to the IFB.

I.6 IFB-011.1B Submission of Bids – Electronic Submittal (May 2011)

- a. Bids are requested for the item(s) described in the Invitation For Bids and all the documents referenced in the form (collectively called the IFB). Bidders must submit their bids through the Commonwealth's electronic system (SRM).
- b. It is the responsibility of each bidder to ensure that its Bid is received through the electronic system prior to the date and time set for the opening of bids ("Bid Opening Time"). No Bid shall be considered if it arrives after the Bid Opening Time, regardless of reason for the late arrival.

Bids that are timely received prior to the Bid Opening Time shall be opened publicly in the presence of one or more witnesses at the time and place designated in this IFB for the Bid opening.

- c. Bids must be firm. If a Bid is submitted with conditions or exceptions or not in conformance with the terms

and conditions referenced in the IFB Form, it shall be rejected. The Bid shall also be rejected if the items offered by the Bidder are not in conformance with the specifications as determined by the Commonwealth.

d. The Bidder, intending to be legally bound hereby, offers and agrees, if this Bid is accepted, to provide the awarded items at the price(s) set forth in this Bid at the time(s) and place(s) specified.

I.7 IFB-024.1 Bid Protest Procedure (April 2016)

The Bid Protest Procedure is on the DGS website at

<http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf>

I.8 IFB-025.1 Electronic Version of this IFB (Oct 2006)

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

I.9 IFB-027.1 COSTARS Program (January 2017)

COSTARS Purchasers. Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 (“Section 1902”), authorizes local public procurement units and state-affiliated entities (together, “COSTARS Members”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members’ participation.

A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A “local public procurement unit” is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission;
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
- Any tax-exempt, nonprofit educational institution or organization;
- Any tax-exempt, nonprofit public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as Local Public Procurement Units on a case-by-case basis.

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:

- The Pennsylvania Turnpike Commission;
- The Pennsylvania Housing Finance Agency;
- The Pennsylvania Municipal Retirement System;
- The Pennsylvania Infrastructure Investment Authority;
- The State Public School Building Authority;

- The Pennsylvania Higher Education Facilities Authority, and
- The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>

B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.

C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.

D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.

E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
DGS-verified Small Diverse Business Bidder	\$166
DGS Self-Certified Small Business Bidder	\$500
All Other Bidders	\$1,500

1. Each bidder electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.

2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.

F. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.

1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract

award and prior to the renewal date for each succeeding Contract period.

2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:

a. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.

b. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.

c. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.

d. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.

e. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.

f. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.

G. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.

1. The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/irj/portal/anonymous> , Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.

3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

H. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.costars.state.pa.us .

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.costars.state.pa.us , where it may register by completing the online

registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.

2. Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101
Telephone: 1-866-768-7827
E-mail GS-PACostars@pa.gov

I.10 IFB-028.1 Participating Addendum with an External Procurement Activity (Dec 6 2006)

Section 1902 of the *Commonwealth Procurement Code*, 62 Pa.C.S. Section 1902, permits external procurement activities to participate in cooperative purchasing agreements for the procurement of services, supplies or construction.

a. **Definitions.** The following words and phrases have the meanings set forth in this provision:

- 1) *External procurement activity:* The term, as defined in 62 Pa. C. S. Section 1901, means a 'buying organization not located in the Commonwealth [of Pennsylvania] which if located in this Commonwealth would qualify as a public procurement unit [under 62 Pa. C.S. Section 1901]. An agency of the United States is an external procurement activity.'
- 2) *Participating addendum:* A bilateral agreement executed by the Contractor and an external procurement activity that clarifies the operation of the Contract for the external procurement activity concerned. The terms and conditions in any participating addendum shall affect only the procurements of the purchasing entities under the jurisdiction of the external procurement activity signing the participating addendum.
- 3) *Public procurement unit:* The term, as defined in 62 Pa. C. S. Section 1901, means a 'local public procurement unit or purchasing agency.'
- 4) *Purchasing agency:* The term, as defined in 62 Pa. C. S. Section 103, means a 'Commonwealth agency authorized by this part or any other law to enter into contracts for itself or as the agent of another Commonwealth agency.'

b. **General.** A participating addendum shall incorporate the terms and conditions of the Contract resulting from this IFB. The Contractor shall not be required to enter into any participating addendum.

c. **Additional Terms.**

- 1) A participating addendum may include additional terms that are required by the law governing the external procurement activity.
- 2) A participating addendum may include new, mutually agreed upon terms that clarify ordering procedures specific to a participating external procurement activity.
- 3) The construction and effect of any participating addendum shall be governed by and construed in accordance with the laws governing the external procurement activity.
- 4) If an additional term requested by the external procurement activity will result in an increased cost to the Contractor, the Contractor shall adjust its pricing up or down accordingly.

d. **Prices.**

- 1) **Price adjustment** For any costs affecting the percent markup that the Contractor will or will not incur or

that differ from costs incurred or not incurred in the fulfillment of this Contract, the Contractor shall adjust its pricing up or down accordingly. These costs may include, but not be limited to:

- a) State and local taxes;
 - b) Unemployment and workers compensation fees;
 - c) E-commerce transaction fees; and
 - d) Costs associated with additional terms, established pursuant to the Contract.
- 2) The Contractor's pricing for an external procurement activity shall be firm and fixed for the duration of the initial term of the Contract. After the initial term of the Contract, if the Contract is renewed, the Contractor's pricing may be adjusted up or down based on market conditions only with the mutual agreement of both the Contractor and any external procurement activity.

e. Usage Reports on External Procurement Activities.

The Contractor shall furnish to the Contracting Officer an electronic quarterly usage report, preferably in spreadsheet format no later than the fifteenth calendar day of the succeeding calendar quarter. Reports shall be e-mailed to the Contracting Officer for the Contract. Each report shall indicate the name and address of the Contractor, contract number, period covered by the report, the name of the external procurement activity that has used the Contract and the total volume of sales to the external procurement activity for the reporting period.

- f. **Electronic Copy of Participating Addendum.** The Contractor, upon request of the Contracting Officer, shall submit **one** electronic copy of the participating addendum to the Contracting Officer within **ten** days after request.

I.11 IFB-029.1 Prices (Dec 6 2006)

The bid submitted by the successful Bidder will be incorporated into any resulting Contract and the Bidder will be required to provide the awarded item(s) at the prices quoted in its Bid.

I.12 IFB-030.1 Approved Equal (Nov 2006)

Whenever an item is defined in this IFB by trade name and catalogue number of a manufacturer or vendor, the term 'or approved equal,' if not inserted therewith shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, the Issuing Office will consider Bids for the referenced product only. The term 'or approved equal' is defined as meaning any other make which, in the sole opinion of the Issuing Office, is of such character, quality, and performance equivalence as to meet the standard of quality of products specified for which it is to be used equally as well as that specified. A Bidder quoting on a product other than the referenced product shall: a) furnish complete identification in its Bid of the product it is offering by trade name, brand and/or model number; b) furnish descriptive literature and data with respect to the substitute product it proposes to furnish; and c) indicate any known specification deviations from the referenced product.

I.13 IFB-031.1 Alternates (Oct 2013)

A Bidder who wants to offer an alternate must notify the Issuing Office in writing, at least five (5) days prior to the scheduled Bid opening, that the Bidder intends to offer an alternate in its Bid. An "alternate" is a product that deviates from the requirements of the specifications in its composition, qualities, performance, size dimension, etc. The written notification from the Bidder must include a complete description of the alternate and must identify the

product's deviations from the specifications. Upon receipt of the notification, the Issuing Office will determine whether the alternate is acceptable. If the Issuing Office, in its discretion, determines that the alternate is acceptable, the Issuing Office will issue a change notice to the invitation for bids that revises the specifications. If no change notice is issued revising the specification, a Bid offering the alternate will not be considered for award. If an item or items in the IFB are designated "no substitute," this provision does not apply and no alternate may be proposed by a bidder nor will any alternate be considered by the Issuing Office.

I.14 IFB-032.1 New Equipment (Nov 2006)

Unless otherwise specified in this invitation for bids, all products offered by Bidders must be new or remanufactured. A 'new' product is one that will be used first by the Commonwealth after it is manufactured or produced. A 'remanufactured' product is one which: 1) has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item; 2) does not, in the opinion of the Issuing Office, differ in appearance from a new item; and 3) has the same warranty as a new item. Unless otherwise specified in this invitation for bids, used or reconditioned products are not acceptable. This clause shall not be construed to prohibit Bidders from offering products with recycled content, provided the product is new or remanufactured.

I.15 I-IFB-033.1 Modification or Withdrawal of Bid (Nov 2006)

- a. Bid Modification Prior to Bid Opening. Bids may be modified only by written notice or in person prior to the exact hour and date specified for Bid opening.
 - 1) If a Bidder intends to modify its Bid by written notice, the notice must specifically identify the Bid to be modified and must be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the modification to modify the Bid on behalf of the Bidder. The Bid modification must be received in a sealed envelope. The sealed envelope must identify the assigned Collective Number and the Bid Opening Time, and should state that enclosed in the envelope is a Bid modification
 - 2) If a Bidder intends to modify its Bid in person, the individual who will modify the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to modify the Bid on behalf of the Bidder. If a Bidder intends to modify its Bid in person, the Bidder may do so only in the presence of an agency employee. (The agency employee will observe the actions taken by the individual to modify the Bid, but will not read the Bid or the modification).
- b. Bid Withdrawal Prior to Bid Opening. Bids may be withdrawn only by written notice or in person prior to the exact hour and date specified for Bid opening.
 - 1) If a Bidder intends to withdraw its Bid by written notice, the notice shall specifically identify the Bid to be withdrawn and shall be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the bid withdrawal to withdraw the bid on behalf of the Bidder. Except as provided in Subparagraph c, below, bid withdrawals received after the exact hour and date specified for the receipt of Bids shall not be accepted.
 - 2) If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to withdraw the Bid on behalf of the Bidder.
- c. Bid Withdrawal After Bid Opening. Bidders are permitted to withdraw erroneous Bids after Bid opening only if the following conditions are met:
 - 1) The Bidder submits a written request for withdrawal.
 - 2) The Bidder presents credible evidence with the request that the reason for the lower Bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the Bid.

- 3) The request for relief and supporting evidence must be received by the Issuing Office within three (3) business days after Bid opening, but before award of the contract.
 - 4) The Issuing Office shall not permit a Bid withdrawal if the Bid withdrawal would result in the award of the contract on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the bidder has a substantial interest.
 - 5) If a Bidder is permitted to withdraw its Bid, the Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.
- d. **Firm Bid.** Except as provided above, a Bid may not be modified, withdrawn, or cancelled by any Bidder for a period of sixty (60) days following the time and date designated for Bid opening, unless otherwise specified by the Bidder in its Bid. If the lowest responsible Bidder, as determined by the Issuing Office, withdraws its Bid prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the Bidder shall be liable to the Commonwealth for all costs and damages associated with the re-award or re-bid including the difference between the Bidder's price and the actual cost that the Commonwealth pays for the awarded items.
- e. **Clarification and Additional Information.** After the receipt of Bids, the Issuing Office shall have the right to contact Bidders for the purpose of seeking:
- 1) Clarification of the Bid which confirms the Issuing Office's understanding of statements or information in the Bid or;
 - 2) Additional information on the items offered; provided the IFB does not require the rejection of the Bid for failure to include such information.

I.16 I-IFB-034.1 Rejection of Bids (Nov 2006)

The Issuing Office reserves the right to reject any and all Bids, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid if the best interests of the Commonwealth are thereby served.

I.17 Submission-001.1 Representations and Authorizations (February 2017)

By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.

E. The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.

F. To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.

G. To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.

H. The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.

I. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.

J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.

K. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

L. The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

PART II - REQUIREMENTS

PART II - REQUIREMENTS

II.1 IFB-006.1b COSTARS Program Election to Participate (July 2012)

If the bidder is willing to sell the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to COSTARS members, the bidder should complete and return the COSTARS Program Election to Participate form which is an attachment to this IFB. If the bidder is asserting that it is a Department of General Services Certified Small Business, the bidder must submit its active certification with the bid response.

II.2 II-IFB-008.1b Lobbying Certification and Disclosure – Electronic Submission. (Oct 2006).

With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000 all recipients must certify that they will not use federal funds for lobbying and must disclose the use of non-federal funds for lobbying by filing required documentation. Offerors must complete and return the Lobbying Certification Form and the Disclosure of Lobbying Activities Form, which are attached to and made a part of this IFB. The completed and signed Lobbying Certification Form and the Disclosure of Lobbying Activities Form should be submitted with the Bid Response. Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.

II.3 II-IFB-016.1 Post-Submission Descriptive Literature (Dec 2006)

The Commonwealth may, during its evaluation of the bids, require any bidder to submit cuts, illustrations, drawings, prints, test data sheets, specification sheets and brochures which detail construction features, design, components, materials used, applicable dimensions and any other pertinent information which the Issuing Office may require in order to evaluate the product(s) offered. The required information must be submitted within two (2) business days after notification from the Issuing Office. Failure to submit the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid as non-responsive.

II.4 II-IFB-017.1b Reciprocal Limitations Act – Electronic Submittal (February 2007)

This procurement is subject to the Reciprocal Limitations Act. Bidders must complete and submit with the Bid Response the State of Manufacture Chart, which is contained in GSPUR-89 ("Reciprocal Limitations Act Requirements") which is attached to and made part of this IFB. The completed State of Manufacture Chart should be submitted as part of the Bid Response.

II.5 II-IFB-018.1b Iran Free Procurement Certification and Disclosure – Electronic Submittal (November 2016)

Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, a bidder 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 bidders must complete and return the Iran Free Procurement Certification form, which is attached hereto and made part of this IFB. The completed and signed Iran Free Procurement Certification form must be submitted with the Bid Response.

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#.WDNfJJ>

PART III - SELECTION CRITERIA

PART III - SELECTION CRITERIA

III.1 III-IFB-001.1a Mandatory Responsiveness Requirements (Oct 2006)

To be eligible for selection, a bid must be:

- a. Timely received from a Bidder;
- b. Properly signed by the Bidder.

III.2 III-IFB-006.1f Method of Award - All Bidders (April 2011)

Award will be made to all responsive and responsible bidders.

III.3 III-IFB-007.1 Awards (May 2011)

Unless all Bids are rejected, and except as otherwise provided by law, award will be made through the issuance of a contract/purchase order in accordance with the method of award. Unless otherwise specified by the Issuing Office in the IFB form the Commonwealth reserves the right to award by item or on a total Bid basis, whichever is deemed more advantageous to the Commonwealth. In cases of discrepancies in prices, the unit price will be binding unless the unit price is obviously in error and the extended price is obviously correct, in which case the erroneous unit price will be corrected. As a condition for receipt of award of a contract/purchase order, the Bidder must be registered in the Commonwealth of Pennsylvania's Vendor Master file. In order to register, bidders must visit the Pa Supplier Portal at <https://www.pasupplierportal.state.pa.us/> or call the Customer Support Center at 877-435-7363 or 717-346-2676.

III.4 III-IFB-008.1 Tie Bids (Nov 2006)

All tie bids will be broken by the Issuing Office.

III.5 III-IFB-009.1 Prompt Payment Discounts (Nov 2006)

Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Bidder, however, the Issuing Office will take advantage of such offer.

III.6 III-IFB-010.1 Option for Separate Competitive Bidding Procedure (Nov 2006)

The Commonwealth reserves the right to purchase products or services covered under this Contract through a separate competitive bidding procedure, whenever Commonwealth deems it in the best interest of the Commonwealth. The right will generally be exercised only when a specific need for a large quantity of the product or service exists or when the price offered is significantly lower than the Contract price.

III.7 III-IFB-014.1 Rebates (Nov 2006)

Any rebate applicable at the time of bid should be taken into consideration by the bidder in calculating its bid price. Bidders must specifically state in their bid proposal, when applicable, that rebates have been considered in arriving at the bid price. Following award, the Commonwealth will assign to the awarded bidder, any rebates which the bidder stated that he took into consideration. If the bidder fails to include such a statement, the Commonwealth will receive the full benefit of the manufacturer's rebate.

PART IV - WORK STATEMENT

PART IV - WORK STATEMENT

IV.1 IFB-001.1a Specifications (Nov 2006)

The Commonwealth is seeking bids to procure the item(s) set forth in the attached document entitled "Specifications."

