

REQUEST FOR APPLICATIONS FOR

VENDOR/FISCAL EMPLOYMENT AGENT FINANCIAL MANAGEMENT SERVICES

ISSUING OFFICE

**Commonwealth of Pennsylvania
Department of Human Services
Bureau of Procurement and Contract Management
Room 832 Health and Welfare Building
625 Forster Street
Harrisburg, PA 17120**

RFA NUMBER

07-21

DATE OF ISSUANCE

March 10, 2022

**REQUEST FOR APPLICATIONS FOR
VENDOR/FISCAL EMPLOYMENT AGENT FINANCIAL MANAGEMENT SERVICES**

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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-PWRFAQUESTIONS@PA.GOV	Potential Applicants	March 24, 2022 5:00 PM EST
Pre-Application Conference Webinar. Please register at: https://attendee.gotowebinar.com/register/2748657445200194064 After registering, you will receive a confirmation email.	DHS/Potential Applicants	March 24, 2022 1:00 PM
Answers to Potential Applicant questions posted to the Department of General Services website at http://www.emarketplace.state.pa.us/Search.aspx no later than this date.	DHS	March 31, 2022
Please monitor website for all communications regarding this Request for Applications.	Potential Applicants	Ongoing
Applications must be received by the Issuing Office at RA-PWRFAQUESTIONS@PA.GOV as provided in Part I, Sections I-12 and I-13.A and Part III, Section III-3.	Applicants	April 25, 2022 12:00 PM EST

PART I

GENERAL INFORMATION

- I-1. Purpose.** This Request for Applications (“RFA”) provides to those interested in submitting applications for the subject procurement (“Applicants”) sufficient information to enable them to prepare and submit Applications for the Department of Human Services’ (“Department” or “DHS”) consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for Vendor Fiscal/Employment Agent (“VF/EA”) Financial Management Services (“FMS”). This RFA contains instructions governing the requested applications, including the requirements for the information and material to be included, a description of the service to be provided, requirements that Applicants must meet to be eligible for consideration, general evaluation criteria, and other requirements specific to this RFA.
- I-2. Issuing Office.** The Department’s Office of Administration, Bureau of Procurement and Contract Management (“Issuing Office”) has issued this RFA on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFA will be Holly Zeiders, RA-PWRFAQUESTIONS@PA.GOV, the Issuing Officer for this RFA. Please refer all inquiries to the Issuing Officer.
- I-3. Overview of Project.** The Department is seeking a VF/EA FMS organization to perform payment-related employer responsibilities on behalf of participants or their representatives who exercise employer or budgetary authority with respect to their participant-directed services received through the Office of Developmental Programs (“ODP”) Medical Assistance (“MA”) Home and Community-Based Service (“HCBS”) waiver programs and the Office of Long-Term Living (“OLTL”) 100% State Funded and remaining HCBS Waiver programs. The relevant ODP waiver programs are the Consolidated Waiver, the Community Living Waiver, the Person/Family Directed Support (“P/FDS”) Waiver, and the Adult Autism Waiver. The referenced OLTL 100% State funded program is the Act 150 program, and the remaining OLTL non-Community Health Choices (“CHC”) Waiver is the OBRA Waiver. Currently, approximately 964 ODP participants and 625 OLTL participants have chosen participant-directed services and use the VF/EA FMS. Additionally, in some cases, VF/EA services may be paid through the State Base Allocation Funding, which is 100% state funding from ODP to county and county jointers.
- I-4. Objectives.**
- A. General.** The objective of this RFA is to secure a VF/EA FMS provider for eligible participants throughout the Commonwealth who receive participant-directed services through the ODP and OLTL HCBS Waiver and state funded programs.

The Department is seeking to enhance opportunities for self-directing participants as well as the quality, efficiency, effectiveness, and accountability of FMS support. More specifically, the Department will select an Applicant to coordinate and manage FMS in

a manner that is fiscally and programmatically effective and efficient for participants and the Commonwealth.

The Department seeks an Applicant that shares the Department's vision of quality services for the participants ODP and OLTL serves. Quality services include careful scrutiny of all aspects of participant-directed services in order to prevent participant abuse, as well as the fraudulent use of Commonwealth funds. As such, the Department is interested in Applicants that present innovative methods for deterring participant abuse and fraud.

1. The selected Applicant shall act as the employer agent to the common law employer ("CLE") in accordance with Section 3504 of the Internal Revenue Service ("IRS") Code, IRS Revenue Procedure 70-6, IRS Proposed Notice 2003-70, and REG-137036-08, as applicable. In Pennsylvania, the fiscal support services to be provided by a VF/EA FMS organization include but are not limited to:

- a.** Acting as a neutral "bank" for individuals' public service funds;
- b.** Providing payment of qualified Support Service Professionals ("SSPs"), Direct Care Workers ("DCWs") and vendors, in accordance with Federal, state, and local tax, labor, and unemployment insurance laws, as applicable;
 - i.** SSPs render ODP services directly to ODP-enrolled program participants who self-direct their own services. DCWs render OLTL services directly to OLTL-enrolled program participants who self-direct their own services.
- c.** Preparing and distributing qualified SSPs' payroll, including the management of Federal and state income tax withholding and employment and locality taxes;
- d.** Verifying prospective SSPs', DCWs', and vendors' citizenship and alien status and determining whether they meet the state requirements for the services they are providing;
- e.** Processing and paying invoices for participant-directed goods and services in accordance with each participant's individual support plan;
- f.** Processing and submitting monthly claims through the Medicaid Management Information System ("MMIS"), currently known as the Provider Reimbursement and Operations Management Information System ("PROMIS^e™");
- g.** Brokering workers' compensation insurance policies and renewals and paying premiums for participants who are CLEs;
- h.** Preparing and distributing financial reports to CLEs, Administrative Entities, Supports Coordination agencies, ODP, OLTL, and the Commonwealth as required; and
- i.** Providing initial orientation, initial skills training, and ongoing skills training to participants or their surrogates who are acting as CLEs.

B. Specific. The Department's specific objectives in selecting an Applicant in response to this RFA are to:

- 1.** Support the delivery of participant-directed services;

2. Reduce the employer-related burden on individuals* receiving participant-directed services;
3. Enhance participant choice and control through the provision of appropriate fiscal, payroll, and supportive services;
4. Monitor the provision of participant-directed services for compliance with Federal, state, and local tax, labor, and workers' compensation insurance rules and requirements related to the employment of qualified SSPs and the engagement of vendors, and independent Applicants by conducting ongoing compliance reviews of relevant documentation;
5. Competitively procure cost effective workers' compensation insurance for SSPs;
6. Provide for pre-service orientation and skills training for SSPs, including training relating to workplace safety as an integral part of SSP orientation training; and
7. Achieve cost savings and efficiencies with respect to VF/EA FMS services while enhancing services provided to its participants.

*For the purpose of this RFA, when the term "individual" is used, it includes both the individual participant and their representative.

