

PA Supplier ID Number: _____

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



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

RECITALS:

WHEREAS, this Agreement sets forth the Commonwealth’s software/services license requirements; and,

WHEREAS, Licensor’s [insert title of Licensor’s agreement] is attached hereto as Exhibit A, [and...(insert additional exhibits (including full name) that are also to be made part of this Agreement, if any)] and made a material part hereof by this reference; and

WHEREAS, this document, its Attachments, and Exhibit [insert exhibits that are to be made part of this Agreement] constitutes the Agreement between the Licensor and the Commonwealth.

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

1. **Recitals.** The above recitals are hereby incorporated as a material part of these Software License Requirements.
2. **Order of Precedence.** The terms and conditions of this Agreement supplement, and to the extent a conflict exists, supersede and take precedence over the terms and conditions of the attached [insert exhibits that are to be made part of this Agreement]. The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any quote, purchase order, terms of any shrink-wrap agreement included with the Licensed Products, terms of any click through agreement included with the Licensed Products or any other terms purported to apply to the Licensed Products. The products specified in

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

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. The Commonwealth does not have the authority to and shall not indemnify any entity. The Commonwealth agrees to pay for any loss, liability or expense, which arises out of or relates to the Commonwealth’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Commonwealth is established by a court of law or where settlement has been agreed to

by the Commonwealth. This provision shall not be construed to limit the Commonwealth's rights, claims or defenses that arise as a matter of law or pursuant to any other provision of this Agreement. No provision in this Agreement shall be construed to limit the sovereign immunity of the Commonwealth.

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, in the Licensor's opinion, any Licensed Product furnished hereunder is likely to or do become subject to a claim of infringement of a United States patent, copyright, trade dress or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense:
 - (i) substitute functional equivalents for the alleged infringing Licensed Product, or
 - (ii) obtain the rights for the Commonwealth to continue the use of such Licensed Product.
- (e) If any of the Licensed Products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either:
 - (i) procure the right to continue use of such infringing Licensed Products;
 - (ii) replace them with non-infringing items; or
 - (iii) modify them so that they are no longer infringing.
- (f) If the use of any Licensed Product is enjoined and the Licensor is unable to do any of the preceding set forth in subsection (e) above, the Licensor, upon return of the Licensed Product, agrees to refund to the Commonwealth:
 - (i) the license fee paid for the infringing Licensed Product, less the amount for the period of usage of the Licensed Product; and
 - (ii) the pro-rated portion of any maintenance fees representing the time remaining in any period of services for which payment was made.

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

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

9. Limitation of Liability.

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

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 IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.
- (b) Before the Commonwealth will permit an employee access to the Commonwealth's facilities, the Licensor must provide written confirmation to the office designated by the applicable Commonwealth Agency that the background check has been conducted. If, at any time, it is discovered that an employee has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, the Licensor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems, unless the Commonwealth Agency consents, in writing, prior to the access being provided. The Commonwealth Agency may withhold its consent at its sole discretion. Failure of the Licensor to comply with the terms of this subsection may result in the default of the Licensor under its Agreement with the Commonwealth.
- (c) The Commonwealth specifically reserves the right to conduct background checks over and above that described herein.
- (d) Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances.

Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the applicable Commonwealth Agency and the Department of General Services set forth in Enclosure 3 of [Commonwealth Management Directive 625.10 Amended](#), *Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings*. The requirements, policy and procedures include a processing fee payable by the Licensor for contracted personnel photo identification or access badges.

13. Confidentiality.

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

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

15. Agency-specific Sensitive and Confidential Commonwealth Data.

- (a) The Licensor understands that its level of access may allow it to view or access highly sensitive and confidential Commonwealth and third party data. This data is subject to various state and federal laws and policies that vary from Commonwealth Agency to Commonwealth Agency, and from program to program within a Commonwealth Agency. If applicable, prior to the issuance of a purchase order or other procurement document for a Licensed Product or the deployment of a Licensed Product on any Commonwealth Agency's facilities, the Licensor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth Agency, including but not limited to, as necessary, Business Associate Agreements as required by the *Health Insurance Portability and Accountability Act* (HIPAA), as amended, a sample of which is attached hereto as Attachment 3. This sign-off document (a sample of which is attached hereto as Attachment 4), will include a description of the nature of the data which may be implicated based on the nature of the Licensor's access, and will incorporate the HIPAA Business Associate Agreement if it is applicable.
- (b) The Licensor hereby certifies and warrants that, after being informed by the Commonwealth Agency of the nature of the data which may be implicated and prior to the installation of the Licensed Products), the Licensor is and shall remain compliant with all applicable state and federal law and policy regarding the data's protection, and with the requirements memorialized in every completed and signed Sign-Off document. Every sign-off document completed by the Commonwealth Agency and signed by at least one signatory of the Licensor authorized to bind the Licensor is valid and is hereby integrated and incorporated by reference into this Agreement.
- (c) This section does not require a Commonwealth Agency to exhaustively list the law to which implicated data is subject; the Commonwealth Agency is obligated only to list the nature of the data implicated by the Licensor's access, to refer the

Licensor to its privacy and security policies, and to specify requirements that are not otherwise inherent in compliance with law and policy.