PART V - CONTRACT TERMS and CONDITIONS

PART V - CONTRACT TERMS and CONDITIONS

V.1 CONTRACT-001.1b Contract Terms and Conditions (Nov 30, 2006)

The Contract with the awarded bidder (who shall become the "Contractor") shall include the following terms and conditions:

V.2 CONTRACT-002.1a Term of Contract – Contract (May 2012)

The initial term of the Contract shall be 02 year(s) and 00 month(s).

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

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

V.3 CONTRACT-002.2b Renewal of Contract Term – Mutual (Oct 2013)

The Contract may be mutually renewed for a maximum of 3 additional 1 year term(s), so long as the Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter dated not less than 090 days prior to the expiration of the term of the agreement, or any extension thereof, and the Contractor consents to the renewal not less than 060 days prior to the expiration of the term of the agreement or any extension thereof. The renewal may be exercised as individual or multiple year terms(s). Any renewal will be under the same terms, covenants and conditions. No further document is required to be executed to renew the term of the contract.

V.4 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006)

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

V.5 CONTRACT-003.1a Signatures – Contract (July 2015)

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

The Contract may be electronically signed by the Commonwealth. The electronically-printed name of the Purchasing Agent represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have "Fully Executed" at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

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

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding

contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

c. 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.

V.6 CONTRACT-004.1a Definitions (Oct 2013)

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

a. Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this contract, that entity shall also be identified as "Agency".

b. Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.

c. Days: Unless specifically indicated otherwise, days mean calendar days.

d. Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.

e. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.

f. Services: All Contractor activity necessary to satisfy the Contract.

V.7 CONTRACT-005.1a Purchase Orders (July 2015)

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

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

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

a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.

b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain

agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

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

V.8 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)

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

V.9 CONTRACT-007.01a Supplies Delivery (Nov 30 2006)

All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date.

V.10 CONTRACT-007.02 Estimated Quantities (Nov 30 2006)

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

V.11 CONTRACT-008.1a Warranty. (Oct 2006)

The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.

V.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2013)

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which

is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report, document or other material provided to the Commonwealth under the contract.

The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract.

This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same.

As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action.

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.

The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract.

If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing.

If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

V.13 CONTRACT-009.1d Ownership Rights (Oct 2006)

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

V.14 CONTRACT-010.1a Acceptance (Oct 2006)

No item(s) received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the item(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Commonwealth within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Commonwealth's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such

item(s), 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.

V.15 CONTRACT-010.2 Product Conformance (March 2012)

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

1. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
2. Supply published manufacturer product documentation.
3. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
4. Complete a survey/questionnaire relating to the bid requirements and specifications.
5. Provide customer references.
6. Provide a product demonstration at a location near Harrisburg or the using agency location.

V.16 CONTRACT-010.3 Rejected Material Not Considered Abandoned (March 2012)

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

V.17 CONTRACT-011.1a Compliance With Law (Oct 2006)

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

V.18 CONTRACT-013.1 Environmental Provisions (Oct 2006)

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

V.19 CONTRACT-014.1 Post-Consumer Recycled Content (June 2016)

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> .

V.20 CONTRACT-014.3 Recycled Content Enforcement (February 2012)

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.

V.21 CONTRACT-015.1 Compensation (Oct 2006)

The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Purchase Order. All item(s) shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.

V.22 CONTRACT-015.2 Billing Requirements (July 2021)

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:

- Vendor name and "Remit to" address, including SAP Vendor number;
- SAP Purchase Order number;
- Delivery Address, including name of Commonwealth agency;
- Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- Quantity provided;
- Unit price;
- Price extension;
- Total price; and
- Delivery date of supplies or services.

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

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

V.23 CONTRACT-016.1 Payment (Oct 2006)

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) 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 (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

V.24 CONTRACT-016.2 Payment – Electronic Funds Transfer (July 2022)

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

V.25 CONTRACT-017.1 Taxes (Dec 5 2006)

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 state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph 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.

V.26 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)

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

V.27 CONTRACT-019.1 Hold Harmless Provision (Nov 30 2006)

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), 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.

V.28 CONTRACT-020.1 Audit Provisions (Oct 2006)

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

V.29 CONTRACT-021.1 Default (Oct 2013)

a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:

- 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
- 2) Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Contract or Purchase Order terms;
- 3) Unsatisfactory performance of the work;
- 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
- 5) Improper delivery;
- 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
- 7) Delivery of a defective item;
- 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
- 9) Discontinuance of work without approval;
- 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- 11) Insolvency or bankruptcy;
- 12) Assignment made for the benefit of creditors;
- 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
- 14) Failure to protect, to repair, or to make good any damage or injury to property;
- 15) Breach of any provision of the Contract;

16) Failure to comply with representations made in the Contractor's bid/proposal; or

17) Failure to comply with applicable industry standards, customs, and practice.

b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.

c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

d. The rights and remedies of the Commonwealth provided in this paragraph 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 paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

V.30 CONTRACT-022.1 Force Majeure (Oct 2006)

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 aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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

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

V.31 CONTRACT-023.1a Termination Provisions (Oct 2013)

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

a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.

b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under the Subparagraph a.

V.32 CONTRACT-024.1 Contract Controversies (Oct 2011)

a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.

b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

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

V.33 CONTRACT-025.1 Assignability and Subcontracting (Oct 2013)

a. Subject to the terms and conditions of this paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be

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

c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.

g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

V.34 CONTRACT-026.1 Other Contractors (Oct 2006)

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 work 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 paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

V.35 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (August 2018)

The Contractor agrees:

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

V.36 CONTRACT-028.1 Contractor Integrity Provisions (January 2015)

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.

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

a. "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.

b. "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.

c. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.

d. "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.

e. "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.

f. "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.

g. "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.

2. In furtherance of this policy, Contractor agrees to the following:

a. 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.

b. 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.

c. 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.

d. 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 the Contractor's submission of the contract signed by Contractor.

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

(1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

(2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

f. 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)*.

g. 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.

h. 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.

i. 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.

j. 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.

V.37 CONTRACT-029.1 Contractor Responsibility Provisions (July 2021)

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

V.38 CONTRACT-030.1 Americans with Disabilities Act (July 2021)

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

- 1 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 agreement or from activities provided for under this agreement. As a condition of accepting and executing this

agreement, 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 through contracts with outside contractors.

- 2 The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

V.39 CONTRACT-031.1 Hazardous Substances (April 2017)

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 34 Pa. Code Section 301.1 - 323.6.

a. Labeling. The Contractor shall ensure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Subparagraphs (1) through (4):

1) Hazardous substances:

- a) The chemical name or common name,
- b) A hazard warning, and
- c) The name, address, and telephone number of the manufacturer.

2) Hazardous mixtures:

- a) The common name, but if none exists, then the trade name,
- b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
- c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
- d) A hazard warning, and
- e) The name, address, and telephone number of the manufacturer.

3) Single chemicals:

- a) The chemical name or the common name,
- b) A hazard warning, if appropriate, and
- c) The name, address, and telephone number of the manufacturer.

4) Chemical Mixtures:

- a) The common name, but if none exists, then the trade name,
- b) A hazard warning, if appropriate,
- c) The name, address, and telephone number of the manufacturer, and
- d) The chemical name or common name of either the top five substances by volume or those substances

consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

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

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

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

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

b. Material Safety Data Sheet. The contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The contractor shall also notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

V.40 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)

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

V.41 CONTRACT-033.1 Applicable Law (Oct 2006)

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

V.42 CONTRACT- 034.1b Integration (Nov 30 2006)

This Contract, including the Invitation for Bids, the Contractor's bid, all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

V.43 CONTRACT-034.2b Order of Precedence - IFB (Dec 6 2006)

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

V.44 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011)

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the Commonwealth.

V.45 CONTRACT-035.1a Changes (Oct 2006)

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

V.46 CONTRACT-037.1a Confidentiality (Oct 2013)

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

(b) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:

- (1) already known to the recipient at the time of disclosure other than through the contractual relationship;
- (2) independently generated by the recipient and not derived by the information supplied by the disclosing party.
- (3) 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;
- (4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- (5) required to be disclosed by law , regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

(c) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:

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

V.47 CONTRACT-043.1 Leasing Additional Terms and Conditions (Oct 2013)

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

A. Term of Lease

The Contractor may provide any Leased Property under the Contract for any term up to 60 months, including a Fair Market Value Option for Lease/Purchases. The Lessee shall identify the term selected, as well as its election of either a Lease or Lease/Purchase option, on the Lease PO. The Lease term shall commence on the date the Lessee accepts the Leased Property by executing the Acceptance Certificate, and the term shall continue for the length specified on the Lease PO. The form of the Acceptance Certificate can be found on the Forms page of the Department of General Services' webpage (www.dgs.state.pa.us).

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

B. Payments

1. Full Term Intention. The Lessee shall pay the applicable monthly or annual rent payment for the Leased Property for the full Lease term, unless the Lessee terminates the Lease, either for Contractor default as set forth in the Default provision of the Contract or for non-appropriation of funds as specified in this section.

2. Non-Appropriation. The Lessee's obligation is payable only and solely from funds allotted for the purpose of the Lease. If sufficient funds are not appropriated for continuation of performance under any Lease for any fiscal year subsequent to the one in which the Lessee issued the Lease PO, the Lessee may return the Leased Property to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee shall release the Lessee of all further obligations under the Lease, provided:

- a. The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
- b. The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
- c. The Lessee gives 30 days written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Leased Property is not being replaced by similar items from another vendor. In the event the Lessee returns the Leased Property for failure of appropriations, the Lessee shall pay all amounts then due under the Lease through the end of the fiscal year for which sufficient funds were appropriated for the Lease.

C. Title

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

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

D. Use And Location Of, and Alteration to Leased Property

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

E. Risk of Loss

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

F. Warranties

1. The Lessee shall have the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.

2. The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Lessee's quiet enjoyment of the Leased Property so long as no event of default as defined in Subsection J of this Section shall have occurred and be continuing.

G. Liability

1. The Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Lessee's possession, use, operation, condition, or storage of any Leased Property, whether such injury or death be of agents or employees of the Lessee or of third parties, and whether such property damage be to the Lessee's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Lessee, its agents or employees, and provided that judgment has been obtained against the Lessee, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Lessee.

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

H. Assignment

1. The Lessee shall not assign any Lease PO or other interest in the Leased Property without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Lease PO and Leased Property to an Initial Assignee, who in turn may further assign and/or grant a security interest in a Lease to a subsequent assignee without the Lessee's consent. Any other Contractor assignment shall require the Lessee's prior written consent. Upon written notice to the Lessee, the Contractor may assign payments under any Lease to a third party.

2. The Contractor may assign, without Lessee consent, any Lease PO to a third party ("Initial Assignee") who will fund the purchase of the Leased Property. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Leased Property. The Contractor shall notify the Lessee of any Lease PO assignment in its acknowledgment of the Lease PO to the Lessee, providing the Lessee with a copy of the assignment agreement between the Contractor and the Initial Assignee.

3. Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Leasing Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing a Lease PO, the Lessee waives any claims it may have under the Lease against the Initial Assignee for any loss, damage, or expense caused by, defect

in, or use or maintenance of any Leased Property. The Lessee acknowledges that the Initial Assignee is not the supplier of the Leased Property and is not responsible for their selection or installation. After the ordering Lessee executes, and the Initial Assignee receives, an Acceptance Certificate, if any portion of the Leased Property is unsatisfactory for any reason, the ordering Lessee shall, nevertheless, continue to make payments under the applicable Lease terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.

4. After a Lessee executes and the Initial Assignee receives an Acceptance Certificate:

a. The Lessee shall, regardless of whether any portion of the Leased Property is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Lease and shall make any claim relating to the Leased Property against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

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

5. Warranty Disclaimer

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

I. Financing and Prepayment

1. If the Contractor is not the supplier of the Leased Property, the Contractor will pay the charges for the Leased Property directly to the supplier. In the event the Contractor assigns the Lease to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned rental payments under the Lease to an Initial Assignee, the Lessee's obligation to make rental payments for the Leased Property for which the Lessee has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Lessee dissatisfaction with any Leased Property.

2. The Lessee may at any time terminate the financing for any Leased Property by prepaying its remaining rental payments. The Lessee shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining rental payments to reflect the requested prepayment and shall advise the Lessee of the balance to be paid.

3. If the Lessee purchases Contract items related to Leased Property prior to the expiration of the Lease term, or if the Lease is terminated for any reason except non-appropriation as described in Subsection B of this Subsection, and if the Leased Property has been delivered and the Lessee has executed and delivered to the Contractor an acceptance certificate, the Lessee shall prepay such Leased Property.

J. Remedies for Default

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

individually or collectively:

a. Terminate the applicable Lease.

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

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

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

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

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

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

K. Purchase Option

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

L. Extension

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

M. Return of Leased Property

At the expiration or termination of a Lease for any Leased Property, or upon Contractor/Initial Assignee demand pursuant to Subsection J. of this Section, the Lessee shall promptly return the Leased Property, freight prepaid, to

any location in the continental United States specified by the Contractor/Initial Assignee. The Lessee shall pay the required rent for the Leased Property until they have been shipped to the Contractor.

1. Since DGS has, as a matter of policy, determined that all hard drives contain information that is confidential or sensitive, the Contractor shall, at its discretion, either remove and destroy any hard drive from the Leased Property or clean the hard drive to Office of Administration/U.S. Department of Defense standards, and the Contractor shall provide written certification to the Lessee that the hard drive has been destroyed or cleaned to Office of Administration/U.S. Department of Defense standards.

2. Except in the event of a total loss of any or all Leased Property as described in Subsection E. of this Section, and except for any costs associated with the removal, destruction, and cleaning of any hard drives, the Lessee shall pay any costs the Contractor/Initial Assignee incurs to restore the Leased Property to good operating condition in accordance with the Contract specifications. All parts the Contractor/Initial Assignee may remove and replace shall become the Contractor's/Initial Assignee's property.

3. The Contractor's/Initial Assignee's costs associated with the cleaning of any hard drive to Office of Administration/U.S. Department of Defense standards and the removal and destruction of any hard drive(s) shall be included in the rental amount. The Lessee shall not be required to pay additional charges for the Contractor's/Initial Assignee's cleaning of a hard drive to Office of Administration/U.S. Department of Defense standards nor for the Contractor's/Initial Assignee's removal and destruction of any hard drive(s) upon the return of a Leased item.

N. Compliance with Internal Revenue Code

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

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

O. Governing Law

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

P. Notices

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

V.48 CONTRACT-046.1 Manufacturer's Price Reduction (Oct 2006)

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

V.49 CONTRACT-051.1 Notice (Dec 2006)

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

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

V.50 CONTRACT-052.1 Right to Know Law (Feb 2010)

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.

b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:

1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the 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
2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold

the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.



ELECTION TO PARTICIPATE FORM

COSTARS PROGRAM

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 at the beginning of each contract year and/or upon each contract renewal date:

\$166 for a Department of General Services-verified Small Diverse Business or
Small, Veteran Business Enterprise

\$500 for a Department of General Services Self-Certified Small Business

\$1,500 for all other businesses

*If you are a Department of General Services Self-Certified Small Business or
Department of General Services-verified Small Diverse Business,
you must submit a copy of your active **Small Business Contracting Program**
certificate with your bid response.*

Corporate or Legal Entity Name:	
Signature:	
Date:	
Contract Description:	

COSTARS PROGRAM CLAUSE

COSTARS Purchasers. Section 1902 of the Commonwealth Procurement Code, 62 Ph.C.'s. § 1902 (“Section 1902”), authorizes local public procurement units and state-affiliated entities (together, “COSTARS Members”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members’ participation.

A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A “local public procurement unit” is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission;
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
- Any tax-exempt, nonprofit educational institution or organization;
- Any tax-exempt, nonprofit public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as local public procurement units on a case-by-case basis.

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:

- The Pennsylvania Turnpike Commission;
- The Pennsylvania Housing Finance Agency;
- The Pennsylvania Municipal Retirement System;
- The Pennsylvania Infrastructure Investment Authority;
- The State Public School Building Authority;
- The Pennsylvania Higher Education Facilities Authority, and
- The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>.

- B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.
- C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.
- D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.
- E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
DGS-verified Small Diverse Business Bidder	\$166
DGS Self-Certified Small Business Bidder	\$500
All Other Bidders	\$1,500

- 1. Each bidder electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.
 - 2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.
- F. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.