- I-5. Type of Agreement.** The Department intends to award one Grant Agreement as the result of this RFA. If the Department enters into an agreement, it will be a Cost Reimbursement agreement containing the IT Contract Terms and Conditions as shown in **Part VII** of this RFA. All references to the term "Contractor" shall refer to the selected Applicant and all references to the term "Contract" shall refer to the Grant Agreement.
- I-6. Rejection of Applications.** The Department, in its sole and complete discretion, may reject any application received as a result of this RFA.
- I-7. Incurring Costs.** The Commonwealth and the Department are not liable for any costs an Applicant incurs in the preparation and submission of its application, in participating in the RFA process, in anticipation of agreement award, or for any service or work performed or expenses incurred prior to the Effective Date of a fully executed Grant Agreement.
- I-8. Pre-Application Conference.** The Department will hold a Pre-Application conference as specified in the Calendar of Events. The purpose of this conference is to provide opportunity for clarification of this RFA. Applicants should forward all questions to the Issuing Officer in accordance with **Part I, Section I-9** of this RFA to provide adequate time for analysis before the Department provides an answer. The Pre-Application conference is for information only. Any answers furnished during the conference will not be official until they have been verified, in writing, by the Department. **Attendance at the Pre-Application Conference is optional, but strongly encouraged.**
- I-9. Questions & Answers.** If an Applicant has questions regarding this RFA, the Applicant must submit the questions by email (**with the subject line "RFA 07-21 Question"**) to the Issuing Officer named in **Part I, Section I-2** of this RFA. Questions must be submitted **no later than** the date stated in the Calendar of Events. The Applicant shall not attempt to contact the Issuing Officer by any other means.

An Applicant who submits a question *after* the date for receipt of questions specified in the Calendar of Events assumes the risk that its application will not be responsive or competitive because the Department is unable to respond before the application receipt date or in sufficient time for the Applicant to prepare a responsive or competitive application based on the Department's response. When questions are submitted after the date specified in the Calendar of Events, the Issuing Officer *may* respond to questions of an administrative nature by directing the questioning Applicant to specific provisions in this RFA. If the Department decides to respond to a non-administrative question *after* the date specified for receipt of questions, DHS will provide the answer to all Applicants through an addendum to this RFA.

All questions and responses will be posted on the Department of General Services ("DGS") website and are considered as an addendum to, and part of, this RFA in accordance with **RFA Part I, Section I-10.**

I-10. Addenda to this RFA. If the Department deems it necessary to revise any part of this RFA before the application response date, the Department will post an addendum to eMarketplace at <http://www.emarketplace.state.pa.us>. Each Applicant shall be responsible for monitoring this website for any new information or addenda to this RFA. The Department will not be bound by any verbal information, nor will it be bound by any written information that is neither contained within this RFA nor formally issued as an addendum to it.

I-11. Small Diverse Business ("SDB") and Veteran Business Enterprise ("VBE") Participation. The DGS Bureau of Diversity, Inclusion and Small Business Opportunities ("BDISBO") has developed a goal setting policy based upon recommendations from its 2018 Disparity Study. The goal setting policy requires BDISBO and agencies to identify contract-specific participation goals for SDBs (which include Minority Business Enterprises ("MBE"), Women Business Enterprises ("WBE"), LGBT Business Enterprises ("LGBTBE"), Disability-Owned Business Enterprises ("DOBE"), and Service-Disabled Veteran-Owned Small Business ("SDVBE")) and VBEs (which include Veteran-Owned Small Businesses and Service-Disabled Veteran-Owned Small Businesses). Applicants must either agree to meet the participation goals in full or must request and be granted a full or partial Good Faith Efforts waiver from one or both of the participation goals. Failure to meet the participation goals or to establish the Applicant's Good Faith Efforts to meet any unmet portions of the participation goals will result in rejection of that Applicant's application as nonresponsive.

The established goals for this Project are set forth below:

SDB Participation: 5%
VBE Participation: 3%.

Further information can be found in Part V of this RFA. For assistance in determining whether a firm meets these requirements, you may contact BDISBO at (717) 783-3119 or RA-BDISBOVerification@pa.gov.

I-12. Response Date. To be considered for selection, an Applicant must submit an electronic copy of its application to the Issuing Office no later than the date and time specified in the Calendar of Events. Electronic copies of applications must be submitted to RA-PWRFAQUESTIONS@PA.GOV. Hard copy applications will not be accepted. The Department will reject late applications.

I-13. Application Requirements.

A. Application Submission: To be considered, Applicants should submit a complete response to this RFA to the Issuing Office, using the format provided in **Part I, Section I-13.B**, providing **one copy of the Technical Submittal, one copy of the Cost Submittal, one copy of the Contractor Partnership Program (“CPP”) Submittal, one copy of the Small Diverse Business (“SDB”) Participation Submittal (which must include either the SDB Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both), and one copy of the Veteran Business Enterprise (“VBE”) Participation Submittal (which must include either the VBE Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both)** via email to RA-PWRFAQUESTIONS@PA.GOV. The subject line of the email must specify “RFA #07-21 Application”. Email attachments are limited to 10 MB, cumulatively, per email, and files may not be sent in any compressed format. Any part of the application or its attachments over that limit must be sent via separate emails, with each labeled “RFA #07-21 Application Part X of Y” (with Y being the total number of emails).

The electronic response must be in Microsoft Office or a Microsoft Office-compatible format; and any spreadsheets must be in Microsoft Excel. If an Applicant designates information as confidential or proprietary or trade secret protected in accordance with **Part I, Section I-19**, the Applicant must also include one redacted version of the Technical Submittal, also excluding financial capability information. Applicants shall not lock or protect any cells or tabs. An Applicant shall make no other distribution of its application to any other Applicant, Commonwealth official, or Commonwealth consultant. Each application page should be numbered for ease of reference. An official authorized to bind the Applicant to its provisions must sign the application. This requirement will be met if the official signs the **Application Cover Sheet (Appendix A** to this RFA) and the Application Cover Sheet is attached to the Applicant’s application. For this RFA, the application must remain valid for 120 days or until an Agreement is fully executed. If the Department selects the Applicant’s application for award, the contents of the selected Applicant’s application will become, except to the extent those contents are changed through Best and Final Offers or negotiations, contractual obligations.

Each Applicant submitting an application specifically waives the ability to withdraw or modify it, except that the Applicant may withdraw its application by written notice received at the Issuing Office’s address for application delivery prior to the exact hour and date for application receipt. An Applicant may modify its submitted application

prior to the exact hour and date set for application receipt only by submitting a new sealed application or sealed modification that complies with this RFA's requirements.

B. Application Format: Applicants should submit their applications in the format, including heading descriptions, outlined below. To be considered, the application should respond to all application requirements. Applicants should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the application. All cost data relating to this application and all SDB and VBE cost data should be kept separate from and not included in the Technical Submittal. Applicants should not reiterate technical information in the Cost Submittal. Each application shall consist of the following five separately sealed submittals

1. Technical Submittal:

a. In response to Part III;

The Technical Submittal must include a Transmittal Letter and include Tabs 1 through 11. Applicants must format their responses as follows:

- Tab 1: Table of Contents
- Tab 2: Statement of the Project
- Tab 3: Management Summary
- Tab 4: Qualifications
- Tab 5: Training
- Tab 6: Financial Capability
- Tab 7: Work Plan
- Tab 8: Requirements
- Tab 9: Reports & Project Control
- Tab 10: Performance Standards
- Tab 11: Conflict Free

b. Complete, sign and include Appendix G - Lobbying Certification and if applicable, the Disclosure of Lobbying Activities.

c. Complete, and include Appendix H, Federal Funding Accountability and Transparency Act Sub-Recipient Data Sheet.

d. Complete and include Appendix K, Worker Protection and Investment Certification Form.