- (d) The requirements of this section are in addition to and not in lieu of other requirements of this Agreement and its Attachments and Exhibits having to do with data privacy and security, including but not limited to the requirement that the Licensor comply with Attachment 2, *Requirements for Non-Commonwealth Hosting Applications/Services*, and all applicable Commonwealth Information Technology Policies (ITPs), which can be found at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.
 - (e) The Licensor shall conduct additional background checks, in addition to those required in section, as may be required by a Commonwealth Agency in its sign-off documents. The Licensor shall educate and hold its agents, employees, contractors and subcontractors to standards at least as stringent as those contained in this Agreement. The Licensor shall provide information regarding its agents, employees, contractors and subcontractors to the Commonwealth upon request.
- 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; 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).

19. Commonwealth Audit Responsibilities.

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

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 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.

24. 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 agrees to maintain such insurance for the life of any applicable purchase order issued pursuant to the Agreement.

- 25. Federal Requirements.** If applicable, in addition to the requirements set forth in Section 15 of this Agreement, the Licensor must receive and sign off on particular federal requirements that a Commonwealth Agency may be required to include when utilizing federal funds to procure the Licensed Products. This sign-off document (a sample of which is attached hereto as Attachment 4), in addition to any applicable requirements of Section 15 of this Agreement, will include a description of the required federal provisions, along with the applicable forms necessary for the Licensor execute, as necessary. The sign-off document, along with attachments, must be attached to the purchase order.
- 26. Signatures.** The fully executed Agreement may not contain ink signatures by the Commonwealth. In that event, the Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- 27. 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](#).
- 28. 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.
- 29. Survival.** The termination or expiration of this Agreement will not affect any provisions of this Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, indemnification and privacy.

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

Witness:

Licensor:

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title

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

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR’S OFFICE OF ADMINISTRATION

See Section 26
Agency Head or Designee

APPROVED AS TO FORM AND LEGALITY:

See Section 26
Office of Chief Counsel

See Section 26
Office of General Counsel

See Section 26
Office of Attorney General

APPROVED:

See 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 technology solutions procured by the Commonwealth that are not hosted within Commonwealth infrastructure.

A. Hosting Requirements

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

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

9. The Licensor shall examine applicable system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. The Licensor shall completely test and apply patches for all third-party software products in the server environment before release.
11. The Licensor shall provide the Commonwealth with its annual American Institute of Certified Public Accountants (AICPA) Attestation Standard (AT) Sec. 101 Service Organization Control (“SOC”) 2, Type 2 certification (AT Sec. 101 SOC 2, Type 2), or an equivalent certification approved by the Commonwealth. Equivalent certifications include, but are not limited to: International Organization of Standards (ISO) 2700x certification; certification under the [Federal Information Security Management Act](#) (FISMA); and AT Sec. 101 SOC 3 (SysTrust/WebTrust) certification. Annually, Licensor shall provide an AT Sec. 101 SOC 2, Type 2 audit report, or its equivalent, to the Commonwealth upon request.

B. Security Requirements

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

C. **Data Storage**

1. The Licensor shall use industry best practices to update and patch all applicable systems and third-party software security configurations to reduce security risk. The Licensor shall protect their operational systems with applicable anti-virus, host intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.
2. The Licensor shall be solely responsible for applicable data storage required.
3. The Licensor shall take all commercially viable and applicable measures to protect the data including, but not limited to, the backup of the servers on a daily basis in accordance with industry best practices and encryption techniques.
4. The Licensor agrees to have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, to protect that data particularly in instances where such critical or sensitive data may be stored on a Licensor-controlled or Licensor-owned electronic device.
5. The Licensor shall utilize a secured backup solution to prevent loss of data, back up all data every day and store backup media. Stored backup media must be kept in an all-hazards protective storage safe at the worksite and when taken offsite. All back up data and media shall be encrypted.

D. **Adherence to Policy**

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

E. **Closeout**

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

possession or control. The Commonwealth's data shall be returned in a format agreed to by the Commonwealth.