1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.
 2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:
 - a. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.
 - b. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
 - c. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.
 - d. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.
 - e. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.
 - f. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.
- G. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.
1. The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/irj/portal/anonymous>, Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal

Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.
3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

H. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.costars.state.pa.us.

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.costars.state.pa.us, where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently registered COSTARS member entities, please visit the COSTARS website.
2. Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101
Telephone: 1-866-768-7827
E-mail GS-PACostars@pa.gov

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, which can be found at:

<https://www.gsa.gov/Forms/TrackForm/33144>

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under *Section 1352, Title 31, U. S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than **\$100,000** for such failure.

SIGNATURE: _____

TITLE: _____ DATE: _____



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania’s Unemployment Compensation Law, Workers’ Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee’s compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

<i>Signature</i>	<i>Date</i>
<i>Name (Printed)</i>	
<i>Title of Certifying Official (Printed)</i>	
<i>Contractor/Grantee Name (Printed)</i>	

PA Supplier ID Number: _____

**ENTERPRISE ON-PREMISE SOFTWARE/SERVICES LICENSE
REQUIREMENTS AGREEMENT
BETWEEN
THE COMMONWEALTH OF PENNSYLVANIA,
ACTING BY AND THROUGH
THE GOVERNOR’S OFFICE OF ADMINISTRATION
AND
[INSERT FULL NAME OF LICENSOR]**

This Enterprise On-Premise Software/Services License Requirements Agreement (“Agreement”) is entered into by and between **[insert full name of Licensor]** (“Licensor”) and the **Commonwealth of Pennsylvania**, acting by and through the Governor’s Office of Administration (“Commonwealth”).

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 Licensor **[insert the name of Licensor’s standard End User License/Software License Agreement]**, which is attached to this Agreement as Exhibit A. 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 maintenance, support and services for said products, shall be referred to as “Licensed Products.”
2. **Effective Date.** The effective date of this Agreement shall be the date that it has been fully executed by the Licensor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.
3. **Enterprise Language:**
 - (a) The parties agree that more than one agency of the Commonwealth (“Commonwealth Agency”) may license products subject to this Agreement, provided that the procurement of any Licensed Products by any Commonwealth Agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each Commonwealth Agency seeking to use the Licensed Products.
 - (b) The parties agree that, if the licensee is a “Commonwealth Agency” as defined by Section 103 of the [Commonwealth Procurement Code, 62 Pa. C. S. § 103](#), the terms and conditions of this Agreement apply to the procurement of any Licensed

Products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase order or other procurement document without further need for execution.

4. List of Licensed Products.

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

5. 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.

6. Indemnification/Immunity.

- (a) The Commonwealth does not have the authority to indemnify any entity. The Commonwealth shall 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.
- (b) Licensor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by Licensor and its employees, affiliates, subcontractors, and agents under this Agreement, provided the Commonwealth gives 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 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 Licensor, the Commonwealth will cooperate with all reasonable requests of the Licensor made in the defense of such suits.

- (c) 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 Licensor to control the defense and any related settlement negotiations.

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

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

incurred by the Commonwealth for such support. If the OAG does not delegate to the Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this section ceases. The Licensor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the suit.

- (b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all Licensed Products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties.
- (c) If the defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the Commonwealth or agreed to by the Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.
- (d) If any Licensed Product furnished hereunder is likely to (in the Licensor's opinion) or does become subject to a claim of infringement of a United States patent, copyright, trade dress or trademark, or for a misappropriation of trade secret, or is held to constitute infringement and the use of the Licensed Product is enjoined, without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (i) Replace or substitute functional equivalents for the Licensed Product;
 - (ii) Modify the Licensed Product so that it is no longer infringing;
 - (iii) Re-perform the Services in a non-infringing manner; or
 - (iv) Obtain the rights necessary for the Licensor to continue performance under this Agreement or obtain the rights for the Commonwealth to continue the use of the Licensed Product.
- (e) If the use of any Licensed Product is enjoined and the Licensor is unable to provide any remedy set forth in subsection (d) above, the Licensor, upon return of the Licensed Product, agrees to refund to the Commonwealth:
 - (i) the fee paid for the infringing Licensed Product, less the amount for the period of usage of the Licensed Product; and
 - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.

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

8. Virus, Malicious, Mischievous or Destructive Programming.

- (a) The Licensor warrants that the Licensed Products as delivered by the Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the Licensed Products (each a "Virus"). However, the Licensed Products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.
- (b) The Licensor shall be liable to the Commonwealth for any damages, costs, fines, remedial measures incurred by the Commonwealth and shall indemnify the Commonwealth against any Third Party claims (in accordance with Section 6,

Indemnification) if the Licensor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Licensed Product or the Commonwealth's or Third Party's software, data, systems or computer networks.

9. **Limitation of Liability.**

- (a) Except as otherwise provided in this Agreement, the Licensor's liability to the Commonwealth under this Agreement shall be limited to the greater of \$500,000 or the total dollar amount of purchase orders issued for Licensed Products and services covered by this Agreement during the twelve (12)-month period prior to the event giving rise to the damage claim. This limitation does not apply to damages:
- (i) for bodily injury;
 - (ii) for death;
 - (iii) for gross negligence and willful or unlawful misconduct;
 - (iv) to real property or tangible personal property for which the Licensor is legally liable;
 - (v) under **Section 7**, Patent, Copyright, Trade Secret and Trademark Protection;
 - (vi) resulting from 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;
 - (vii) resulting from a breach of confidentiality;
 - (viii) for which the Licensor is responsible pursuant to any indemnification obligations it has under this Agreement; or
 - (ix) under **Section 8**, Virus, Malicious, Mischievous or Destructive Programming.
- (b) Except with respect to those damages enumerated in subsections 9(a)(i) through (ix) above, the Licensor shall not be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement.

10. **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.

11. 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").

12. 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 Confidential Information or Commonwealth 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 [Criminal History Background Check \(pa.gov\)](http://pa.gov). 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.

13. Confidentiality.

- (a) Definition. “Confidential Information:”
- (i) For the Commonwealth: Information, whether oral or written or via computer disk or electronic media, to which the Licensor is given access, or which is made available by the Commonwealth, whether directly or through a third party, is defined as "Confidential Information." Confidential Information shall include, without limitation, all technology, know-how, processes, software, databases, Trade Secrets (as defined by the Pennsylvania Uniform Trade Secret Act found at 12 Pa. Cons. Stats Secs. 5392 et. seq.), proprietary information, product and business requirements, and information about or from the Commonwealth’s vendors or employees whether received before or after the Effective Date of this Agreement. Confidential Information shall also include information and documentation that 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 the Commonwealth is a party. Sensitive information, as define in Section 14 below, shall be a subset of Confidential Information of the Commonwealth, and shall be subject to additional protections as set forth in Section 14 below.
- (ii) For the Licensor: All information identified in writing by the Licensor as confidential or proprietary to Licensor or its subcontractors.
- (b) Confidential Information. All Confidential Information of or relating to a party shall be held in confidence by the other party to the same extent and in at least the same manner as such party protects its own confidential or proprietary information. Neither party shall disclose, publish, release, transfer or otherwise make available any Confidential Information of the other party in any form to, or for the use or benefit of, any person or entity without the other party’s consent. Subject to the other provisions of this Agreement, each party shall, however, be permitted to disclose relevant aspects of the other party’s Confidential Information to its officers, agents, subcontractors and personnel and to the officers, agents, subcontractors and personnel of its corporate affiliates or subsidiaries to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement; provided, however, that such party shall take all reasonable measures to ensure that Confidential Information of the other party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, subcontractors and personnel and that such party shall be

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

- (i) is developed by the other party without violating the disclosing party's proprietary rights,
- (ii) is or becomes publicly known (other than through unauthorized disclosure),
- (iii) is disclosed by the owner of such information to a Third Party free of any obligation of confidentiality,
- (iv) is already known by such party without an obligation of confidentiality other than pursuant to this Agreement or any confidentiality contract entered into before the Effective Date of the Agreement between the Commonwealth and the Licensor, or
- (v) is rightfully received by the disclosing party free of any obligation of confidentiality.

(c) Obligations. Each party shall:

- (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.

14. Sensitive Information

- (a) “Sensitive Information” is a subcategory of Confidential Information of the Commonwealth and shall include, regardless of whether marked or identified by the Commonwealth as confidential:
- (i) Information related to the design or implementation of the Commonwealth’s technology and security infrastructure and architecture, including, but not limited to, Protected Critical Infrastructure Information (PCII) under the Cybersecurity Information Sharing Act (CISA) of 2015;
 - (ii) Information identified as Sensitive Security Information, Protected Information or Privileged Information as defined under ITP-SEC19;
 - (iii) Passwords, encryption keys, and other cyber security control design information;
 - (iv) Consumer and citizen information;
 - (v) Employee information;
 - (vi) Information that is either nonpublic personal information or personally identifiable information, including, without limitation, names, addresses, telephone numbers, fax numbers, electronic mail addresses, web universal resource locators (URLs), Internet Protocol (IP) addresses, vehicle identifiers, account numbers, birthdates, social security numbers, individual likeness or images, fingerprint or biometric data, genetic information, demographic, information contained in, relating to or deriving from medical or personal health records, criminal justice information and records, information relating to drivers licenses or other identification cards, financial and transactional information, tax information and any other information that is deemed to be nonpublic or protected under federal and state law, regulation, order or standard including, but not limited to, the Criminal History Record Information Act, the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), Confidentiality of HIV-Related Information Act, the Omnibus Reconciliation Act of 1990, Real ID Act of 2005, Tax Reform Act of 1976 the Internal Revenue Code and IRS Publication 1075, the Affordable Care Act, federal and state notification laws, The Driver’s Privacy Protection Act of 1994, Title V of the *Gramm-Leach-Bliley Act*, Section 628 of the *Fair Credit Reporting Act*, Section 216 of the Fair and Accurate Credit Transactions Act, the *Children's Online Privacy Protection Act*, and any implementing regulations, guidelines and Commonwealth policies adopted under any of these or other related laws; and
 - (vii) Payment Card Industry Information (PCI).

- (b) The Licensor understands that its level of access may allow or require it to view or access Sensitive Information and Confidential Information. The Licensor shall hold all Commonwealth Sensitive Information in the strictest of confidence and shall use all protective measures to protect the Sensitive Information as prescribed by law, regulation and/or Commonwealth policies and standards. In addition, the Licensor shall only permit staff located in the United States to access Sensitive Information, Confidential Information and Commonwealth systems, data and services.
- (c) Sensitive Information and Confidential Information may be subject to and governed by specific state and federal laws, regulations and policies that must be followed. If applicable, prior to deployment of the Products or Services, the Licensor may be required to sign off on particular instructions, restrictions and limitations as dictated by the Commonwealth, including, but not limited to, as necessary, HIPAA Business Associate Agreements. The Commonwealth's use of any sign off sheet shall create specificity in the Licensor's obligations with respect to certain Confidential Information, and this Section and the instructions within the sign-off sheet shall not, in any way, diminish the obligations of the Licensor under this Agreement with respect to Confidential Information generally and Sensitive Information specifically. The sign-off sheet shall be signed by at least one authorized signatory for the Licensor and incorporated into this Agreement.

15. **Hyperlink Content.** Any terms and conditions contained in any hyperlink content referenced in this Agreement ("Hyperlink Content") shall not apply to the extent such terms and conditions are expressly prohibited by applicable law. In addition, no financial obligation of the Agency or Commonwealth to Licensor shall be affected by any change to information contained in a hyperlink, nor will any additional material obligations be placed on the Agency or Commonwealth as a result of any such changes to Hyperlink Content. Terms and conditions in the Hyperlink Content that are materially inconsistent with the Agreement are rejected, unenforceable by the Licensor, and shall not become part of this Agreement unless such terms and conditions are to the benefit of the Agency or Commonwealth.
16. **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.
17. **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.

18. 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).

19. Commonwealth Audit Responsibilities.

- (a) The Commonwealth will maintain, and promptly provide to the Licensor upon its request, accurate records regarding use of the Licensed Product by or for the Commonwealth. If the Commonwealth becomes aware of any unauthorized use of all or any part of the Licensed Product, the Commonwealth will notify the Licensor promptly, providing reasonable details. The limit of the Commonwealth's responsibility for use of the Licensed Products by more individuals than are permitted by the licensing terms applicable to the Licensed Products shall be to purchase additional licenses and Maintenance and Support (if applicable) for such Licensed Products through a reseller contract or procurement document.
- (b) The Commonwealth will perform a self-audit upon the request of the Licensor, which request may not occur more often than annually, and report any change in user count (hereinafter "True up number"). The Commonwealth shall notify the Licensor of the True up number no later than **45 calendar days** after the request that the Commonwealth perform a self-audit. If the user count has increased, the Commonwealth will make an additional purchase of the Licensed Products through a reseller contract or another procurement document, which is equivalent to the additional users. This section sets out the sole license audit right under this Agreement.

20. **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.

- 21. Third-Party Software.** If a Licensed Product utilizes or includes third party software and other copyrighted material and is subject, therefore, to additional licensing terms, acknowledgements or disclaimers compliance with this Agreement constitutes compliance with those third-party terms. The parties agree that the Commonwealth, by acknowledging third-party software, does not agree to any terms and conditions of the third-party software agreements that are inconsistent with or supplemental to this Agreement.
- 22. Attorneys' Fees.** The Commonwealth will not pay attorneys' fees incurred by or paid by the Licensor.
- 23. Controversies.**
- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Agreement or a purchase order, the Licensor, within **six (6) months** after the claim accrues, must file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Licensor asserts a controversy exists. If the Licensor fails to file a claim or files an untimely claim, the Licensor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send a written determination to the Licensor. If the contracting officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Licensor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Licensor shall proceed diligently with the performance of the Agreement or purchase order in a manner consistent with the determination of the contracting

officer and the Commonwealth shall compensate the Licensor pursuant to the terms of the Agreement, purchase order or other procurement document.

- 24. Signatures.** The parties agree that: (1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form; (2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; (3) if a law requires a record to be in writing, an electronic record satisfies the law; and (4) if law requires a signature, an electronic signature satisfies the law.

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

- 25. Independent Contractor.** The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- 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. No modification of this Agreement will be effective unless in writing and signed by both Parties.
- 28. Assignment.** Either party may assign this Agreement in its entirety, but not in parts, on written notice to the other party to its parent company, affiliate or subsidiary, in connection with a merger, consolidation, or sale or other disposition of all or substantially all of its assets, or in the case of the Commonwealth to another Commonwealth entity. Any other assignment shall be null and void, except with the other party's prior written consent, which shall not be unreasonably withheld. This Agreement and all obligations shall be binding upon and inure to the benefit of the parties' successors and lawful assignees.

29. **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.
30. **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.
31. **Waiver.** Failure to enforce any provision will not constitute a waiver.
32. **Severability.** If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
33. **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.
34. **Integration.** This Agreement, including all exhibits and referenced documents, and any Purchase Orders referencing this Agreement, constitutes the entire agreement between the parties. No agent, representative, employee or officer of the Commonwealth or of Licensor has authority to make any statement, agreement, or representation, oral or written, in connection with this Agreement, which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment executed by the parties.

[Reminder of Page Intentionally Left Blank]

The Parties to this Agreement have executed it, through their respective duly authorized representatives.

Witness:

Licensor:

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title

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

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR’S OFFICE OF ADMINISTRATION**

Electronically signed per Section 24

Agency Head or Designee

APPROVED AS TO FORM AND LEGALITY:

Electronically signed per Section 24

Office of Chief Counsel

Electronically signed per Section 24

Office of General Counsel

Electronically signed per Section 24

Office of Attorney General

APPROVED:

Electronically signed per Section 24

Office of the Budget, Office of Comptroller Operations

ATTACHMENT 1

LIST OF LICENSED PRODUCTS

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

Licensed Product:

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

PA Supplier ID Number: _____

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



This Enterprise SaaS Software/Services License Requirements Agreement (“Agreement”) is entered into by and between (“Licensor”) and the **Commonwealth of Pennsylvania**, acting by and through the **Governor’s Office of Administration** (“Commonwealth”).