2. Cost Submittal, in response to Part IV;

3. SDB Participation Submittal (which must include the SDB Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both), in response to Part V;

4. VBE Participation Submittal (which must include the VBE Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both), in response to Part V; and

5. CPP Submittal, in response to **Part VI**.

Technical Submittals should adhere to the following format:

- a. Pages of 8.5 by 11 inches with right and left margins of one inch.
- b. Arial or Times New Roman font with a type size of 12.
- c. Tab and Section headings, shown in this **Part I, Section I-13.B.1**, must be used.
- d. Include a page number and identification of the Applicant in the page footer of each page.
- e. Specifically reference materials provided in any appendix by page numbers in the body of the application.
- f. Exceptions for page and font size are permissible for project schedule (Microsoft Project) or for graphical exhibits and material in appendices.

The Department may request additional information which, in the Department's opinion, is necessary to verify that the Applicant's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to this RFA.

The Department may make investigations as deemed necessary to determine the ability of the Applicant to perform the Project, and the Applicant shall furnish to the Issuing Office all requested information and data. The Department may reject any application if the evidence submitted by, or investigation of, such Applicant fails to satisfy the Department that such Applicant is properly qualified to carry out the obligations of this RFA and to complete the Project as specified.

I-14. Economy of Preparation. Applicants should prepare applications simply and economically, providing a straightforward, concise description of the Applicant's ability to meet the requirements of this RFA.

I-15. Alternate Applications. The Department has identified the basic approach to meeting its requirements, allowing each Applicant to be creative and propose their best solution to meeting these requirements. The Department will not accept alternate applications.

I-16. Discussions for Clarifications and Negotiations. Applicants may be required to make an oral or written clarification of their applications, or both, to the Department to ensure thorough mutual understanding and Applicant responsiveness to the solicitation requirements. The Department will initiate requests for clarifications. Clarifications may occur at any stage of the evaluation and selection process prior to the award of an Agreement.

The Department, in its sole discretion, may undertake negotiations with Applicants whose applications demonstrate they are qualified, responsible, and capable of performing the Project. Negotiations may occur after the selection process but prior to the award of an Agreement.

- I-17. Oral or Written Presentations.** Applicants may be required to make an oral or written presentation of their applications to the Department to demonstrate their capabilities and ability to provide the services required in this RFA. The Department will initiate requests for presentations, which may include a request that key personnel be present during an oral presentation. Such oral presentation would be held in Harrisburg, Pennsylvania. Presentations may be requested at any stage of the evaluation and selection process prior to the award of the Grant Agreement.
- I-18. Prime Applicant Responsibilities.** The selected Applicant must perform services with a total value of at least at 50% of the total Agreement cost. Nevertheless, the selected Applicant shall assume responsibility for all services offered in its application whether it produces them itself or by subcontract. The Department will consider the selected Applicant to be the sole point of contact for all Agreement matters.
- I-19. Application Contents.**
- A. Confidential Information.** The Commonwealth does not require, and is not requesting, that Applicants include confidential or proprietary information or trade secrets as part of their submissions. Accordingly, except as provided herein, Applicants should not label applications as confidential, proprietary, or trade secret protected. Any Applicant who determines that its application cannot be evaluated properly without including such information must submit the signed written statement described in Subsection C below and must additionally provide, for required public disclosure purposes, a redacted version of its application in accordance with **Part I, Section I-13.A**, which removes only the confidential or proprietary information and trade secrets.
- B. Commonwealth Use.** All material submitted with an application shall be the property of the Commonwealth. Regardless of whether any particular application becomes part of an Agreement, the Commonwealth has the right to use any or all ideas presented in any application which are not protected by intellectual property rights. Notwithstanding any Applicant copyright designations contained on applications, the Commonwealth shall have the right to make copies, to distribute applications internally, and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. Public Disclosure.** After the award of a Grant pursuant to this RFA, all applications are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If an application contains confidential or proprietary information or trade secrets, the Applicant must provide a signed written statement to this effect with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt from public records requests under 65 P.S. § 67.708(b)(11). Refer to **Appendix B** of this RFA for a **Trade Secret Confidential Proprietary Information Notice Form** that may be utilized as the signed written statement, if applicable. If financial capability information is submitted

in response to **Part III, Section III-5**, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-20. Best and Final Offers (“BAFO”).

A. While not required, the Department may conduct discussions with Applicants for the purpose of obtaining BAFOs. To obtain BAFOs, the Department may do one or more of the following, in any combination and order:

1. Schedule presentations;
2. Request revised applications; and
3. Enter into pre-selection negotiations.

B. The following Applicants will **not** be invited by the Department to submit a BAFO:

1. Those Applicants the Department has determined to be not responsible or whose applications the Department has determined to be not responsive.
2. Those Applicants the Department has determined based on the submitted and gathered financial and other information, do not possess the financial capability, experience, or qualifications to ensure good faith performance of the Grant Agreement.
3. Those Applicants whose raw score for their Technical Submittal is less than 75% of the total amount of raw technical points allotted to the technical criterion.

The Department may further limit participation in the BAFO process to those remaining responsible Applicants which the Department has, within its discretion, determined to be within the top competitive range of responsive applications.

C. The Evaluation Criteria found in **Part II, Section II-4**, will also be used to evaluate the BAFOs.

D. Price reductions offered shall have no effect upon the Applicant’s Technical Submittal.

E. The Department, in its sole discretion, also may undertake negotiations with Applicants whose applications, in the judgement of DHS, show them to be qualified, responsible, and capable of performing the Project.

I-21. News Releases. Applicants shall not issue news releases, Internet postings, advertisements, or any other public communications pertaining to this Project without prior written approval of the Department, and then only in coordination with the Department.

- I-22. Restriction of Contact.** From the issue date of this RFA until the Department selects an application for award, the Issuing Officer is the sole point of contact concerning this RFA. Any violation of this condition may be cause for the Department to reject the offending Applicant's application. If the Department later discovers that the Applicant has engaged in any violations of this condition, the Department may reject the offending Applicant's application or rescind its Grant Agreement. Applicants shall not distribute any part of their applications beyond the Issuing Office. An Applicant who shares information contained in its application with other Commonwealth personnel or consultants or competing Applicant personnel may be disqualified.
- I-23. Department Participation.** The selected Applicant shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-23**. The Department will monitor the selected Applicant's performance. Designated Department staff will coordinate Knowledge Acquisition/Transition/Readiness Review and Turnover, provide technical assistance, and monitor for compliance with Grant requirements and approved program policies and procedures.
- I-24. Term of Agreement.** The term of the Agreement will commence on the Effective Date and will end three years after the Effective Date. The Department shall have the option to extend the Agreement on the same terms and conditions for up to four additional six-month periods. The Department will fix the Effective Date after the Agreement has been fully executed by the selected Applicant and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Applicant shall not start the performance of any work pursuant to the Agreement prior to its Effective Date, and the Commonwealth shall not be liable to pay the selected Applicant for any service or work performed or expenses incurred before the Effective Date.
- I-25. Applicant's Representations and Authorizations.** By submitting its application, each Applicant understands, represents, and acknowledges that:
- A.** All Applicant's information and representations in its application are material and important, and the Department will rely upon the contents of the application in awarding the Agreement. The Commonwealth may treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the application, punishable pursuant to 18 Pa. C.S. § 4904.
 - B.** The Applicant has arrived at the price(s) and amounts in its application independently and without consultation, communication, or agreement with any other Applicant or potential Applicant.
 - C.** The Applicant has not disclosed the price(s), the amount of its application, nor the approximate price(s) or amount(s) of its application to any other firm or person who is an Applicant or potential Applicant for this RFA, and the Applicant shall not disclose any of these items on or before the application submission deadline specified in the Calendar of Events.