ATTACHMENT 2-A

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

ITP Number - Name	Policy Link
ITP_ACC001- Accessibility Policy	http://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf
ITP_APP030- Active Directory Architecture	http://www.oa.pa.gov/Policies/Documents/itp_app030.pdf
ITP_BUS007- Enterprise Service Catalog	http://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf
ITP_BUS010-Business Process Management Policy	http://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf
ITP_BUS011-Commonwealth Cloud Computing Services Requirements	https://www.oa.pa.gov/Policies/Documents/itp_bus011.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	http://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf
ITP_INF001- Database Management Systems	http://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf
ITP_INF006- Commonwealth County Code Standard	http://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf
ITP_INF009- e-Discovery Technology Standard	http://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf
ITP_INF010- Business Intelligence Policy	http://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf
ITP_INF011- Reporting Policy	http://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf
ITP_INF012- Dashboard Policy	http://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf
ITP_INFRM001- The Life Cycle of Records: General Policy Statement	http://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf
ITP_INFRM004- Management of Web Records	http://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf
ITP_INFRM005- System Design Review of Electronic Systems	http://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf
ITP_INFRM006- Electronic Document Management Systems	http://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf
ITP_INT_B_1- Electronic Commerce Formats and Standards	http://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf
ITP_INT_B_2- Electronic Commerce Interface Guidelines	http://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf
ITP_INT006- Business Engine Rules	http://www.oa.pa.gov/Policies/Documents/itp_int006.pdf
ITP_NET004- Internet Protocol Address Standards	http://www.oa.pa.gov/Policies/Documents/itp_net004.pdf
ITP_NET005- Commonwealth External and Internal Domain Name Services (DNS)	http://www.oa.pa.gov/Policies/Documents/itp_net005.pdf
ITP_PRV001- Commonwealth of Pennsylvania Electronic Information Privacy Policy	http://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf
ITP_SEC000 - Information Security Policy	http://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf
ITP_SEC002- Internet Accessible Proxy Servers and Services	http://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf
ITP_SEC003- Enterprise Security Auditing and Monitoring	http://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf
ITP_SEC004- Enterprise Web Application Firewall	http://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf
ITP_SEC006- Commonwealth of Pennsylvania Electronic Signature Policy	http://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf
ITP_SEC007- Minimum Standards for IDs, Passwords and Multi-Factor Authentication	http://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf
ITP_SEC008- Enterprise E-mail Encryption	http://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf
ITP_SEC009- Minimum Contractor Background Checks Policy	http://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf

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

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

Attachment 3

Business Associate Agreements as provided by Agencies may differ:

COMMONWEALTH OF PENNSYLVANIA SAMPLE BUSINESS ASSOCIATE AGREEMENT

WHEREAS, the _____ (Covered Entity) and _____ (Business Associate) intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191 (HIPAA), the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the *American Recovery and Reinvestment Act of 2009* (ARRA), as amended, Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164), as amended, 42 C.F.R. §§ 431.301-431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), [35 P.S. § 7607](#), [50 Pa. C.S. § 7111](#), [71 P.S. § 1690.108\(c\)](#), [62 P.S. § 404](#), [55 Pa. Code Chapter 105](#), [55 Pa. Code Chapter 5100](#), the Pennsylvania *Breach of Personal Information Notification Act*, [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 Section 3(f).

- (g) **Amendment and Incorporation of Amendments.** Within **five (5) business days** of receiving a written request from Covered Entity for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available and incorporate the amendment to enable Covered Entity to comply with [45 C.F.R. § 164.526](#), applicable federal and state law, including the HITECH Act, as amended and related regulations, the Privacy Rule, the Security Rule and agency guidance. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity within **five (5) business days**.
- (h) **Provide Accounting of Disclosures.** Business Associate shall maintain a record of all disclosures of PHI made by Business Associate which are not excepted from disclosure accounting requirements under HIPAA, HITECH and related regulations, the Privacy Rule or the Security Rule (all as amended) in accordance with [45 C.F.R. § 164.528](#) and other applicable laws and agency guidance, including the HITECH Act and related regulations. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, and the purpose of the disclosure. Business Associate shall make such record available to the Covered Entity within **five (5) business days** of a written request for an accounting of disclosures. Business Associate shall indemnify Covered Entity for costs/damages associated with Business Associate's failure to respond within the time frames set forth in this Section 3(h).
- (i) **Requests for Restriction.** Business Associate shall comply with requests for restrictions on disclosures of PHI about an individual if the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for treatment purposes), and the PHI pertains solely to a health care item or service for which the service involved was paid in full out-of-pocket. For other requests for restriction, Business associate shall otherwise comply with the Privacy Rule, as amended, and other applicable statutory and regulatory requirements and agency

guidance.

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

1. Scope of Deployment (need not be entire agency):

2. Nature of Data implicated or potentially implicated:

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

4. Background checks (describe if necessary):

5. Additional requirements (describe with specificity):

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

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

Agency Contact Person signature and Date: _____

[Licensor _____]
Authorized Signatory and Date: _____