The parties intending to be legally bound, agree as follows:

- 1. Order of Precedence.** The terms and conditions of this Agreement, to the extent a conflict exists, supersede and take precedence over the terms and conditions of the Licensor [insert the name of Licensor’s standard End User License/Software License Agreement], which is attached to this Agreement as Exhibit A. 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 maintenance, support and services for said products, shall be referred to as “Licensed Products.”
- 2. Effective Date.** The effective date of this Agreement shall be the date that it has been fully executed by the Licensor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.
- 3. Enterprise Language.**
 - (a) The parties agree that more than one agency of the Commonwealth (“Commonwealth Agency”) may license products subject to this Agreement, provided that the procurement of any Licensed Products by any Commonwealth Agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each Commonwealth Agency seeking to use the Licensed Products.
 - (b) The parties agree that, if the licensee is a “Commonwealth Agency” as defined by Section 103 of the *Commonwealth Procurement Code*, 62 Pa. C. S. § 103, the terms and conditions of this Agreement apply to the procurement of any Licensed Products made by the Commonwealth, and that the terms and conditions of this

Agreement become part of the purchase order or other procurement document without further need for execution.

4. List of Licensed Products.

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

5. 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 Agreement and the resolution of those disputes.

6. Indemnification/Immunity.

- (a) Neither the Commonwealth nor any Commonwealth Agency have the authority to indemnify any entity. The Commonwealth shall 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 or any Commonwealth Agency.
- (b) Licensor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by Licensor and its employees, affiliates, subcontractors, and agents under this Agreement, provided the Commonwealth gives 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 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 Licensor, the Commonwealth will cooperate with all reasonable requests of Licensor made in the defense of such suits.

- (c) 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 Licensor to control the defense and any related settlement negotiations.

7. 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 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 shall 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. The Licensor, at its own expense, shall provide whatever cooperation the OAG requests in the defense of the Claim.

- (b) The Licensor shall 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 of a Claim is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded against the Commonwealth or agreed to by the Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's sole expense.
- (d) If any Licensed Product furnished hereunder is likely to (in the Licensor's opinion) or does become subject to a claim of infringement of a United States patent, copyright, trade dress or trademark, or for a misappropriation of trade secret, or is held to constitute infringement and the use of the Licensed Product is enjoined, without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (i) Replace or substitute functional equivalents for the Licensed Product;
 - (ii) Modify the Licensed Product so that it is no longer infringing;
 - (iii) Re-perform the Services in a non-infringing manner; or
 - (iv) obtain the rights necessary for the Licensor to continue performance under this Agreement or obtain the rights for the Commonwealth to continue the use of the Licensed Product.
- (e) If the use of any Licensed Product is enjoined and the Licensor is unable to provide any remedy set forth in subsection (d) above, the Licensor, upon return of the Licensed Product, shall refund to the Commonwealth:
 - (i) the fee paid for the infringing Licensed Product, less the amount for the period of usage of the Licensed Product; and
 - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.
- (f) The obligations of the Licensor under this section survive the termination of this Agreement.

- (g) Notwithstanding the above, the Licensor shall have no obligation under this section to the extent a Claim arises from:
 - (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 Product in other than the specified operating environment;
 - (v) the combination, operation, or use of the Licensed Products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the Licensed Products, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (vi) infringement of a non-Licensed Product alone;
 - (vii) the Commonwealth's use of any Licensed Product beyond the scope contemplated by the Agreement; or
 - (viii) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Licensor at no charge.

8. 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 to the Commonwealth for any damages, costs, fines, remedial measures incurred by the Commonwealth and shall indemnify the Commonwealth against any Third Party claims (in accordance with Section 5, Indemnification) if the Licensor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Licensed Product or the Commonwealth's or Third Party's software, data, systems or computer networks.

9. Limitation of Liability.

- (a) Except as otherwise provided in this Agreement, the Licensor's liability to the Commonwealth under this Agreement shall be limited to the greater of \$500,000 or the total dollar amount of purchase orders issued for Licensed Products and services covered by this Agreement during the twelve (12)-month period prior to the event giving rise to the damage claim. This limitation does not apply to damages:
- (i) for bodily injury;
 - (ii) for death;
 - (iii) for gross negligence and willful or unlawful misconduct;
 - (iv) to real property or tangible personal property for which the Licensor is legally liable;
 - (v) under Section 7, [Patent, Copyright, Trade Secret and Trademark Protection](#);
 - (vi) resulting from 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;
 - (vii) resulting from a breach of confidentiality;
 - (viii) for which the Licensor is responsible pursuant to any indemnification obligations it has under this Agreement; or
 - (ix) under Section 8, [Virus, Malicious, Mischievous or Destructive Programming](#).
- (b) Except with respect to those damages enumerated in subsection 9(a)(i) through (ix) above, the Licensor shall not be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement.

10. 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.

11. Termination.

- (a) The Licensor may not terminate for non-payment 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").

12. 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 Commonwealth Confidential Information or Commonwealth 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 [Criminal History Background Check \(pa.gov\)](#). 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 Confidential Information or Commonwealth 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, systems or Confidential Information, 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.

13. Confidentiality.

- (a) Definition. "Confidential Information:"
 - (i) For the Commonwealth: Information, whether oral or written or via computer disk or electronic media, to which the Licensor is given access, or which is made available by the Commonwealth, whether directly or through a third party, is defined as "Confidential Information." Confidential

Information shall include, without limitation, all technology, know-how, processes, software, databases, Trade Secrets (as defined by the Pennsylvania Uniform Trade Secret Act found at 12 Pa. Cons. Stats Secs. 5392 et. seq.), proprietary information, product and business requirements, and information about or from the Commonwealth's vendors or employees whether received before or after the Effective Date of this Agreement. Confidential Information shall also include information and documentation that 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 the Commonwealth is a party. Sensitive information, as define in Section 14 below, shall be a subset of Confidential Information of the Commonwealth, and shall be subject to additional protections as set forth in Section 14 below.

- (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 the disclosing party shall be held in confidence by the receiving party to the same extent and in at least the same manner as the receiving party protects its own confidential or proprietary information, using no less than commercially reasonable standards or higher or more stringent standards required by law, including those laws governing Sensitive Information, and those standard specified in this Agreement. The receiving party shall not disclose, publish, release, transfer or otherwise make available any Confidential Information of the disclosing party in any form to, or for the use or benefit of, any person or entity without the disclosing party's consent. Subject to the other provisions of this Agreement, receiving party shall be permitted to disclose relevant aspects of the disclosing party's Confidential Information to the receiving party's officers, agents, subcontractors and personnel and to the officers, agents, subcontractors and personnel of the receiving party's corporate affiliates or subsidiaries to the extent that such disclosure is reasonably necessary for the performance of the receiving party's duties and obligations under this Agreement; provided, however, that the receiving party shall take all reasonable measures to ensure that Confidential Information of the disclosing party is not disclosed or duplicated in violation of the provisions of this Agreement by such officers, agents, subcontractors and personnel and that the receiving party shall be responsible for any unauthorized disclosure of the Confidential Information by the receiving party's 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 for Sensitive Information (which shall be protected in all circumstances), and except to the extent provided otherwise by any applicable law, the obligations of this subsection (b) shall not apply with respect to information that:

- (i) is developed by the other party without violating the disclosing party's proprietary rights;
 - (ii) is or becomes publicly known,
 - (iii) is disclosed by the owner of such information to a third party free of any obligation of confidentiality;
 - (iv) is already known by the receiving 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 receiving 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; and
 - (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 receiving party shall give prompt notice to the non-disclosing party of such disclosure or order in a timeframe to allow the 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 that 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 receiving party must promptly return to the disclosing party all of the disclosing party's Confidential Information and Data (and all copies of this information) that is in the receiving party's possession or control, regardless of form.
- (g) Not confidential. Additionally, neither this Agreement nor any pricing information related to this Agreement, nor purchase orders issued pursuant to this Agreement, will be deemed confidential.

14. Sensitive Information.

- (a) "Sensitive Information" is a subcategory of Confidential Information of the Commonwealth and shall include, regardless of whether marked or identified by the Commonwealth as confidential:
- (i) Information related to the design or implementation of the Commonwealth's technology and security infrastructure and architecture,

including, but not limited to, Protected Critical Infrastructure Information (PCII) under the Cybersecurity Information Sharing Act (CISA) of 2015;

- (ii) Information identified as Sensitive Security Information, Protected Information or Privileged Information as defined under ITP-SEC19;
 - (iii) Passwords, encryption keys, and other cyber security control design information;
 - (iv) Consumer and citizen information;
 - (v) Employee information;
 - (vi) Information that is either nonpublic personal information or personally identifiable information, including, without limitation, names, addresses, telephone numbers, fax numbers, electronic mail addresses, web universal resource locators (URLs), Internet Protocol (IP) addresses, vehicle identifiers, account numbers, birthdates, social security numbers, individual likeness or images, fingerprint or biometric data, genetic information, demographic, information contained in, relating to or deriving from medical or personal health records, criminal justice information and records, information relating to drivers licenses or other identification cards, financial and transactional information, tax information and any other information that is deemed to be nonpublic or protected under federal and state law, regulation, order or standard including, but not limited to, the Criminal History Record Information Act, the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), Confidentiality of HIV-Related Information Act, the Omnibus Reconciliation Act of 1990, Real ID Act of 2005, Tax Reform Act of 1976 the Internal Revenue Code and IRS Publication 1075, the Affordable Care Act, federal and state notification laws, The Driver's Privacy Protection Act of 1994, Title V of the *Gramm-Leach-Bliley Act*, Section 628 of the *Fair Credit Reporting Act*, Section 216 of the Fair and Accurate Credit Transactions Act, the *Children's Online Privacy Protection Act*, and any implementing regulations, guidelines and Commonwealth policies adopted under any of these or other related laws; and
 - (vii) Payment Card Industry Information (PCI).
- (b) The Licensor understands that its level of access may allow or require it to view or access Sensitive Information and Confidential Information. The Licensor shall hold all Commonwealth Sensitive Information in the strictest of confidence and shall use all protective measures to protect the Sensitive Information as prescribed by law, regulation and/or Commonwealth policies and standards. In addition, the Licensor shall only permit staff located in the United States to access Sensitive

Information, Confidential Information and Commonwealth systems, data and services.

- (c) Sensitive Information and Confidential Information may be subject to and governed by specific state and federal laws, regulations and policies that must be followed. If applicable, prior to deployment of the Products or Services, the Licensor may be required to sign off on particular instructions, restrictions and limitations as dictated by the Commonwealth, including, but not limited to, as necessary, HIPAA Business Associate Agreements. The Commonwealth's use of any sign off sheet shall create specificity in the Licensor's obligations with respect to certain Confidential Information, and this Section and the instructions within the sign-off sheet shall not, in any way, diminish the obligations of the Licensor under this Agreement with respect to Confidential Information generally and Sensitive Information specifically. The sign-off sheet shall be signed by at least one authorized signatory for the Licensor and incorporated into this Agreement.

15. Data Breach or Loss.

- (a) Compliance with Laws. The Licensor 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) Control of Licensor. For Data and Confidential Information in the possession, custody, and control of the Licensor or its employees, agents, and/or subcontractors:
 - (i) The Licensor shall report unauthorized access, acquisition, use, release, loss, destruction or disclosure of Data or Confidential Information (“Incident”) to the Commonwealth within one (1) hour of when the Licensor knows of or reasonably suspects such Incident, and the Licensor must immediately take all reasonable steps to mitigate any potential harm or further access, acquisition, use, release, loss, destruction or disclosure of such Data or Confidential Information.
 - (ii) The Licensor 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, the Licensor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.
 - (iii) The Licensor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents, which shall be reimbursed upon invoice received from the Commonwealth.

- (iv) The Licensor shall indemnify the Commonwealth against any third party claims arising out of an Incident.
 - (c) **Security Breach.** Licensor agrees that it shall not inform any third party of any Security Breach without first obtaining the Commonwealth's prior, written consent, other than to inform a complainant that the matter has been forwarded to the Commonwealth's legal counsel. Further, the Licensor agrees that the Commonwealth shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others as required by law or regulation, or otherwise in the Commonwealth's discretion; and (ii) the contents of such notice, whether any type or remediation may be offered to affected persons, and the nature and extent of any such remediation.
 - (d) **Diligent Performance and Cooperation.** The Licensor shall diligently perform all of the duties required in this Section in cooperation with the Commonwealth.
 - (e) The requirements of this section are in addition to and not in lieu of other requirements of this Agreement and its Attachments and Exhibits having to do with data privacy and security, including but not limited to the requirement that the Licensor comply with Attachment 2, *Requirements for Non-Commonwealth Hosting Applications/Services*, and all applicable Commonwealth Information Technology Policies (ITPs), which can be found at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.
- 16. Hyperlink Content.** Any terms and conditions contained in any hyperlink content referenced in this Agreement ("Hyperlink Content") shall not apply to the extent such terms and conditions are expressly prohibited by applicable law. In addition, no financial obligation of the Commonwealth to Licensor shall be affected by any change to information contained in a hyperlink, nor will any additional material obligations be placed on the Commonwealth as a result of any such changes to Hyperlink Content. Terms and conditions in the Hyperlink Content that are materially inconsistent with the Agreement are rejected, unenforceable by the Licensor, and shall not become part of this Agreement unless such terms and conditions are to the benefit of the Commonwealth.
- 17. 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.
- 18. 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.

19. Taxes-Federal, State and Local; Interest.

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

20. Commonwealth Audit Responsibilities.

- (a) The Commonwealth shall maintain, and promptly provide to the Licensor upon request, accurate records regarding use of the Licensed Products by or for the Commonwealth. If the Commonwealth becomes aware of any unauthorized use of all or any part of the Licensed Products, the Commonwealth shall 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 shall 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 shall make an additional purchase of the Licensed Products through a reseller contract or another procurement document, which is equivalent to the additional users. This section sets out the sole software license audit right under this Agreement.

21. **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.
22. **Third-Party Software.** If a Licensed Product utilizes or includes third party software and other copyrighted material, any additional licensing terms, acknowledgements or disclaimers associated with the third-party software and materials shall not be applicable to the Commonwealth unless agreed to in writing. 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.
23. **Attorneys’ Fees.** The Commonwealth is not responsible for and shall not pay attorneys’ fees incurred by or paid by the Licensor.
24. **Controversies.**
- (a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Agreement or a purchase order, the Licensor, within **six (6) months** after the claim accrues, must file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Licensor asserts a controversy exists. If the Licensor fails to file a claim or files an untimely claim, the Licensor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <http://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Licensor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the contracting officer and the Licensor. The contracting officer shall send his/her written determination to the Licensor. If the contracting officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer’s determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Licensor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the

Licensors 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.

25. Insurance.

- (a) The Licensor shall maintain at its expense, and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:
 - (i) Workers' Compensation Insurance for all of the employees engaged in performing Services in accordance with the *Worker's Compensation Act*, the Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 101—2708.
 - (ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death (including bodily injury), sickness or disease, accidental death and damage to and property of others, including loss of use resulting from any property damage which may arise from the Licensor's operations under this Agreement, whether such operation be by the Licensor, its agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for or supplies provided to the Commonwealth.
 - (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.
 - (iv) Technology Products Liability/Professional Liability/Errors & Omissions Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
 - (v) Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.

- (vi) Information Security and Privacy Liability Insurance including Privacy Notification Costs (including coverage for Technology Professional Liability if not covered under Licensor's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Licensor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (b) Certificate of Insurance. Prior to providing Licensed Products under this Agreement, and annually thereafter, the Licensor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been received by the Commonwealth. Such cancellation or change shall not relieve the Licensor of its continuing obligation to maintain insurance coverage in accordance with this section.
- (c) Insurance coverage length. The Licensor shall maintain such insurance for the life of any applicable purchase order issued pursuant to the Agreement.

26. Signatures.

- (a) The parties agree that: (1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form; (2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; (3) if a law requires a record to be in writing, an electronic record satisfies the law; and (4) if law requires a signature, an electronic signature satisfies the law.
- (b) The fully executed Agreement may not contain ink signatures by the Commonwealth. If this Agreement does not contain ink signatures by the Commonwealth, the Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in this Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.

27. Independent Contractor. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

28. Travel. The Licensor shall not be allowed or paid travel or per diem expenses except as specifically set forth in this 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](#).