- D.** The Applicant has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting an application, or to submit an application higher than its application, or to submit any intentionally high or noncompetitive application or other form of complementary application.
- E.** The Applicant makes its application 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 application.
- F.** To the best knowledge of the person signing the application for the Applicant, the Applicant, 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 of 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 Applicant has disclosed in its application.
- G.** To the best of the knowledge of the person signing the application for the Applicant and except as the Applicant has otherwise disclosed in its application, the Applicant has no outstanding delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal.
- H.** The Applicant is not currently under suspension or debarment by the Commonwealth and has not been precluded from participation in any Federally funded health care program by any other state or the Federal government, and if the Applicant cannot so certify, then it shall submit along with its application a written explanation of why it cannot make such certification.
- I.** The Applicant has not made, under separate agreement with the Department, any recommendations to the Department concerning the need for the services or the specifications for the services described in the application.
- J.** Each Applicant, by submitting its application, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Applicant's Pennsylvania taxes, unemployment compensation, and workers' compensation liabilities.
- K.** Until the selected Applicant receives a fully executed and approved written Agreement from the Issuing Office, no legal and valid Agreement exists, in law or in equity, and the Applicant shall not begin to perform.
- L.** The Applicant is not currently engaged, and will not during the duration of the Agreement engage, in a boycott of a person or an entity based in or doing business with a jurisdiction that the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

I-26. Notification of Selection.

A. Negotiations. The Department will notify all Applicants in writing of the Applicant selected for negotiations after the Department has determined, taking into consideration all evaluation factors, the application that is the most advantageous to the Department.

B. Award. Applicants whose applications are not selected will be notified when negotiations have been successfully completed and the Department has received the final negotiated Agreement signed by the selected Applicant.

I-27. Debriefing Conferences. Upon notification of award as provided in **I-26.B**, Applicants whose applications were not selected may request the opportunity to be debriefed by emailing the Issuing Officer identified in **Section I-2**. The purpose of a debriefing is to assist the Applicant in understanding some of the strengths and weaknesses of certain aspects of its Technical Submittal. The debriefing will not compare the Applicant's application with those of other Applicants, other than the position of the Applicant's application in relation to all others. In its sole discretion, the Issuing Office may schedule a call to read the written debriefing script or e-mail the debriefing script to the Applicant. Any questions concerning the debriefing must be submitted, in writing, to the Issuing Officer no later than the date stated in the debriefing script. In its sole discretion, DHS may respond to some, all, or none of the Applicant's questions.

I-28. Use of Electronic Versions of this RFA. This RFA is being made available by electronic means. If an Applicant electronically accepts this RFA, the Applicant accepts full responsibility to ensure that no changes are made to this RFA. If a conflict arises between a version of this RFA in the Applicant's possession and the Issuing Office's version of this RFA, the Issuing Office's version shall govern.

I-29. Information Technology Policies. This RFA is subject to the Information Technology Policies ("ITPs") issued by the Office of Administration, Office for Information Technology and DHS Business and Technical Standards ("BTSs") created and published by DHS. ITPs may be found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>. The DHS Business and Technical Standards may be found at <http://www.dhs.pa.gov/provider/busandtechstandards/index.htm>.

All applications must be submitted on the basis that all ITPs and BTSs are applicable to this procurement. It is the responsibility of the Applicant to read and to be familiar with the ITPs and BTSs. Notwithstanding the foregoing, if the Applicant believes that any ITP or BTS is not applicable to this procurement, it must list all such ITPs and BTSs in its technical response and explain why it believes the ITP or BTS is not applicable. DHS may, in its sole discretion, accept or reject any request that an ITP or BTS not be considered to be applicable to the procurement. The Applicant's failure to list an ITP or BTS will result in its waiving its right to do so later, unless DHS in its sole discretion, determines that it would be in the best interest of the Commonwealth to waive the pertinent ITP or BTS.

PART II

CRITERIA FOR SELECTION

II-1. Mandatory Responsiveness Requirements. To be eligible for selection, an application must:

A. Be timely received from an Applicant (see **Part I, Section I-12**);

B. Be properly signed by the Applicant (see **Part I, Section I-13.A**);

C. Contain an SDB Participation Submittal (SDB-2) (which must include the SDB Utilization Schedule (SDB-3), Good Faith Efforts Documentation to Support Waiver Request (SDB-4 and SDB-5), or both); **and** (a) agree to meet the SDB participation goal in full or (b) receive an approved waiver from any unmet portion of the SDB participation goal; and

D. Contain an VBE Participation Submittal (VBE-2) (which must include the VBE Utilization Schedule (VBE-3), Good Faith Efforts Documentation to Support Waiver Request (VBE-4 and VBE-5), or both); **and** (a) agree to meet the VBE participation goal in full or (b) receive an approved waiver from any unmet portion of the VBE participation goal.

II-2. Technical Nonconforming Applications. The four Mandatory Responsiveness Requirements set forth in **Section II-1** are the only RFA requirements that the Commonwealth will consider to be *non-waivable*. The Department may, in its sole discretion, (1) waive any other technical or immaterial nonconformities in an Applicant's application, (2) allow the Applicant to cure the nonconformity, or (3) consider the nonconformity in the scoring of the application.

II-3. Evaluation. The Department has selected a committee of qualified personnel to review and evaluate the Technical Submittals of the timely submitted applications that are eligible for selection. The Department will provide written notice of its selection for negotiations to the responsible Applicant whose application is determined to be the most advantageous to the Commonwealth after taking into consideration all evaluation factors.

The Commonwealth will not score the SDB and VBE Participation Submittals. Rather, Applicants must commit to meeting the SDB and VBE participation goals or make good faith efforts to meet the SDB and VBE participation goals as more fully explained in **Part V**. Although the SDB and VBE Participation Submittals will not be scored, the Department, in conjunction with BDISBO, will evaluate the SDB Participation Submittal, the VBE Participation Submittal, and additional required documentation to determine whether the Applicant has satisfied the SDB and VBE participation requirements. An Applicant's failure to satisfy the SDB and VBE participation goals or to receive an approved waiver from meeting any unmet part of those goals will result in the rejection of the Applicant's application as non-responsive.

DHS will not review or score the CPP Submittal. Once an Applicant has been selected for negotiations, DHS will review the CPP Submittal of the selected Applicant and may request changes to the selected Applicant's CPP Submittal during Grant Agreement negotiations.

II-4. Evaluation Criteria. The following criteria will be used in evaluating each application:

A. Technical: The Department has established the weight for the Technical criterion as **75%** of the total points. Evaluation will be based upon the following:

- **Soundness of Approach.** This includes, but is not limited to, the Applicant's technical approach to providing all services required by this RFA, the extent to which it is responsive to all requirements of this RFA, and the extent to which it meets the Project's objectives.
- **Applicant Qualifications.** This includes, but is not limited to, the ability of the Applicant to meet the terms of this RFA, including the time constraints involved with the Project and the quality, relevancy, and recentness of previously completed projects. This also includes the Applicant's demonstrated ability to undertake a Project of this size.
- **Personnel Qualifications.** This includes, but is not limited to, the demonstrated competence and sufficiency of the personnel and staff who would be assigned to the Project by the Applicant.
- **Understanding the Project.** This includes the Applicant's demonstrated understanding of Commonwealth's needs that generated this RFA, the objectives of this RFA, and of the nature and scope of the work involved.