- 29. Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes and integrates all prior discussions, agreements and understandings pertaining thereto. No modification of this Agreement will be effective unless in writing and signed by both Parties. Other terms and conditions or additional terms and conditions included or referenced in the Licensor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Licensor and not binding on the Commonwealth. No modification of this Agreement will be effective unless in writing and signed by both Parties.
- 30. Assignment.** Either party may assign this Agreement in its entirety, but not in parts, on written notice to the other party to its parent company, affiliate or subsidiary, in connection with a merger, consolidation, or sale or other disposition of all or substantially all of its assets, or in the case of the Commonwealth to another Commonwealth entity. Any other assignment shall be null and void, except with the other party's prior written consent, which shall not be unreasonably withheld. This Agreement and all obligations shall be binding upon and inure to the benefit of the parties' successors and lawful assignees.
- 31. Notice.** Any written notice to either 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.
- 32. 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.
- 33. Waiver.** Failure to enforce any provision will not constitute a waiver.
- 34. Severability.** If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 35. 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.
- 36. Integration.** This Agreement, including all exhibits and referenced documents, and any Purchase Orders referencing this Agreement, constitutes the entire agreement between the

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

[Reminder of Page Intentionally Left Blank]

The parties to this Agreement have executed it, through their respective duly authorized representatives.

Witness:

Licensor:

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title

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

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF ADMINISTRATION**

Electronically signed per Section 26

Agency Head or Designee

APPROVED AS TO FORM AND LEGALITY:

Electronically signed per Section 26

Office of Chief Counsel

Electronically signed per Section 26

Office of General Counsel

Electronically signed per Section 26

Office of Attorney General

APPROVED:

Electronically signed per Section 26

Comptroller

ATTACHMENT 1

LIST OF LICENSED PRODUCTS

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

Licensed Products:

The Licensed Products include (list all titles covered by this Agreement):

ATTACHMENT 2
Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this Attachment is to define requirements for business or technology solutions and services procured by the Commonwealth that are hosted within the Licensor's or its subcontractor's managed 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 components of the hosted solution with commercially reasonable support and replace as necessary to maintain compliance.
5. The Licensor shall monitor, prevent and deter unauthorized system access. The Licensor shall use all commercially reasonable methods to confirm suspected breaches. 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 with 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.

Requirements for non-Commonwealth Hosted Applications Services

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- 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. System and Organization Controls (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; and
 - (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 Class "C" Classified Records or Closed Records, as defined in ITP-SEC019, or in compliance with mandates by federal or state audit requirements and/or policy.

The Licensor shall receive and review their subcontractor's relevant SOC reports, and the Licensor shall provide the Commonwealth with a Letter of Attestation that includes an analysis of their subcontractor's SOC report.

- 2.□ Unless otherwise agreed to in writing by the Commonwealth, the Licensor's SOC Report(s) 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.

3. 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.
4. At the request of the Commonwealth, the Licensor shall, and shall require its subcontractors, as applicable, complete a SOC for Cybersecurity audit 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 SOC for Cybersecurity report shall detail the controls used by the Licensor or its subcontractor setting forth the description and effectiveness of the Licensor's or subcontractor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

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

5. The Commonwealth may specify other or additional standards, certifications or audits it requires under any Purchase Orders or within an ITP.
6. The Licensor shall adhere to Statement on Standards for Attestation Engagements (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.
7. In the event an audit reveals any non-conformity to SSAE standards, the Licensor shall provide the Commonwealth, within **45 days** of the issuance of the SOC report, a documented corrective action plan that addresses each non-conformity that is identified within the SOC report, including any subcontractor's SOC report. The corrective action plan shall provide, in detail:

Requirements for non-Commonwealth Hosted Applications Services

- (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).
8. The Commonwealth may in its sole discretion agree, in writing, to accept alternative security report 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 or compensating controls on all servers and network components.
- 6. The Licensor shall limit access to Commonwealth-specific systems, data and services and provide access only to those staff, located within CONUS (any of the Continental United States and Hawaii) 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 Protection

- 1. The Licensor shall only host, store or backup Commonwealth Data in physical locations within CONUS.

- 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.
- 3.□ 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.
- 4.□ The Licensor shall be solely responsible for applicable data storage required.
- 5.□ The Licensor shall encrypt all Commonwealth data in transit and at rest. The Licensor shall comply with ITP-SEC031, and ITP-SEC019, encryption policies and minimum standards or stronger.
- 6.□ The Licensor shall take all commercially viable and applicable measures to protect the data availability including, but not limited to, real-time replication, traditional backup, and/or georedundant storage of Commonwealth data in accordance with industry best practices and encryption techniques.
- 7.□ The Licensor shall 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.
- 8.□ The Licensor shall utilize a secured backup solution to prevent loss of data. Stored backups must be kept in an all-hazards protective storage environment at the primary location and any additional locations where the data is being maintained. All back up data and media shall be encrypted.

E. Adherence to Policy

- 1.□ The 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.□ 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.

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 within **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.

Upon confirmation that Commonwealth data is in possession or control of the Commonwealth, the Licensor shall ensure all residual user account(s) are promptly deleted or reset in the solution. The Licensor shall notify the Commonwealth within **10 business days** that all user account(s) have been deleted or reset.

ATTACHMENT 2-A

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

ITP Number - Name	Policy Link
ITP_ACC001 - Accessibility Policy	https://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf
ITP_APP030 - Active Directory Architecture	https://www.oa.pa.gov/Policies/Documents/itp_app030.pdf
ITP_BUS007 - Enterprise Service Catalog	https://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf
ITP_BUS010 - Business Process Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf
ITP_BUS012 -Artificial Intelligence General Policy	https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf
ITP_INF000 - Enterprise Data and Information Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf
ITP_INF001 - Database Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf
ITP_INF006 - Commonwealth County Code Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf
ITP_INF009 - e-Discovery Technology Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf
ITP_INF010 - Business Intelligence Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf
ITP_INF011 - Reporting Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf
ITP_INF012 - Dashboard Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf
ITP_INFRM001 - The Life Cycle of Records: General Policy Statement	https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf
ITP_INFRM004 - Management of Web Records	https://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf
ITP_INFRM005 - System Design Review of Electronic Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf
ITP_INFRM006 - Electronic Document Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf
ITP_INT_B_1 - Electronic Commerce Formats and Standards	https://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf
ITP_INT_B_2 - Electronic Commerce Interface Guidelines	https://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf
ITP_INT006 - Business Engine Rules	https://www.oa.pa.gov/Policies/Documents/itp_int006.pdf
ITP_NET004 - Internet Protocol Address Standards	https://www.oa.pa.gov/Policies/Documents/itp_net004.pdf
ITP_NET005 - Commonwealth External and Internal Domain Name Services (DNS)	https://www.oa.pa.gov/Policies/Documents/itp_net005.pdf
ITP_PRV001 - Commonwealth of Pennsylvania Electronic Information Privacy Policy	https://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf
ITP_SEC000 - Information Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf
ITP_SEC001 - Enterprise Host Security Software Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec001.pdf
ITP_SEC002 - Internet Accessible Proxy Servers and Services	https://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf
ITP_SEC003 - Enterprise Security Auditing and Monitoring	https://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf
ITP_SEC004 - Enterprise Web Application Firewall	https://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf
ITP_SEC006 - Commonwealth of Pennsylvania Electronic Signature Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf
ITP_SEC007 - Minimum Standards for IDs, Passwords and Multi-Factor Authentication	https://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf
ITP_SEC008 - Enterprise E-mail Encryption	https://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf
ITP_SEC009 - Minimum Contractor Background Checks Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf
ITP_SEC010 - Virtual Private Network Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf

ITP Number - Name	Policy Link
ITP_SEC011 - Enterprise Policy and Software Standards for Agency Firewalls	https://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf
ITP_SEC012 - System Logon Banner and Screensaver Requirements	https://www.oa.pa.gov/Policies/Documents/itp_sec012.pdf
ITP_SEC015 - Data Cleansing	https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf
ITP_SEC016 - Information Security Officer Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec016.pdf
ITP_SEC017 - Copa Policy for Credit Card Use for e-Government	https://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf
ITP_SEC019 - Policy and Procedures for Protecting Commonwealth Electronic Data	https://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf
ITP_SEC021 - Security Information and Event Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf
ITP_SEC023 - Information Technology Security Assessment and Testing Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf
ITP_SEC024 - IT Security Incident Reporting Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf
ITP_SEC025 - Proper Use and Disclosure of Personally Identifiable Information (PII)	https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf
ITP_SEC029 - Physical Security Policy for IT Resources	https://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf
ITP_SEC031 - Encryption Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf
ITP_SEC032 - Enterprise Data Loss Prevention (DLP) Compliance Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf
ITP_SEC034- Enterprise Firewall Rule Set	https://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf
ITP_SEC035 - Mobile Device Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec035.pdf
ITP_SEC038 - Commonwealth Data Center Privileged User IAM Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf
ITP_SEC039 - Keystone Login and Identity Proofing	https://www.oa.pa.gov/Policies/Documents/itp_sec039.pdf
ITP_SEC040 - Commonwealth Cloud Computing Services Requirements	https://www.oa.pa.gov/Policies/Documents/itp_sec040.pdf
ITP_SFT000 - Software Development Life Cycle (SDLC) Policy	https://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf
ITP_SFT001 - Software Licensing	https://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf
ITP_SFT002 - Commonwealth of PA Website Standards	https://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf
ITP_SFT003 - Geospatial Enterprise Service Architecture	https://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf
ITP_SFT004 - Geospatial Information Systems (GIS)	https://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf
ITP_SFT005 - Managed File Transfer (MFT)	https://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf
ITP_SFT007 - Office Productivity Policy	https://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf
ITP_SFT008 - Enterprise Resource Planning (ERP) Management	https://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf
ITP_SFT009 - Application Development	https://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf
ITP_SYM003 - Off-Site Storage for Commonwealth Agencies	https://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf
ITP_SYM004 - Policy for Establishing Alternate Processing Sites for Commonwealth Agencies	https://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf
ITP_SYM006 - Commonwealth IT Resources Patching Policy	https://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf
ITP_SYM008 - Server Virtualization Policy	https://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf
ITP_SYM010 - Enterprise Services Maintenance Scheduling	https://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf

Attachment 3

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

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

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be used or disclosed only in accordance with this Agreement and the standards established by applicable laws and agency guidance; and

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI must be handled in accordance with this Agreement and the standards established by HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and other applicable laws and agency guidance.

NOW, THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions.

- (a) **“Business Associate”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.
- (b) **“Covered Entity”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.

- (c) “**HIPAA**” shall mean the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191.
- (d) “**HITECH Act**” shall mean the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).
- (e) “**Privacy Rule**” shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164, as amended, and related agency guidance.
- (f) “**Protected Health Information**” or “**PHI**” shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule (all as amended) and agency guidance.
- (g) “**Security Rule**” shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- (h) “**Unsecured PHI**” shall mean PHI that is not secured through the use of a technology or methodology as specified in HITECH Act regulations, as amended, and agency guidance or as otherwise defined in the HITECH Act, as amended.

2. Stated Purposes for Which Business Associate May Use or Disclose PHI. The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided by or obtained on behalf of Covered Entity for the following stated purposes, except as otherwise stated in this Agreement:

NO OTHER DISCLOSURES OF PHI OR OTHER INFORMATION ARE PERMITTED.

3. BUSINESS ASSOCIATE OBLIGATIONS.

- (a) **Limits on Use and Further Disclosure.** Business Associate shall not further use or disclose PHI provided by, or created or obtained on behalf of, Covered Entity

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

- (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](#).

4. OBLIGATIONS OF COVERED ENTITY.

- (a) **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with applicable law and agency guidance, as well as changes to such notice. Covered Entity will post on its website any material changes to its notice of privacy practices by the effective date of the material change.
- (b) **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) **Restrictions.** Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, as amended, and other applicable laws and applicable agency guidance, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) **Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, HITECH and

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

5. MISCELLANEOUS.

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

Attachment 4

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

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

Scope of Deployment (need not be entire agency):

Nature of Data implicated or potentially implicated:

Agency Policies to which Licensor. is subject (incorporated by reference):

Background checks (describe if necessary):

Additional requirements (describe with specificity):

Is Licensor. a Business Associate (yes or no)?

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

Agency Contact Person signature and Date: _____

[Licensor _____]
Authorized Signatory and Date: _____

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>

LEASE ACCEPTANCE CERTIFICATE

Purchase order number _____ dated _____ 20 _____ , by and between _____ (Contractor) and _____ (Commonwealth Agency).

ACCEPTANCE CERTIFICATE

The undersigned hereby certifies and represents to, and agrees with, the contractor or its assignee as follows:

1. A unit(s) of the equipment and/or financed item(s) identified on the attached schedule have/has been delivered to _____ and accepted on the date indicated below.
2. The Commonwealth agency had conducted such inspection and/or testing of the unit(s) of the equipment and/or financed item(s) as it deems necessary and appropriate and hereby acknowledges that it accepts the such unit(s) of equipment.
3. The Commonwealth agency is not in any event of default as defined in RFP 6100051157 and no event which, with notice or lapse of item, or both, would become an event of default, has occurred and is continuing at the date thereof.

Commonwealth Agency

Name

Title

Date

Enhanced Minimum Wage Provisions (July 2022)

- 1. Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$15.00 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.
- 2. Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate shall 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.
- 3. Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. 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
 - d. required to be paid a higher wage under any state or local policy or ordinance.
- 4. 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.
- 5. 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.
- 6. 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.
- 7. 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.

APPENDIX O -STATEMENT OF WORK TEMPLATE

CONTRACT #
Statement of Work

for

Commonwealth of PA – (Insert Agency Name)

PO Number: _____

AGENCY CONTACT:
AGENCY ADDRESS:

PHONE:
E-MAIL:

APPENDIX O -STATEMENT OF WORK TEMPLATE

A. Introduction

This Statement of Work ("SOW") is made ("Effective Date"), by and between the Commonwealth of PA – ("Agency"), with its principal office located at (Address) (hereinafter referred to as "Customer") and Insert full Supplier name, with its principal place of business at Insert Address (hereinafter referred to as "Supplier"). Supplier and Customer may also be referred individually as "Party" or collectively as "Parties."

Agency is responsible for promptly obtaining all required consents necessary for the Supplier to provide the services described in this Statement of Work. A required consent means any consent or approval required to give the Supplier access to Agency or third-party software, firmware, data or other products to enable Supplier and Supplier's approved subcontractors to perform the services set forth in this Statement of Work without infringing on the ownership or license rights (including patent and copyright) of the providers or owners of such products.

The terms and conditions of contract #XXXXXXXXXX shall govern this SOW.

B. Project Overview and Tasks

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

Supplier to insert exact description of work to be performed

Agency Requirements & Room Preparation:

Any requirements for the agency must be inserted here

C. Time Estimates / Delivery Schedule

The actual Project start date will depend on following:

(below are examples only, ensure dates are provided)

- 1.) Scheduled availability of a qualified systems engineer. 5/10/06
- 2.) Receipt of equipment. 5/20/06
- 3.) Completion necessary cabling, ISP connection, etc. by other vendors if applicable. 5/20/06
- 4.) Receipt of signed SOW from Customer prior to proposed start date. 5/5/06

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

D. Project Cost

Project Cost is: \$

All work associated with the Project is performed during Mondays through Fridays, between the hours of 8am and 5pm local time, excluding holidays.

(Ensure an exact costing breakdown is provided)

APPENDIX O -STATEMENT OF WORK TEMPLATE

E. SOW Acceptance

This SOW is acceptable. The Parties hereby acknowledge and confirm that the scope of work and related terms of this SOW have been read and are accepted and approved. If additional work is required that by its nature was not known or determined at the time this SOW was executed, a written change order describing the additional work and any related expenses is required prior to commencing in any work outside the scope of the original SOW.

Please sign and email to **Supplier** at **email address**

Supplier

Commonwealth of PA – “**Agency**”

Approved (date): _____

Print Name of Authorized Signatory

Authorized **Supplier** Signature

Authorized **Agency** Signature

Authorized **Supplier** Signature

Title

F. Project Completed and Accepted

The Project was completed in accordance with this SOW. The Parties hereby accept as completed all work indicated in this SOW. The Parties acknowledge at there is nothing that should prevent prompt payment in accordance with the terms indicated above.

Approved (date): _____

Print Name of Authorized Signatory

Authorized **Supplier** Signature

Authorized **Agency** Signature

Authorized **Supplier** Signature

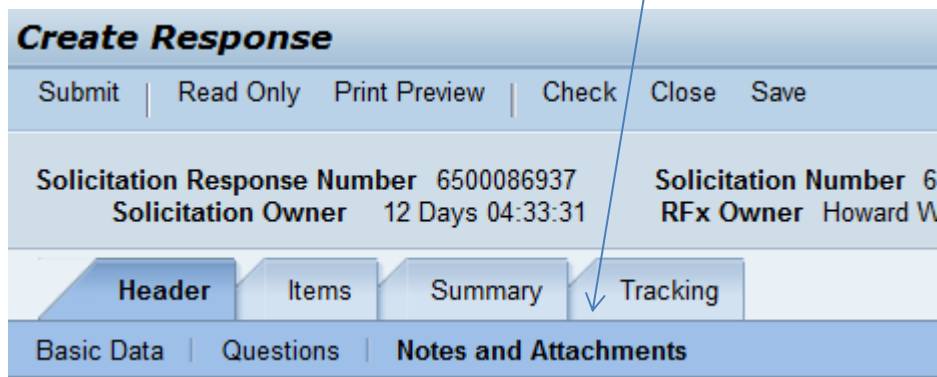
Title

PLEASE ATTACH HARD COPY OF PURCHASE ORDER
REFERENCING THIS SOW

ATTACHING DOCUMENTS TO A BID AT WWW.PASUPPLIERPORTAL.STATE.PA.US

After you have begun your response to a solicitation, answered the mandatory questions under the Header Tab and entered pricing under the Items tab (if applicable) and need to upload documents to your response, follow this step by step guide:

1. Under the Header Tab, Select Notes and Attachments:



2. Scroll down to see all the documents the Purchasing Agent/Commodity Specialist attached to the solicitation, **please review all documents.**

Example:

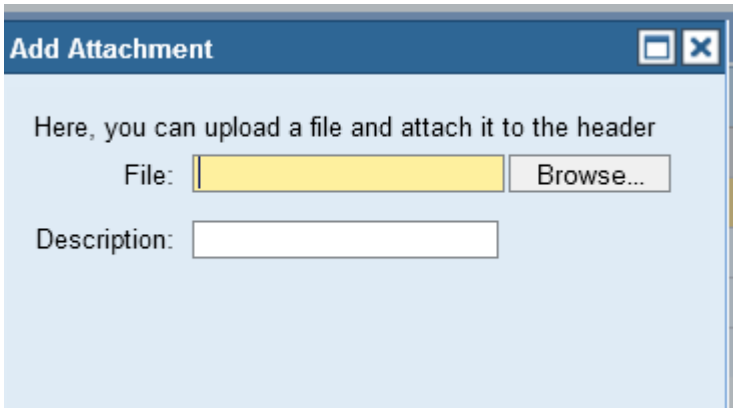
▼ Attachments									
Add Attachment Edit Description Versioning Delete									Filter Setting
Category	Description	File Name	Version	Processor	Checked Out	Type	Size (KB)	Changed by	Changed on
Standard Attachment	Reciprocal Limitations	Rec Limbs.doc	1		<input type="checkbox"/>	doc	72	P00046012	02/24/2015
Legal Document	Terms & Conditions	Document	1		<input type="checkbox"/>	pdf	83	SRMRFC	02/24/2015

3. Determine which documents must be completed and attached to your response.
4. After completing documents that must be included with your response, save them to your computer so you can easily find them later.
5. When responding to the solicitation and ready to submit your documents, go to Header Tab, Notes and Attachments and select ADD ATTACHMENT:

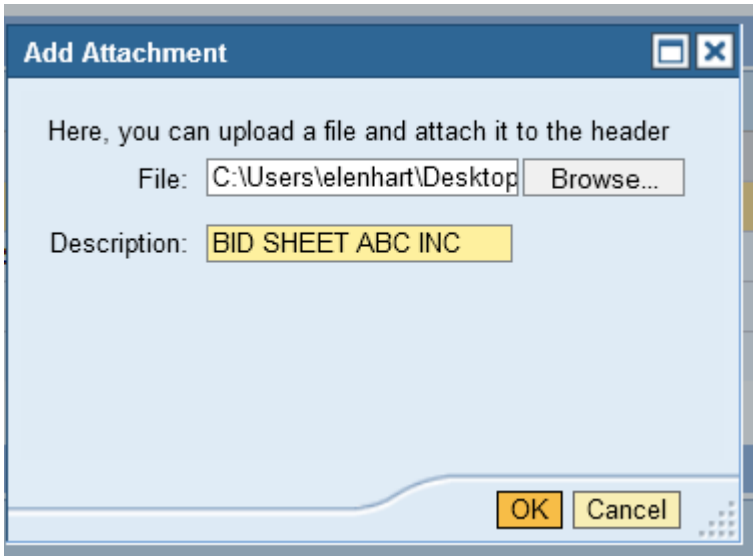
▼ Attachments									
Add Attachment Edit Description Versioning Delete									Filter Setting
Category	Description	File Name	Version	Processor	Checked Out	Type	Size (KB)	Changed by	Changed on
Standard Attachment	Reciprocal Limitations	Rec Limbs.doc	1		<input type="checkbox"/>	doc	72	P00046012	02/24/2015
Legal Document	Terms & Conditions	Document	1		<input type="checkbox"/>	pdf	83	SRMRFC	02/24/2015

If Add Attachment is not available, make sure you are in Edit Mode and not Display mode.

6. This pop up window will appear:



7. Using the Browse field, find your saved document.
Type in your description of the document and select OK.



8. When successfully attached, your document will appear as an attachment:

▼ Attachments	
Add Attachment Edit Description Versioning ▲ Delete	
Category	Description
Standard Attachment	BID SHEET ABC INC
Standard Attachment	Reciprocal Limitations
Legal Document	Terms & Conditions

9. Note: system will only allow one document to be attached at a time, repeat as necessary.

Under the Summary Tab, attachment(s) will also be listed.

Create Response			
Submit	Read Only	Print Preview	Check Close Save
Solicitation Response Number 6500086937	Solicitation Number 6100033022	Status In Process	Submission Deadline 03/1
Solicitation Owner 12 Days 04:22:39	RFX Owner Howard Walk	Response Version Number	0.00 USD Versi
Header	Items	Summary	Tracking
RFX Response Number: 6500086937			
Items with Response: 2 out of 2 items responded to			
Questions: 2 out of 2 questions answered (2 out of 2 mandatory)			
Notes: 3 notes added			
Attachments: 1 attachments added			
Conditions: No Conditions Added			
Total RFX Response Value: 0.00 USD			

10. When response is complete, select CHECK and SUBMIT to transmit your response (bid) to the purchasing agent.
11. If assistance is required, contact the help desk at 877-435-7363 option 2.



End User Procedures for the **E-Alerts System**

Includes

Accessing the E-Alerts System

Completing E-Alerts Registration

Updating E-mail Addresses

Changing Your E-Alerts Categories

Unsubscribing From E-Alerts

REVISED MAY 2015

Department of General Services eAlerts

Important Points

- E-Alerts is an e-mail based system that notifies suppliers of new bids issued by the Department of General Services. This program can be accessed through the PA Supplier Portal at www.pasupplierportal.state.pa.us (for registered suppliers) or through the [DGS Procurement website](#) (for unregistered suppliers).
- E-Alerts are notifications for solicitations issued only by the Department of General Services - Bureau of Procurement (DGS-BOP). DGS-BOP manages procurements for services in excess of \$250,000 and materials in excess of \$20,000.
- Bidding opportunities under \$10,000 are not posted online, and therefore do not fall under the E-Alerts system. Suppliers interested in bid opportunities through other departments or under \$10,000 must still search [PA E-Marketplace](#) or contact the agency's [purchasing agent](#).
- **We recommend that you still check [PA E-Marketplace](#) website on a daily basis.** These E-Alerts are not meant to be the only notification of bidding opportunities. The Department of General Services assumes no risk or liability for any delays, errors or failures in suppliers' receipt of these E-Alerts.

Accessing the E-Alerts System - Overview

The E-Alerts system can be accessed two separate ways.

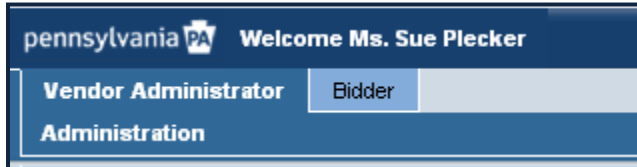
- Suppliers who have not registered at the PA Supplier Portal (www.pasupplierportal.state.pa.us) may access the E-Alerts system at the [DGS Procurement website](#).
NOTE: Please proceed to page 4 for instructions on how to access the E-Alerts system.
- Suppliers who have registered at the PA Supplier Portal may access the E-Alerts system after logging in to their account (www.pasupplierportal.state.pa.us).
NOTE: Please proceed to page 5 for instructions on how to access the E-Alerts system.

Department of General Services eAlerts

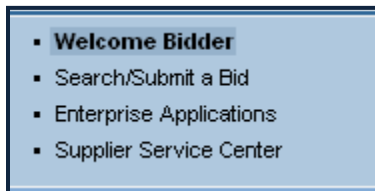
Accessing the E-Alerts System (for registered suppliers)

1. Go to www.pasupplierportal.state.pa.us and log in with your user name and password.

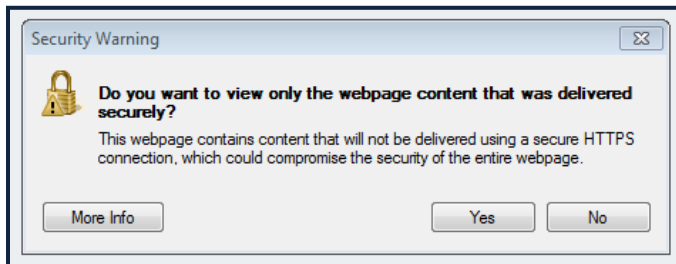
2. Select the "Bidder Tab".



3. Select "Enterprise Applications".



4. If a Security Information box pops up, select "No".



5. Select the DGS e-mail Notifications (eAlerts) link.



6. Please enter additional company contact information as requested below.

Department of General Services eAlerts

Department of General Services
E-Alert Subscription Service

Please enter the following information before subscribing.

Name	<input type="text"/>	Address	<input type="text"/>
Title	<input type="text"/>		<input type="text"/>
Phone	<input type="text"/>	City	<input type="text"/> State <input type="text"/> ZIP <input type="text"/>
		<input type="button" value="Submit"/>	

NOTE: [Placeholder text]


Department of General Services eAlerts

Completing E-Alerts Registration

1. Upon reaching the E-Alerts welcome page, please choose one of the following options below to select your categories (Materials or Services). **If you wish to select categories for both, you must open each link to select your categories.**



2. Select your categories by placing a checkmark in the appropriate boxes or by clicking on "Select All" and click submit. **If you do not select any categories, you will not receive any E-Alerts.**



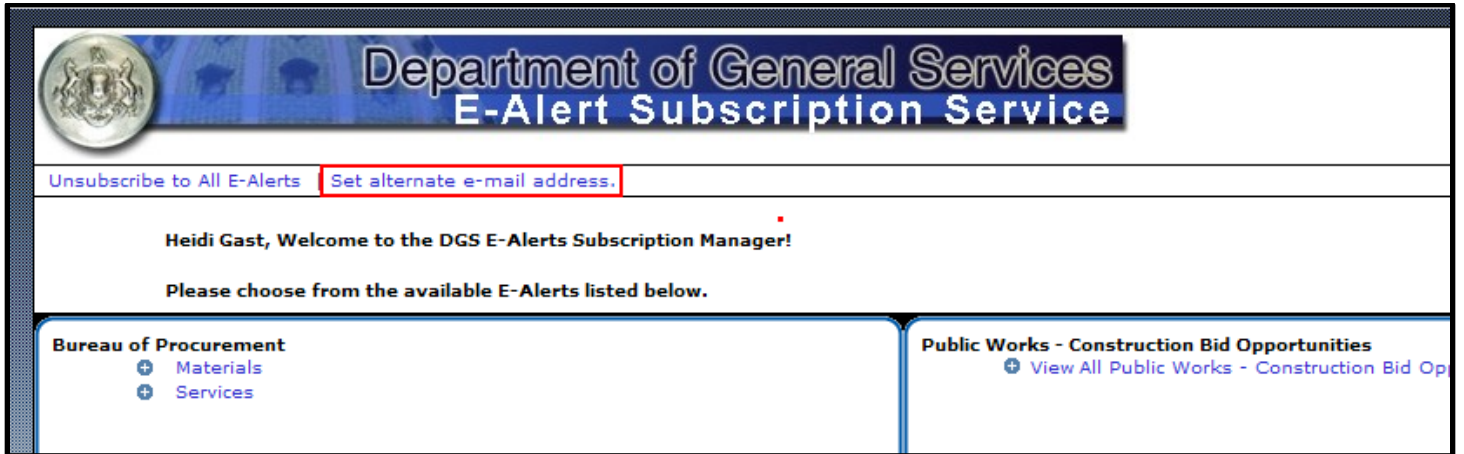
Department of General Services E-Alert Subscription Service

Bureau of Procurement - Services
Select the E-Alert topics you wish to receive emails about and then click the "Submit" button at the bottom of the page to save your selections.

70000000- Farming and Fishing and Forestry and Wildlife Contracting Services: This segment includes services associated with the production, management and protection of plants, soil and land resources as well as those related to the breeding of animals and services related to wildlife.	<input checked="" type="checkbox"/>
71000000- Mining and oil and gas services: Services provided to the mining and oil and gas industries.	<input checked="" type="checkbox"/>
72000000- Building and Construction and Maintenance Services: This segment includes services associated with the construction and maintenance of buildings, structures and roads. This segment also includes trades such as general contractors, electricians, plumbers, carpenters, painters, and roofing, landscaping, gardening and pest control.	<input checked="" type="checkbox"/>
73000000- Industrial Production and Manufacturing Services: This segment includes contracted services associated with industrial and manufacturing processes.	<input checked="" type="checkbox"/>
76000000- Industrial Cleaning Services: This segment includes services associated with wastewater management. This segment also includes industrial cleaning services such as building site cleanup or janitorial services.	<input checked="" type="checkbox"/>
77000000- Environmental Services: This segment includes services associated with environmental protection and management as well as environmental science and technology. This segment also includes pollution control.	<input checked="" type="checkbox"/>
78000000- Transportation and Storage and Mail Services: This segment includes services associated with cargo and personal transportation.	<input checked="" type="checkbox"/>
80000000- Management and Business Professionals and Administrative Services: This segment includes services associated with the management and administrative functions of an organization or business. This segment also includes business administration, human resources, marketing, management consulting, legal, and real estate services.	<input checked="" type="checkbox"/>
81000000- Engineering and Research and Technology Based Services: This segment includes services associated with professional engineering, information and computer technology, economic analysis, and manufacturing production planning and control as well as cartographic, weather forecasting, and other earth science services.	<input checked="" type="checkbox"/>

Department of General Services eAlerts

3. □ The e-mail address used upon Supplier Registration will automatically receive notifications. You may update your company's default e-mail by following the instructions on the next page.



The screenshot shows the 'Department of General Services E-Alert Subscription Service' interface. At the top left is the state seal. The main header reads 'Department of General Services E-Alert Subscription Service'. Below the header, there are two links: 'Unsubscribe to All E-Alerts' and 'Set alternate e-mail address.' (the latter is highlighted with a red box). A personalized welcome message follows: 'Heidi Gast, Welcome to the DGS E-Alerts Subscription Manager!' with a small red dot above the 'i' in 'Gast'. Below this, it says 'Please choose from the available E-Alerts listed below.' The interface is divided into two columns. The left column is titled 'Bureau of Procurement' and contains two expandable items: 'Materials' and 'Services', each with a plus sign icon. The right column is titled 'Public Works - Construction Bid Opportunities' and contains one expandable item: 'View All Public Works - Construction Bid Op', also with a plus sign icon.

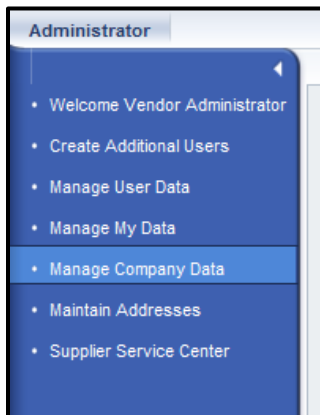
Updating Company E-mail Addresses (registered suppliers only)

To change your company e-mail address, you must go back into the PA Supplier Portal at www.pasupplierportal.state.pa.us.