The final Technical scores are determined by giving the maximum number of technical points available to the application with the highest raw technical score. The remaining applications are then rated by applying the Technical Scoring Formula located at:

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

B. Cost: The Department has established the weight for the Cost criterion for this RFA as **25%** of the total points. The cost criterion is rated by giving the application with the lowest total cost the maximum number of Cost points available. The remaining applications are then rated by applying the Cost Formula located at:

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

II-5. Applicant Responsibility. To be responsible, an Applicant must submit a responsive application and possess the capability to fully perform the Agreement requirements in all respects and the integrity and reliability to assure good faith performance of the Agreement.

For an Applicant to be considered responsible for this RFA and, therefore, eligible for selection for BAFO and selection for negotiations, all of the following requirements must be satisfied:

- A. The total score for the Technical Submittal of the Applicant's application must be greater than or equal to **75%** of the **available raw technical points**;
- B. Must meet the conflict free requirements as set forth in this Section and **RFA Part III, Section III-7.J**; and
- C. The Applicant's financial information must demonstrate that the Applicant possesses the financial capability for the good faith performance of the Agreement. The Commonwealth will review the Applicant's previous three financial statements, any additional information received from the Applicant, and any other publicly available financial information concerning the Applicant and assess each Applicant's financial capacity based on calculating and analyzing various financial ratios in comparison with industry standards and trends.

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

The Department will not elect for Grant award any entity that is not conflict free at the time of application submission. The Applicant's conflict free information must demonstrate that the Applicant meets the conflict free requirements defined in **RFA Part III, Section III-7.J**.

Further, the Department will award an Agreement only to an Applicant determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

II-6. Final Ranking and Award.

- A.** After any BAFO process is conducted, the Issuing Office will combine the evaluation committee's final technical scores and the final cost scores, in accordance with the relative weights assigned to these areas as set forth in this **Part II**.
- B.** The Issuing Office will rank responsible Applicants according to the total overall score assigned to each, in descending order.
- C.** Except as provided in **Section II-6.D**, the Department will select for negotiations the Applicant with the highest overall score.
- D.** The Department has the discretion to reject all applications or to cancel this RFA, at any time prior to the time an Agreement is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation will be made part of the RFA file.

PART III

TECHNICAL SUBMITTAL

III-1. Statement of the Project. State in succinct terms your understanding of the Project and the service required by this RFA. The Applicant's response should demonstrate that the Applicant fully understands the scope of services to be provided, the Applicant's responsibilities, and how the Applicant will effectively manage the Grant.

Applicant Response

III-2. Management Summary. Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided. The Applicant should condense and highlight the contents of the Technical Submittal in a manner that allows a broad understanding of the entire Technical Submittal.

Applicant Response

III-3. Qualifications.

A. Company Overview. The Applicant should describe its corporate history and relevant experience. This section must detail information on the ownership of the company (names and percent of ownership), the date the company was established, the date the company began operations, the physical location of the company, and the current size of the company. The Applicant should provide a corporate organizational chart.

The Applicant should describe its corporate identity, legal status and form, including the name, address, telephone number, and email address for the legal entity that is submitting the application. In addition, the Applicant should provide the names of the principal officers, a description of its major services, and any specific licenses and accreditations held by the Applicant.

Applicants should provide similar organizational background information for any significant subcontractor for services. A "significant subcontractor" is defined as an organization undertaking more than 10% on the total cost basis of the work associated with this RFA.

If an Applicant is proposing to use the services or products of a subsidiary or affiliated firm, the Applicant should describe the business arrangement with that entity and the scope of the services the entity will provide.

If the experience of any proposed subcontractor is being used to meet the qualifications and requirements of this RFA, the Applicant should provide the same information as listed above for that subcontractor. This information must be presented separately within this section, clearly identifying the subcontractor experience and name of the subcontractor.

The Applicant should disclose any contract or agreement cancellations or terminations within the five years preceding the issuance of this RFA. If a Contract or Agreement was canceled or terminated for lack of performance, the Applicant must provide details of the customer's allegations, the Applicant's position relevant to those allegations, and the final resolution of the cancellation or the termination. The Applicant must include each customer's company or entity name, address, contact name, phone number, and email address.

The Department may disqualify an Applicant based on a failure to disclose such a cancelled or terminated contract or agreement. If the Department learns about such a failure to disclose after an Agreement is awarded, the Department may terminate the Agreement

Applicant Response

- B. Prior Experience.** The Applicant should include experience or similar types of experience in providing VF/EA FMS and demonstrate a working knowledge of VF/EA FMS as described in this RFA. Experience should be work done by individuals who shall be assigned to this Project as well as that of your company. Studies or projects referred to should be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

Applicant Response

- C. Personnel.** Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, and consultants, who shall be engaged in the work for this Project. Show where these personnel shall be physically located during the time they are engaged in the Project. For "Key Personnel," defined as a Grant Administrator or Project Manager, Enrollment Services Manager, Payroll and Invoice Payment Manager, and a Medicaid Billing Manager, include the employee's name and, through a resume or similar document, the Project personnel's education and experience in projects similar in size and scope. Specify the responsibilities each individual shall have with respect to this Project and how long each has been with your company. For non-Key Personnel, include position descriptions and minimum qualifications.

Submitted responses are not to include personal information that will, or will be likely to, require redaction in order to release the application under the Pennsylvania Right-to-Know Law, including, but not limited to, home addresses and phone numbers, Social Security Numbers, driver's license numbers or numbers from state identification cards issued in lieu of a driver's license, and financial account numbers. If the Commonwealth requires any of this information for security validation or other purposes, such information will be requested separately and as necessary.

Include organizational charts outlining the staffing, reporting relationships and staff members in their descriptions. Show the total number of staff proposed and specify the number of Full Time Equivalents (“FTE”) to account for any additional staff (non-Key Personnel) that are not assigned on a full-time basis. Provide similar information for any subcontractors that are proposed. The organizational chart must illustrate the lines of authority, designate the positions responsible and accountable for the completion of each component in this RFA, and specify the job titles and number of personnel that shall be assigned to each role, and the number of hours per week each person is projected to work on the Project. The organizational chart must clearly specify any functions that are subcontracted along with the names of the subcontracting entities and the services they shall perform.

Key Personnel Diversions or Replacement. Once Key Personnel are approved by the Department, the selected Applicant may not divert or replace those personnel without prior approval of the Department’s Grant Administrator. The selected Applicant must provide notice of a proposed diversion or replacement to the Department’s Grant Administrator at least 30 calendar days in advance and provide the name, qualifications, and background check (if required) of the person who would replace the diverted personnel. The Department’s Grant Administrator will notify the selected Applicant within 10 business days of the diversion notice whether the proposed diversion is acceptable and if the replacement is approved.

To “divert” or a “diversion” is defined as the transfer of personnel by the selected Applicant or its subcontractor to another assignment within the control of either the Applicant or a subcontractor. Advance notification and approval requirements do not include changes in Key Personnel due to resignations, death, disability, dismissal for cause or as a result of the termination of a subcontract, or any other causes that are beyond the control of the selected Applicant or its subcontractor. However, under such circumstances, the replacement personnel still must be approved by the Department’s Grant Administrator.