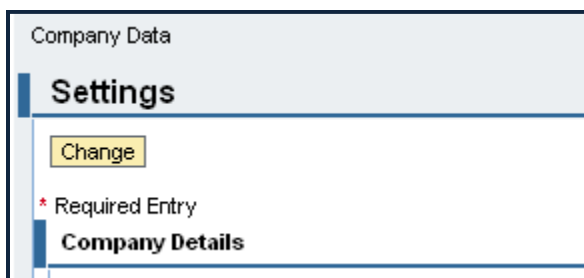
1. Log in using your PA Supplier Portal registration information.



2. Select the "Manage Company Data" tab.



3. Select the "Change" button.



Department of General Services eAlerts

4. □ Scroll down to the email address section. Click in the 1st box on the left and delete the listed e-mail address.

E-Mail Addresses		
	Standard Address *	E-Mail Address
<input type="checkbox"/>	<input checked="" type="radio"/>	splecker@state.pa.us
<input type="checkbox"/>	<input type="radio"/>	pchapman@state.pa.us
<input type="checkbox"/>	<input type="radio"/>	

5. □ Scroll back to top of page and click "Save".

Company Data

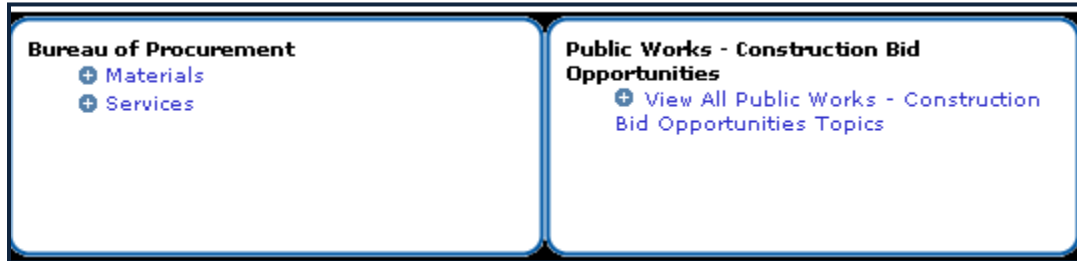
Settings

* Required Entry

Department of General Services eAlerts

Updating Your E-Alerts Categories

1. Return to the E-Alerts welcome page via www.pasupplierportal.state.pa.us (registered suppliers) or www.dgs.state.pa.us (unregistered suppliers).
2. Select the "Materials" or "Services" sections, seen below.



3. Select your categories by placing/removing a check mark on each one and click "Submit".

The screenshot shows the "Department of General Services E-Alert Subscription Service" interface. At the top left is the state seal. The title "Department of General Services E-Alert Subscription Service" is centered. Below the title, it says "Bureau of Procurement - Services" and "Select the E-Alert topics you wish to receive emails about and then click the 'Submit' button at the bottom of the page to save your selections." There are two buttons: "Select All" and "Clear All". Below these is a table of service categories, each with a description and a checkbox.

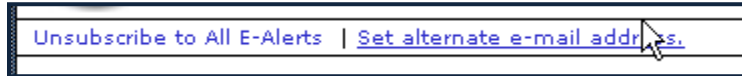
70000000- Farming and Fishing and Forestry and Wildlife Contracting Services: This segment includes services associated with the production, management and protection of plants, soil and land resources as well as those related to the breeding of animals and services related to wildlife.	<input checked="" type="checkbox"/>
71000000- Mining and oil and gas services: Services provided to the mining and oil and gas industries.	<input checked="" type="checkbox"/>
72000000- Building and Construction and Maintenance Services: This segment includes services associated with the construction and maintenance of buildings, structures and roads. This segment also includes trades such as general contractors, electricians, plumbers, carpenters, painters, and roofing, landscaping, gardening and pest control.	<input checked="" type="checkbox"/>
73000000- Industrial Production and Manufacturing Services: This segment includes contracted services associated with industrial and manufacturing processes.	<input checked="" type="checkbox"/>
76000000- Industrial Cleaning Services: This segment includes services associated with wastewater management. This segment also includes industrial cleaning services such as building site cleanup or janitorial services.	<input checked="" type="checkbox"/>
77000000- Environmental Services: This segment includes services associated with environmental protection and management as well as environmental science and technology. This segment also includes pollution control.	<input checked="" type="checkbox"/>
78000000- Transportation and Storage and Mail Services: This segment includes services associated with cargo and personal transportation.	<input checked="" type="checkbox"/>
80000000- Management and Business Professionals and Administrative Services: This segment includes services associated with the management and administrative functions of an organization or business. This segment also includes business administration, human resources, marketing, management consulting, legal, and real estate services.	<input checked="" type="checkbox"/>
81000000- Engineering and Research and Technology Based Services: This segment includes services associated with professional engineering, information and computer technology, economic analysis, and manufacturing production planning and control as well as cartographic, weather forecasting, and other earth science services.	<input checked="" type="checkbox"/>

Department of General Services eAlerts

Unsubscribing From E-Alerts

1. □ Return to the E-Alerts welcome page via www.pasupplierportal.state.pa.us (registered suppliers) or www.dgs.state.pa.us (unregistered suppliers).

2. □ Select "Unsubscribe to all E-Alerts".



2. □ Select the "Unsubscribe" button.



Locating and Responding to a Solicitation

Locating a Solicitation

1. Open your web browser and go to www.pasupplierportal.state.pa.us. Please note the important information regarding compatible browsers for the PA Supplier Portal website.
2. Select the **Log on** button at the top right of the page.
3. Enter the **User ID** and **Password** you created when you registered as a supplier and log on. If you are unable to log in, please call the Help Desk at (877) 435-7363 and selection Option #1.
4. Choose the **Bidder** tab to begin. If you do not see a Bidder tab, another person at your company with separate log-in credentials may have been assigned the Bidder role.

The screenshot shows the SAP Vendor Administrator interface. At the top, there are two tabs: 'Vendor Administrator' and 'Bidder'. The 'Bidder' tab is selected. Below the tabs, there is a navigation menu on the left with options like 'Welcome Vendor Administrator', 'Create Additional Users', 'Manage User Data', 'Manage My Data', 'Manage Company Data', 'Maintain Addresses', and 'Supplier Service Center'. The main content area displays 'WELCOME VENDOR ADMINISTRATOR' and lists administrative tasks: 'Create Additional Users', 'Manage Company Data', 'Manage Supplier Addresses', and 'Manage Bank Data & Product Categories'.

5. The **Bid Processing** screen will open and will display all Events currently open for responses. If the search fields seen below are not visible, select the **Search Criteria** button to display them.

The screenshot shows the Bid Processing screen. At the top, there are two tabs: 'Solicitations - All' and 'Auctions - All'. The 'Solicitations - All' tab is selected. Below the tabs, there is a 'Search Criteria' button. The search criteria form includes fields for 'Solicitation Number', 'Solicitation Status' (Current RFx), 'Creation Date', 'Deadline Date Flag', 'Status', 'Response Timeframe', and 'Smart Number'. There are 'Apply' and 'Clear' buttons. Below the search criteria, there is a 'View' dropdown set to 'Standard View' and buttons for 'Create Response', 'Display Event', 'Display Response', 'Print Preview', 'Refresh', and 'Export'. The main content area displays a table of events.

Event Number	Event Description	Event Type	Event Status	Start Date	End Date	Response Number	Response Status	Event Version
6100046613	Eggs October 2018 thru December 2018	Invitation For Bid	Published	08/29/2018	09/12/2018		No Bid Created	1
6100046612	Desserts 10/1/18-12/31/18	Invitation For Bid	Published	08/29/2018	09/12/2018		No Bid Created	1
6100046611	23 NE TNC LONG PRESERVE VPA HIP	Invitation For Bid	Published	08/28/2018	09/06/2018		No Bid Created	1
6100046604	Temporary Housekeeper Service	Invitation For Bid	Published	08/29/2018	09/19/2018		No Bid Created	1

6. To search for and respond to a specific Solicitation, enter the **Solicitation Number** in the appropriate field and select the **Apply** button. The Solicitation will appear below. *Please ensure all fields below "Solicitation Status" are blank, as extra information such as "Status" or "Response Timeframe" may cause the system to skip over the desired Solicitation.*

Event Number	Event Description	Event Type	Event Status	Start Date	End Date	Response Number	Response Status	Event Version
6100046601	PSP Mercer Station Snow Removal	Invitation For Bid	Published	08/28/2018	09/12/2018		No Bid Created	1

7. Click the blue **Event Number** link to open the Solicitation in a new window. *If your browser asks to allow pop-ups, select "Always Allow". If the window still does not open, ensure all pop-up blockers are disabled.*

Viewing and Responding to a Solicitation

Before creating a response, browse the **Header** and **Items** tabs for bid information.

1. If you have not downloaded any bid documents, they can be found under the **Header** tab in the **Notes and Attachments** section. A description for the Solicitation can be found at the **Tendering Text** link. *Any questions about the attachments or description can be directed to the Solicitation Owner.*

Category	Description	File Name	Version	Processor	Checked Out	Type	Size (KB)
Standard Attachment	Bid Specification	SNOW SPECIFICATIONS-2018.doc	1		<input type="checkbox"/>	doc	33
Standard Attachment	Proof of Visit Form	PROOF OF VISIT FORM- SR Mercer Station.doc	1		<input type="checkbox"/>	doc	27
Legal Document	Terms and Conditions	Document	1		<input type="checkbox"/>	pdf	83

2. Download all required attachments (if necessary) by clicking the linked **Description** of each one. *It is highly recommended that you download and complete all required documents before creating a response.*

3. To begin your response, select **Register** to register your company for any potential change notices, then select the **Create Response** button.

Display Solicitation :

Print Preview | | Close | **Register** | Export

Solicitation Number 6100046601 Description PSP Mercer Station Snow Removal Status Published Start Date 12:00:00 EST
Version Type Active Version

Display Solicitation :

Print Preview | | Close | **Create Response** | Export

✔ You are registered to the RFX and will be informed of changes

Solicitation Number 6100046601 Description PSP Mercer Station Snow Removal Status Published Start Date 12:00:00 EST
Version Type Active Version

4. A new **Create Response** window will open (see below). To complete your response, a maximum of three steps must be completed before submitting. These can be done in any order.

Create Response

Submit | Read Only | Print Preview | Check | Close | Save | Questions and Answers (0)

Solicitation Response Number 6500122510 Solicitation Number 6100046601 Status In Process Submission Deadline 09/12/2018 13:30:00 EST Opening Date 09/12/2018 13:35:00 EST
Response Version Number 0.00 USD Version Number Active Version RFX Version Number 1

Header Items Summary Tracking

Basic Data Questions Notes and Attachments

Event Parameters Currency: United States Dollar

Status and Statistics
Created On: 08/29/2018 11:42:25 EST
Created By: Mr. Randall Miller
Last Processed On: 08/29/2018 11:42:25 EST
Last Processed By: Mr. Randall Miller

5. Under the default **Header** tab, select **Questions** to answer two mandatory questions. Select "Yes" from the **Reply** drop-down menu on each one to indicate that you have read and understood the listed attachments.

Header Items Summary Tracking

Basic Data **Questions** Notes and Attachments

Question **Reply**

* Is the offer in accordance with the "Representations and Authorizations" listed in section "Submission – 001.1" of the attached solicitation document? Y: Yes ▾

* Has the submitter read, and does the submitter understand, the "Representations and Authorizations" listed in section "Submission – 001.1" of the attached solicitation document? | ▾

Y: Yes

6. Under the **Header** tab section **Notes and Attachments**, select the **Header Bidder's Remarks** link to add any additional notes or select the **Add Attachment** button (highlighted below) to add any additional documents.

Header Items Summary Tracking

Basic Data Questions **Notes and Attachments**

▼ Notes

Clear

Category	Description
Conditions of Participation	-Empty-
Bid Invitation/Auction Text	THIS BID IS SET ASIDE FOR SMALL BUSINESS. YOU MUST TO S...
Purchaser's Remarks	-Empty-
Header Bidder's Remarks	-Empty-

▼ Attachments

Add Attachment Edit Description Versioning Delete

Category	Description	File Name	Version	Processor	Checked Out	Type	Size (KB)
Standard Attachment	Bid Specification	SNOW SPECIFICATIONS-2018.doc	1		<input type="checkbox"/>	doc	33
Standard Attachment	Proof of Visit Form	PROOF OF VISIT FORM- SR Mercer Station.doc	1		<input type="checkbox"/>	doc	27
Legal Document	Terms and Conditions	Document	1		<input type="checkbox"/>	pdf	83

7. When the **Add Attachment window** pops up, select **Browse** to search your computer for a completed attachment, open the file, and click "OK" to add it to the list (see below). If you have more than one completed attachment to add, repeat this step as necessary. *If no attachments are required, skip this step.*

-Empty-	
THIS BID IS SET ASIDE FOR	
-Empty-	
-Empty-	

Add Attachment □ ×

Here, you can upload a file and attach it to the header

File: C:\Users\randmiller\De

Description:

File Name	Processor	Checked Out	Type
SNOW SPECIFICATIONS-2018.doc		<input type="checkbox"/>	doc
PROOF OF VISIT FORM- SR Mercer Stat		<input type="checkbox"/>	doc

8. Select the **Items** tab to enter line item prices. Prices should be entered in the **Price** column per unit of measure. Pressing Enter after each price will update the **Total Value** amount at the bottom right. If there are more than 10 total line items, scroll down to complete them all. *If a price sheet was completed as an attachment, skip this step.*

Header **Items** Summary Tracking

▼ Item Overview

Details Add New Copy Paste Delete Calculate Value Filter Expand All Collapse All Settings

Line Number	Description	Item Type	Product ID	Product Category	Product Category Description	Required Quantity	Unit	Price	Currency	Price Per	Delivery Date	Total Value	RFx / Response @	RFx / Response	Internal Item Number
	FY18 Snow Removal/Plowing	Material	72102901	SNOW REMOVAL SVCS		25,000	H	50.00	USD	1	On 11/01/2018	1,250.00	0/0	0/0	1
	FY18 Granular Deicing Material	Material	72102901	SNOW REMOVAL SVCS		25,000	TON	320.00	USD	1	On 11/01/2018	8,000.00	0/0	0/0	2
	FY18 Snow Removal/Sidewalks	Material	72102901	SNOW REMOVAL SVCS		25,000	H	40.00	USD	1	On 11/01/2018	1,000.00	0/0	0/0	3
	FY18 Deicing Material/Bags	Material	72102901	SNOW REMOVAL SVCS		15,000	EA	13.00	USD	1	On 11/01/2018	195.00	0/0	0/0	4
	FY18 Application Deicing Material	Material	72102901	SNOW REMOVAL SVCS		25,000	H	20.00	USD	1	On 11/01/2018	500.00	0/0	0/0	5
	FY19 Snow Removal/Plowing	Material	72102901	SNOW REMOVAL SVCS		25,000	H	65.00	USD	1	On 11/01/2019	1,625.00	0/0	0/0	6
	FY19 Granular Deicing Material	Material	72102901	SNOW REMOVAL SVCS		25,000	TON	300.00	USD	1	On 11/01/2019	7,500.00	0/0	0/0	7
	FY19 Snow Removal/Sidewalks	Material	72102901	SNOW REMOVAL SVCS		25,000	H	20.00	USD	1	On 11/01/2019	500.00	0/0	0/0	8
	FY19 Deicing Material/Bags	Material	72102901	SNOW REMOVAL SVCS		15,000	EA	15.00	USD	1	On 11/01/2019	225.00	0/0	0/0	9
	FY19 Application of Deicing Material	Material	72102901	SNOW REMOVAL SVCS		25,000	H	0.00	USD	1	On 11/01/2019	0.00	0/0	0/0	10

Total Value 20,795.00 USD

9. Before submitting your response, select the **Summary** tab (see below) to review. Ensure that all applicable steps have been completed: all **Items** are responded to (if necessary), all **Questions** are answered (mandatory), all **Notes and Attachments** are included (if necessary), and the **Total Response Value** is accurate.

Header	Items	Summary	Tracking
RFx Response Number:		6500122510	
Items with Response:		25 out of 25 items responded to	
Questions:		2 out of 2 questions answered (2 out of 2 mandatk	
Notes:		1 notes added	
Attachments:		No Attachments Added	
Conditions:		25 conditions added	
Total RFx Response Value:		60,220.00 USD	

10. When all information is correct, click the **Check** button at top. You will be prompted to submit the response.

Create Response

⚠ In order to complete your bid as a valid bid response, you must select the Submit button.