The Department’s Grant Administrator may request that the selected Applicant remove a person from this Project at any time. For vacancies other than those caused by diversions and unless otherwise approved by the Grant Administrator, the selected Applicant shall have 10 business days to interim fill and 60 calendar days to permanently fill the vacancy with a person acceptable in terms of experience and skills, subject to the Department Grant Administrator’s approval.

Applicant Response

- D. Subcontractors.** Provide a subcontracting plan for all subcontractors, including SDBs and VBEs, who will be assigned to the Project. The selected Applicant is prohibited from subcontracting or outsourcing any part of this Project without the express written approval of the Commonwealth. Upon award of the Grant Agreement, subcontractors included in the application submission are approved. For each position included in your subcontracting plan provide:

1. Name of subcontractor;
2. Address of subcontractor;
3. Primary contact name, email address and phone number;
4. Type of organization;
5. Date of formation;
6. Status of charter and corporate charter number;
7. Federal Employer Identification Number;
8. SAP/SRM Vendor Number;
9. Number of years worked with the subcontractor;
10. Number of employees by job category to work on this Project;
11. Description of services to be performed;
12. What percentage of time the staff shall be dedicated to this Project;
13. Geographical location of staff; and
14. Resumes (if appropriate and available).

If applicable, the Applicant's subcontractor information should include the employees' names, education, and experience in the services outlined in this RFA. Information provided should also include the responsibilities each individual shall have with respect to this Project and how long each has been with the subcontractor's company.

Applicant Response

III-4. Training. The selected Applicant must:

- A. Provide training to their personnel;
- B. Recommend to ODP and OLTL proposed training topics to deliver to their personnel;
- C. Receive approval from ODP and OLTL on the training topics their personnel should receive;
- D. Provide ODP and OLTL with their personnel to be trained, the number to be trained, duration of the program, place of training, curricula, training materials to be used, number and frequency of sessions, and number and level of instructors;
- E. Train their personnel on but not limited to diversity/culture training, disability training, customer service training, the rules and regulations of the Commonwealth's VF/EA FMS model including the Applicant's programs and processes; navigation of the Applicant's billing system, payroll system, EVV system, SSP and DCW time management tracking system and reporting system(s); the Individual Service Plan, authorized number of service units, utilizing the EVV process; and any of the systems or their successors as outlined in **Section III-7.Q.** of this RFA;
- F. Provide a training schedule notification in advance of each training session;
- G. Record all training sessions and make them available online for users;
- H. Receive approval by DHS for all training materials and schedules before training delivery;
- I. Be responsible for updating training materials upon system changes; and
- J. Describe its approach to the Training Plan.

Applicant Response

III-5. Financial Capability. Describe your company’s financial stability and economic capability to perform the Agreement requirements. Provide your company’s financial statements (audited, if available) for the past three fiscal years. Financial statements must include the company’s Balance Sheet and Income Statement or Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report, if available. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing hardcopies. The Commonwealth may request additional information it deems necessary to evaluate an Applicant’s financial capability.

Applicant Response

III-6. Work Plan. Describe in narrative form your technical plan for accomplishing the work. The technical plan shall have written internal controls, including segregation of duties, related to the completion of tasks, major milestones, and deliverables provided below as reference points. Modifications of tasks are permitted; however, reasons for any changes should be fully explained. Include a Program Evaluation and Review Technique (“PERT”) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose the particular approach. The relationship between Key Personnel and the specific tasks, assignments, and deliverables proposed to accomplish the scope of work should also be described.

The Applicant should describe its management approach, including how it shall implement its proposed work plan. Where applicable, the Applicant should provide specific examples of methodologies or approaches, including monitoring approaches, it shall use to fulfill this RFA’s requirements and examples of similar experience and approaches on comparable projects. The Applicant should describe the management and monitoring controls it shall use to achieve the required quality of services and all performance requirements. The Applicant should also address its approach to internally monitoring and evaluating whether the Agreement’s requirements are being met.

The Applicant should include in the work plan its planned approach and process for establishing and maintaining communication between all parties and a technical approach that is aligned with all written specifications and requirements contained in this RFA.

Tasks:

A. Transition. The selected Applicant shall be responsible for executing a transition of the current FMS tasks to itself from the incumbent vendor. The Grant Agreement will provide up to a four-month period for transition, unless extended by the Commonwealth. The selected Applicant must assume operation and management of all in-scope operational business functions no later than the end of the transition period.

1. Orientation/Knowledge Acquisition (“OKA”). OKA refers to those activities necessary for the selected Applicant to start-up and complete implementation plans to provide the required services. At a minimum, the selected Applicant must:

- a. Acquire sufficient knowledge on the implementation of Pennsylvania's Participant-Directed Services, VF/EA FMS, as it relates to each Department Program Office included in the Agreement, ODP and OLTL.
 - b. Acquire sufficient knowledge on ODP's and OLTL's business cycle demands and operational environment abilities, strengths, and constraints to provide for a smooth transition.
 - c. Acquire sufficient knowledge to understand the functionality of HCSIS and SAMS, or their successors and where appropriate, CIS and its underlying data structures, processing sequences, key data input mechanisms, and interfaces, and the operational aspects of HCSIS and SAMS, such as concurrent usage, transaction volumes, etc. in order to perform the Project requirements successfully.
 - d. Coordinate and work with designated ODP and OLTL staff, stakeholders, participants, CLEs, SSPs, DCWs, provider groups, the incumbents, and third-party vendors, if applicable, during the transition phase to assume performance and management of all tasks.
 - e. Identify a transition team, including their roles and responsibilities, and provide an organizational chart as well as a crosswalk to operational positions after transition completion.
 - f. Acquire and set up facilities, install necessary hardware and software, and establish necessary telecommunication capabilities.
 - g. Execute a detailed approach to knowledge transfer so that it occurs in such a manner as to enable its staff to confidently assume ownership and independently manage the operational business functions and timely delivery of citizen services without disruption.
2. **Transition Plan.** The selected Applicant must prepare and submit a separate comprehensive Transition Plan for both ODP and OLTL within five business days of the Effective Date of the Agreement. ODP and OLTL will each review its respective transition plan and either approve it or request revisions. If any revisions are needed, the selected Applicant shall revise the transition plans accordingly and resubmit updated versions to ODP and OLTL within five business days from the date of such request. At a minimum, the Transition Plans must include:
- a. **Knowledge Acquisition Completion Checklist.** The selected Applicant shall develop a Knowledge Acquisition Completion Checklist that defines each of the planned tasks and subtasks along with start dates, planned completion dates, and primary responsibilities. Upon approval of the Transition Plan, the selected Applicant shall begin utilizing the checklist to indicate the completion date of each task. Once all the listed tasks have been completed, the selected Applicant will submit the checklist to the Department at the end of the four-month transition period.
 - b. **In-Scope Systems and Operations Plan.** The in-scope systems and operations plan must address the operational transition of all in-scope systems and

operations (for example, DHS OLTL and ODP environments), including specialized business and computer systems.