Solicitation Response Number	6500122510	Solicitation Number	6100046601	Status	Saved	Submission Deadline
Response Version Number	60,220.00 USD	Version Number	Active Version	RFx Version Number		1

11. Finally, click the **Submit** button. An approval message will appear below.

Create Response

Solicitation Response Number	6500122510	Solicitation Number	6100046601	Status	In Process	Submission Deadline
Response Version Number	60,220.00 USD	Version Number	C1	RFx Version Number		1

✔ RFx response 6500122510 submitted

12. If desired, a PDF copy of your bid can be viewed or saved by clicking the **Print Preview** button. Any attached documents will not be included. *You do not need to print or mail this file.*

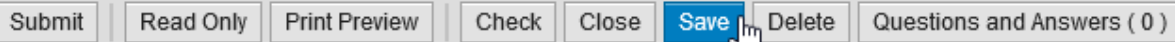
Create Response

13. **Close** and **Log Off** to exit the PA Supplier Portal.

Saving a Solicitation Response

1. To save a response, click the **Save** button at any time when working on it. *Please note that this will simply "freeze" the response until you are ready to resume work.*

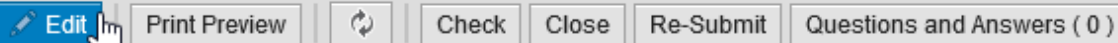
Create Response



Submit | Read Only | Print Preview | Check | Close | **Save** | Delete | Questions and Answers (0)

2. When ready to resume work, click the **Edit** button to pick up where you left off. *If you have logged off between sessions, open the Response Number link to find the Edit button.*

Create Response

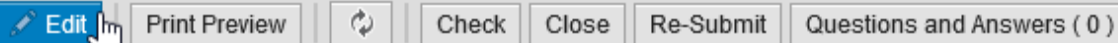


Edit | Print Preview | Refresh | Check | Close | Re-Submit | Questions and Answers (0)

Editing or Withdrawing a Response

1. To edit your response after submitting, open the **Response Number** link and click the **Edit** button. Make any desired changes and click the **Check** and **Submit** buttons as before. Your new response will overwrite the previous one. This can be done an unlimited number of times before the bid deadline.

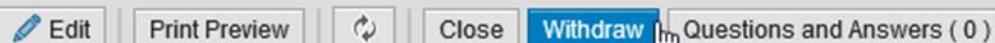
Create Response



Edit | Print Preview | Refresh | Check | Close | Re-Submit | Questions and Answers (0)

2. To withdraw a submitted bid response, open the **Response Number** link and click the **Withdraw** button any time after submitting. If desired, a withdrawn bid can still be re-submitted by clicking the **Re-Submit Bid** button on the same menu.

Create Response



Edit | Print Preview | Refresh | Close | **Withdraw** | Questions and Answers (0)

Any additional questions about locating or responding to PA Supplier Portal Solicitations can be directed to the Help Desk at (877) 435-7363, Option #2.

Questions and Answers

IFB # 6100056936 Microfilm Equipment, Supplies and Services

No.	Questions	Answers
□□□ □	Regarding Section H, what is considered "commercially available software"?	The commercially available software can be considered as software that's designed and developed for licensing or serves as a commercial purpose. The Microsoft products such as the Windows Operating System and MS Office are some of the most well-known examples of commercial software
□□□ □	If a piece of equipment we include in our response requires software to run, does the software manufacturer (or equipment manufacturer if they provide the software) need to have an agreement in place with the Commonwealth before we can submit our response?	No, the software manufacturer (or equipment manufacturer if they provide the software) does not require an agreement in place with the Commonwealth before a response is to be submitted.
□□□ □	If we include scanning software in our response that is not directly related to a specific manufacturer's piece of hardware, but works with it, does the software manufacturer need to have an agreement in place with the Commonwealth?	□□□

<p>4. <input type="checkbox"/></p>	<p>Under "Delivery of Equipment", it is difficult to commit to the 10-day delivery time particularly with today's supply chain issues. Even under normal supply chain circumstances, we typically cannot control the lead times of our manufacturers. If they have supply chain or manufacturing issues, we would be penalized when they exceed the 10-day requirement. Does the clause "This SLA may be waived by the ordering agency if an agreed upon date is established as part of the purchase order. If the agreed upon date is missed, a service credit request will be issued" give us the latitude to provide a delivery time with each quote based upon the manufacturers prevailing lead time when the order is placed?</p>	<p>The SLA delivery of equipment response times can be discussed with the specific agency.</p>
<p>5. <input type="checkbox"/></p>	<p>Under "Fix-Time", 12 business hours may be difficult to achieve if the equipment is a significant distance from the service provider. Can this be increased to 24 or 36 hours but with best efforts still in place to achieve 12 hours?</p>	<p>No. The 12 business hours under "Fix Time" shall remain as is.</p>



REGISTERING AS A SUPPLIER



**The Commonwealth of Pennsylvania
Department of General Services
Bureau of Procurement**

www.dgs.pa.gov

REGISTERING AS A SUPPLIER

If you have never done business with the Commonwealth of Pennsylvania, by following the four steps described in this guide, your company will become registered with us. These four steps are as follows:

STEP 1 - VENDOR IDENTIFICATION

The screenshot shows the PA Supplier Portal interface. At the top, there is a search bar and links for 'New Session' and 'Log in'. Below the search bar, the user is logged in as 'Welcome: PA Suppliers'. The main content area is titled 'Vendor Registration, Commonwealth of Pennsylvania.' and features a progress bar with four steps: 1. Vendor Identification (current step), 2. Vendor Details, 3. Submit Registration Form, and 4. Create User ID. Below the progress bar, there are two sections: 'Instructions' and 'Vendor Identification'. The 'Vendor Identification' section contains the following text: 'Employer Identification Number: [input field] OR Social Security Number: [input field]'. A 'Next' button is located below the input fields.

- A. Begin by going to www.pasupplierportal.state.pa.us.
- B. Select Supplier Registration from the left sidebar menu.
- C. Enter your Employer Identification Number (EIN) or your Social Security Number (SSN), then select the Next button.

STEP 2 - VENDOR DETAILS

Vendor Registration, Commonwealth of Pennsylvania.



Instructions

Complete the registration form below and select the **Next** button. Please do not use Parentheses to separate the area code within the telephone or fax numbers. Enter entire number as a string of 10 numbers or use dashes to separate the groups of numbers. Important: Fields with a * indicate that an entry is required.

Vendor Identification

Employer Identification Number (EIN): Social Security Number (SSN):

Address Data

Disregarded Entity: Yes No

* Legal Name:

Name of the Company (if different than Legal Name):

* Name of Person Creating Registration:

* Business Type:

This text will appear on the W-9 Form

Exempt payee code (if any):

Exemption from FATCA reporting code (if any):

* E-Mail Address:

* Telephone:

Extension:

Fax:

Extension:

Street Number and Name: If PO Box is used then Street Number and Name cannot be used

Street 2 (apt. or suite no., room no., floor no. etc.):

* City:

* County:

* State:

* Zip:

* Country:

PO BOX:

If Street Number and Name are used then PO Box cannot be used

PO Box Country:

Which Product Categories can you Deliver?

At least one product category must be selected

* Select the language in which you want to send the questionnaires:

BUILDING & CONSTRUCT MATERIAL/SERVICES

Data Privacy Statement

Data Privacy Statement Terms must be accepted before being able to move to the next page

DISCLAIMER: Registering as a Commonwealth SRM vendor does not guarantee that your business will be awarded any contract or purchase order to provide supplies to or perform services for the Commonwealth of Pennsylvania. Further, registering does not guarantee that your business or organization will receive any financial assistance including state or federal grant monies from the Commonwealth of Pennsylvania. Registering as a Commonwealth SRM vendor should not be construed as applying for any necessary license to deliver supplies or perform services in a regulated industry in Pennsylvania. Your business would need to seek such a license from the appropriate Commonwealth Agency.

DATA PRIVACY: Information provided through the PA Vendor Portal will be used in the purchasing and accounting activities of the Commonwealth and will not be limited in its use to one Commonwealth agency. Information is retained in accordance with existing Commonwealth policy and laws, including the Pennsylvania Right to Know Law, 65 P.S. Section 66.1 et seq.

TERMS: By submitting information through the PA Supplier Portal, you are agreeing on behalf of the person or entity identified to one (1) default remit to address and one (1) Automatic Clearing House (ACH) bank account.

CERTIFICATION: By submitting information through the PA Vendor Portal, you certify that: (1) you are authorized to submit the information for, or on behalf of, the person or entity identified; and, (2) all of the information is true and correct to the best of your knowledge, information, and belief. Any false statements made by you on or in the PA Vendor Portal are subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Yes, I have read the data privacy statement and accept the terms.

A. Complete the following fields in the Address Data section:

- **Legal Name:** The primary name by which your company (OR the individual's name if registering with a social security number) is currently listed with the IRS.

- **Name of the Company:** Complete this field if the name of your company is different than the legal name listed above. Note clearly if this is a DBA (doing business as), a Disregarded Entity, etc.

- **Name of the Person Creating Registration**
- **Business Type:** Select the legal description of your business.
- **Exempt payee code or Exemption from FATCA reporting code** (if any)
- E-Mail Address:** Enter a valid e-mail address for the person who will set up the Administrative User account for your company.
- **Telephone and Fax:** These fields are each 10 digits and may
 not contain any dashes.
- **Street:** Enter your company street address. If you use a PO
 Box, please enter your PO Box in the “PO Box” field further down.
 The system will not accept both fields being completed.
- City, State, and Country:** Where your company is located.
- **ZIP Code:** Enter your state and entire nine-digit ZIP+4 code.
 The ZIP+4 can be found at www.USPS.com.
- **PO Box:** Enter your company’s PO Box. If none exists, please
 enter your street address in the “Street” field. *The system will not accept both fields being completed.*

B. Complete the Product Categories section by choosing *Building & Construct and/or Materials/Services* for your company type.

- Below, carefully read the **Disclaimer, Data Privacy, Terms** and
 Certification Notices, and check the box stating that you
 accept the terms and conditions.
- Look over the responses carefully.
- Click the “Next” box once.

C. Carefully review the information on the W9 form displayed on the next page. If the information is correct, select the checkbox to confirm your electronic signature on the form and then select the “Submit W9” button to proceed to the confirmation screen. If the information is not correct, select the “Back” button to revise it.

D. Upon submission, an e-mail acknowledgement will be sent that verifies your company information has been successfully received.

After your information has been submitted, check the specified e-mail account for a message from **SRMSVC@pa.gov**. This e-mail should arrive within one business day. *If you do not receive the e-mail within this timeframe, contact the **Help Desk** at (877) 435-7363 and select **Option #1** from the menu.*

A. When you receive your e-mail, read it carefully.

The link contained in this e-mail can only be used once. This e-mail can not be forwarded, copied or pasted, or the link will not work.

B. Follow the link within the e-mail and complete the following fields:

- **User Name:** Create a user name of your choice.
- **Password:** Create a temporary password that must have at least 7 characters (including at least one upper case letter, one lower case letter, one number and one special character). Special characters are the symbols created by holding the SHIFT key and typing any number from 0-9, such as \$, #, @, or *. *This password will need to be changed after the Administrative User is created and may not be re-used. It also cannot contain elements of the User Name.*
- **Confirm Password:** Re-enter the temporary password.
- **Salutation:** Select an option from the drop-down menu.
- **First Name / Last Name:** Enter the administrator's first / last name.
- **E-Mail Address:** Enter a valid e-mail address.
- **Country:** Select from the drop-down menu, if necessary.
- **Language:** Select from the drop-down menu, if necessary.
- **Telephone and Fax:** These fields are each 10 digits and may not contain any dashes.
- **Item and Department:** Use these two fields to help identify additional personnel and items.
- **Date Format:** Select your preferred date format from the drop-down menu.
- **Decimal Format:** Allow the default option to remain.
- **Time Zone:** Select your region's official time zone.
- **Registration ID:** PLEASE DO NOT ENTER OR CHANGE ANYTHING IN THIS FIELD. It contains a default from your encrypted e-mail. *If this field is blank, please call the Help Desk at (877) 435-7363 and select Option #1 from the menu.*

Review your selections to ensure everything is correct. Select the checkbox to confirm that you have read the statements and accept the terms.

C. Select the Create button located below the checkbox. This will complete the "Create Administrative User" process.

Upon submission, a confirmation message displays and states that the User and Password were successfully created. *This message will also contain your newly-assigned Vendor Number and a link to redirect you back to the PA Supplier Portal login page.*

pennsylvania Welcome PA Suppliers Help | Log On

SUPPLIER LOGON

Supplier
Supplier Registration

Detailed Navigation

- PA Supplier Portal Home
- New Supplier Registration
- Existing Supplier Registration
- Supplier Service Center

PLEASE WRITE DOWN OR PRINT THE FOLLOWING INFORMATION:

- * Your User Name
- * Your Temporary Password
- * Vendor Number 0000

THIS INFORMATION WILL BE NEEDED IN PHASE 3.

FIRST, you should Log In to the Supplier Portal at <http://www.pasupplierportal.state.pa.us>, to change your Temporary Password to a New Password.

NEXT, Log Out of the Supplier Portal and wait up to 20 minutes for the system to recognize your Administrative User information.

Once the system has recognized your Administrative User information, you may Log Back In to the PA Supplier Portal to Update your Company Data, Add Bank Data, Create Additional Users and Respond to Solicitations.

PHASE 2 IS COMPLETE.

Select "SUPPLIER LOGON" located in the upper left corner of the screen to begin PHASE 3.

STEP 3 - SUBMIT REGISTRATION LOG IN / MANAGE BIDDER

Welcome Pennsylvania Suppliers! If you are using a screen reader and would like to request the enhanced accessibility option for this website, please call the toll free number 877-435-7363, option 1, between 8:00 AM and 4:30 PM, Monday thru Friday.

The PA Supplier Portal is a secure site. The PA Supplier Portal certified browsers are Internet Explorer 8.0 through 11.0. Other products may work; however, full functionality cannot be assured.

User *

Password *

Logon Problems? [Reset Password](#) Forgot your User ID? Contact the Payable Service Call Center at 877-435-7363, option 1
Or email PA-PSC-SRMPORTAL@pa.gov

- Follow the Supplier Portal link (www.pasupplierportal.state.pa.us) and log in using your User Name and temporary password.
- When prompted, change your temporary password to a new one. Your User Name will default in the User ID field. Please complete the following three fields to complete the process:

- **Old Password:** Type in your temporary password.
- **New Password:** Enter a new password, making sure to follow the previously outlined requirements (see Phase #2, section B).
- **Confirm Password:** Re enter your new password.

Select the **Change** button to complete the password change. *You will now be logged in as the Vendor Administrator and taken to the welcome screen.*

C. Once your password is changed, you will need to click “Log Out” in the upper right-hand corner and wait at least 30 minutes for the system to refresh your registration data before attempting to log in again or change any information.

An e-mail titled “W9 Form for Vendor” will be sent to the e-mail address submitted in Phase 1 requesting a signed and dated IRS W9 form. Please be sure to write the vendor number at the top of the W9 prior to returning it via fax or include the vendor number somewhere within the returning email.

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Once these three steps are completed, you’ll be officially registered with us. Congratulations on becoming a new supplier, and welcome to the Commonwealth of Pennsylvania!

Now that you are registered with the PA Supplier Portal, please enter and update your Company Data and Administrative Information including the default remit-to address for receipt of payments as applicable. Please click <http://www.pasupplierportal.state.pa.us> to get started. The following actions are also recommended:

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- **Enter Bank Data**
This section can be found under the **Manage Bank Data & Product Categories** tab on the left navigation pane, and will enable your company to receive payments via ACH.
- **Register for E-Alerts**
This valuable feature will enable you to “subscribe” to all upcoming solicitations applicable to your company. For more information on E Alerts or to register online, please visit <http://www.dgsweb.state.pa.us/EAlerts/>.

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**For more information about Registering
as a Supplier, please contact:**

**Customer Support Center
(877) 435-7363, Option #1**

**Department of General Services
Bureau of Procurement
555 Walnut Street, 6th Floor
Harrisburg, PA 17101**

www.dgs.state.pa.us/procurement

**Janice Pistor
*Chief Procurement Officer***

**Kenneth Hess
*Deputy Secretary, Procurement***

**Curtis Topper
*Secretary, Department of General Services***

**Tom Wolf
*Governor***

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