- c. **Issue Management Plan.** The issue management plan must provide procedures for identifying, evaluating, and resolving issues impacting the Project. This plan shall be developed as part of the planning process but shall be updated as necessary throughout the Project.
- d. **Change Management Plan.** The change management plan must provide a process for evaluating, assessing, and determining the impact of any proposed changes to the Project. This plan must incorporate the Department's project change procedures.
- e. **Communications Management Plan.** The communications management plan must provide an explanation of the methods the selected Applicant intends to employ for communication with the Department during the Project. The plan must identify the key stakeholders, what shall be communicated through the plan, when it shall be communicated, and the method(s) to be used for communication.
- f. **Quality Management Plan.** The selected Applicant shall describe its approach for the quality management of the tasks outlined in **Section III-6**, including processes, procedures, assessments, and accountability controls.
- g. **Requirements Management Plan.** The requirements management plan must address how the selected Applicant shall develop baseline requirements, the processes, and procedures the selected Applicant shall employ to track and monitor requirements throughout the Project. The requirements management plan should include any software tool that the selected Applicant intends to use to manage requirements.
- h. **Budget/Agreement Management Plan.** The budget and Agreement management plan must provide the method to report up-to-date budget information periodically for the Project.
- i. **Periodic Status Report Templates.** The periodic status report templates shall define the format and content of all Status Reporting documents.
- j. **Agenda and material for the Project Kick-off Meeting.** The Agenda and material for Project Kick-off shall aid in planning the kick-off meeting and obtaining consensus as to the presentation content for the meeting.

Upon approval of the Transition Plan, the selected Applicant will begin transitioning the business systems, documentation, and CLE/DCW files.

3. **Transition Progress.** During the transition, the selected Applicant shall provide the Department with transition progress assessments and status updates. The selected Applicant will coordinate with the Department regarding transition tasks, prioritization issues, or conflicting activities interfering with maintaining business operations.
4. **Transition Results Report.** At the end of the transition phase, the selected Applicant shall prepare and submit to the Department a Transition Results Report. This report will document the completion of transition activities and provide the status of each high-level task and activity that took place during the transition period. The report shall highlight how each of the objectives stated in the Transition Plan have been achieved and the resolution of issues identified and prioritized during the transition process.

Each Applicant should describe in its response its approach to the Transition Task and each of its component parts listed above.

Applicant Response

- B. Billing for Services Rendered.** The selected Applicant must:
1. Determine and incorporate all ODP and OLTL program rules and requirements for payroll and invoice payment and develop and maintain a rules-based system for billing;
 2. Demonstrate and provide documentation that the selected Applicant's "Good to Serve" logic and rules ensure compliance with all Federal, state, and local tax regulations and payroll laws, and encompass the following four key areas of FMS:
 - Common Law Employer of Record tax documentation;
 - SSP enrollment documentation and credentialing information;
 - Common Law Employer/SSP relationship information including tax exemption status and pay rates; and
 - Individual Support Plan ("ISP") information including start and end dates and allocated units and dollars.
 3. The Applicant's "Good to Serve" logic, referenced in **Section III-6.B.2**, is specific to the OLTL program and is the enrollment status of a DCW or Vendor; it means that the Vendor Fiscal Agent has received and processed all of the DCW/Vendor's enrollment paperwork and it is complete and correct.
 4. Receive and maintain participant's initial and updated ISP service authorizations from HCSIS;
 5. Process MA claims through the MMIS, currently known as PROMIS^e, or a successor claims processing system for MA waiver services (including payments made for qualified SSPs and vendors) within 90 calendar days of the date of service and resubmit any rejected claims or claim adjustments within 365 calendar days of the date of service in accordance with the participant's ISP and the Department's billing and Agreement requirements.
 - a. The selected Applicant shall be solely responsible for the reconciliation and resubmission of claims; and

- b. The Applicant should identify the process it shall use to reconcile claims, including a demonstration of how it shall interact with the Service Coordinator Organizations (“SCO”).
6. Process MA claims through the MMIS, PROMIS^eTM, or subsequent claims processing system for the VF/EA FMS per member per month (“PMPM”) fee in accordance with the Department’s billing. At least one direct service must be provided in the same month the PMPM is billed;
7. Establish and maintain an Electronic Visit Verification (“EVV”) system that complies with Federal and state requirements;
8. When the selected Applicant provides VF/EA FMS services for participants funded with Base allocation funds:
 - a. The selected Applicant shall not charge the county an administrative fee that exceeds the PMPM for this Agreement; and
 - b. The selected Applicant shall receive payment from the county/joinder for services rendered as reported on the County payment file generated by PROMIS^eTM or subsequent claims processing system.
9. For ODP participants enrolled in the Community Living and Person Family/Directed Services waivers only, the selected Applicant shall provide VF/EA FMS for rendered services that are authorized with Base allocation funds when the services exceed the annual cap. The selected Applicant shall receive payment from the county/joinder for services rendered as reported on the County payment file generated by the MMIS, PROMIS^eTM, or subsequent claims processing system;
10. Process MA claims for services rendered at the approved hourly rate and benefit allowance with associated taxes;
11. Verify and keep billing records that support the amounts reported on claims that are submitted electronically through the MMIS, PROMIS^eTM, or subsequent claims processing system;
12. Maintain billing records that contain current waiver participant and applicable service information;
13. Implement and maintain a process for quarterly reconciliation of reconciling hours of services billed, paid, and denied by the MMIS;
14. The Applicant shall resolve denied claim issues within two payroll periods from the date of the initial denial and ensure the claim is resubmitted to the MMIS and approved for payment within MA established timely filing limits.
15. The Applicant shall track all denied claims that remain unresolved after two payroll periods from the date of the initial denial and submit a report specified in section **III-8.B – Bi-Payroll Denied Claims Report**, of this RFA.
16. Implement and maintain a process for monitoring and billing the Federal Unemployment Tax Act (“FUTA”) and State Unemployment Tax Act (“SUTA”) paid for each SSP and when applicable thresholds are met to reduce the rate billed to PROMIS^eTM; and
17. Implement and maintain a process for reimbursing the Commonwealth for any funds remaining in the separate bank account for managing participant-directed funds at the end of the state fiscal year.

Each Applicant should describe in its response its approach to the Billing for Services Rendered Task and each of its component parts listed above.

Applicant Response

C. Managing Public Funds. The selected Applicant must:

1. Establish and maintain an accounting and information system for receiving and disbursing MA funds and for tracking all transactions and balances;
2. Establish a separate bank account for the purposes of receiving payment of the VF/EA PMPM for FMS.
3. Establish a separate bank account for each individual participant for the deposit of payments for participant-directed service for the purpose of managing participant-directed funds (“Participant Account”). The selected Applicant must immediately deposit all payments for participant-directed services from MA and the state into each account. The selected Applicant must submit to ODP and OLTL written evidence that the bank has established these accounts as set forth below. The selected Applicant must complete all forms as specified by ODP and OLTL and the bank to establish electronic fund transfers from MA and the state to the bank account. The selected Applicant must set up the Participant Account to:
 - a. Prohibit the withdrawal of funds except for payment for FMS services provided to participants including all taxes, insurances, and fees; and
 - b. Be maintained, to the extent legally permissible, in a manner that prevents creditors of the selected Applicant from in any way encumbering or acquiring funds in the bank account.
4. Absorb any bank charges (for example, stop payment fees) so as not to reduce the balance of the Participant Account;
5. Use funds deposited into the Participant Account, either directly or through its agent or a third-party, to satisfy, temporarily or otherwise, any selected Applicant liability or for any other purpose, except as provided under this RFA;
6. Bank Account Activity Report. Maintain a report on bank account activity in accordance with the reporting requirements established by the Department. The selected Applicant shall report bank account activity for the Participant Accounts, including a summary of the month’s bank activity, reconciliation of the bank balance to the General Ledger, and reconciliation of any amounts advanced from the Department. The selected Applicant shall submit this report to the Department by the 10th business day of the following month; and,
7. Not co-mingle Participant Accounts funds with any other funds.

Each Applicant should describe in its response its approach to the Managing Public Funds Task and each of its component parts listed above.

Applicant Response

D. Receiving Federal and State Authority to Act as a VF/EA FMS Organization. The selected Applicant must:

- 1.** Apply for (through the completion and submission of the IRS Form SS-4 Application for Employer Identification Number) and obtain a separate Federal Employer Identification Number (“FEIN”) within 15 days of a completed application, for the sole purpose of filing and paying Federal employment taxes and insurances and other required IRS forms on behalf of CLEs it represents as agent. (Note: the selected Applicant may already have a separate FEIN and should be able to demonstrate that it is separate and distinct from the organization’s corporate FEIN);
- 2.** Maintain a copy of the completed IRS Form SS-4, separate FEIN, and related correspondence with the IRS in the selected Applicant’s file;
- 3.** Apply for (through the completion and submission of the IRS Form SS-4 Application for Employer Identification Number), and obtain a FEIN for each newly enrolled CLE it represents as employer agent;
- 4.** Maintain a copy of the relevant completed IRS Form SS-4 and Notice of FEIN in each CLE’s file;
- 5.** Apply for IRS agent authorization by completing and submitting an IRS Form 2678, Employer/Payer Appointment of Agent to the IRS per IRS Form instructions for each CLE it represents as agent;
- 6.** Maintain a copy of the relevant completed IRS Form 2678 in each CLE’s file;
- 7.** Receive written agent authorization from the IRS through the receipt of an IRS LTR 1997C, Notice of Appointment, for each CLE it represents as agent;
- 8.** Maintain the relevant IRS LTR 1997C, Notice of Appointment in each CLE’s file;
- 9.** Execute and submit an IRS Form 8821, Tax Information Authorization with each CLE it represents as agent;
- 10.** Maintain a copy of the relevant executed Form 8821 in each CLE’s file;
- 11.** Renew the executed IRS Forms 8821 with CLEs on a periodic basis per Form instructions;
- 12.** Maintain a copy of any IRS Form 8821 renewals in each CLE’s file;
- 13.** Obtain a signed Pennsylvania (“PA”) Department of Labor and Industry Form PA UC-884, Unemployment Power of Attorney from each CLE it represents as agent and file with the PA-100, PA Enterprise Registration Form when registering a waiver participant or surrogate as the CLE for state unemployment insurance filing and depositing purposes per PA Department of Labor and Industry, Office of UC Tax instructions;
- 14.** Maintain a copy of the relevant executed PA UC-884 in each CLE’s file;
- 15.** When a CLE ceases using the Applicant for any reason, the selected Applicant must revoke the relevant PA UC-884 by executing a PA Form UC-2B, PA UC Employer’s Report of Employment and Business Change; and
- 16.** When a CLE ceases using the VF/EA FMS organization for any reason, the selected Applicant must maintain a copy of the PA Form UC-2B and all communications in that CLE’s file.

Each Applicant should describe in its response its approach to the Receiving Federal and State Authority to Act as a VF/EA FMS Organization Task and each of its component parts listed above.

Applicant Response

E. Providing Customer Service. The selected Applicant must:

1. Implement customer service policies and procedures that reflect the principals of the Department;
 2. Implement customer service policies and procedures incorporating culturally sensitive business practices in order to communicate effectively with a diverse population of individuals, DCWs and SSPs;
 3. Implement and maintain a procedure for reporting critical incidents or events as defined by ODP and OLTL;
 4. Develop and implement training for the selected Applicant's customer service representatives that include, at a minimum, the following topics:
 - a. Overview of the ODP and OLTL Statewide Organizational Structure;
 - b. Providing Customer Service to Program Stakeholders;
 - c. Vendor Fiscal/Employer Agent FMS Tasks and Program Responsibilities; and
 - d. Mandatory Reporting Procedures.
 5. Toll Free Hotline. The selected Applicant must:
 - a. Provide a system through which individuals can request technical assistance support via, at minimum, phone, voicemail, email, and chat.
 - b. Answer support requests made via phone, voicemail, email, and chat during Core Hours of Monday through Friday, 9:00 a.m. – 7:00 p.m. EST/EDT, and every Saturday from 9:00 am until 1:00 pm, excluding Federal holidays, in compliance with the following applicable threshold:
 - For calendar months in which there are 500 or fewer support requests, such requests are answered within ten minutes at least 95% of the time;
 - For calendar months in which there are between 501 and 1,000 support requests, such requests are answered within ten minutes at least 90% of the time;
 - For calendar months in which there are between 1,001 and 1,500 support requests, such requests are answered within ten minutes at least 85% of the time; and
 - For calendar months in which there are more than 1,500 support requests, such requests are answered within ten minutes at least 80% of the time.
- For the purposes of evaluating compliance with these standards, time from request to answer shall be measured as follows:
- From the time a call enters the queue until it is answered by a support agent (Answers to voicemails will be measured from the time the initiating call entered the queue until a support agent places a return call);
 - From the time an email is received until a reply is sent by a support agent; and
 - From the time a chat is initiated to the time a support agent sends the first reply message.
- c. For support requests received during Core Hours, the selected Applicant must resolve each support request within the following applicable time frame:
 - 30 minutes during calendar months in which the selected Applicant receives no more than 500 support requests;

- Within one hour during calendar months in which the selected Applicant receives between 501 and 1,000 support requests;
 - Within three hours during calendar months in which the selected Applicant receives between 1,001 and 1,500 support requests; and
 - Within five hours during calendar months in which the selected Applicant receives more than 1,500 support requests.
- d. For support requests received via voicemail, email, and chat outside of the Core Hours specified above, record and respond to a minimum of 95% of such requests within one business day of the request's receipt.
 - e. Record each call for quality and training purposes.
 - f. Provide an option for individuals to complete a customer satisfaction survey at the end of each call.
 - g. Provide each individual requesting such support with a ticket number so they can reference the call, if necessary. If the individual calls in again with the same issue, the original ticket number shall be assigned.
 - h. Any changes in Help Desk/Solution Center scheduled hours specified above must be pre-approved by ODP and OLTL.
 - i. Maintain an operating fax to receive business information.
 - j. Have an operational TTY/TDD line.

Each Applicant should describe in its response its approach to the Providing Customer Service Task and each of its component parts listed above.

Applicant Response

- F. Applicant/Vendor Hosted Program Website for Pennsylvania.** The selected Applicant must have a participant facing dedicated system (web-based or otherwise) to support participants receiving VF/EA FMS in Pennsylvania. The selected Applicant shall grant permissions to participants receiving VF/EA FMS in Pennsylvania to enable them to access this system. Department users must also be given access to the selected Applicant's hosted program system. The selected Applicant's system must allow participants the ability to access and view up-to-date training resources and all applicable information and resources to support participants using the person directed service model, including, but not limited to, window help features and a chat feature for requesting technical support, and must have internal controls for monitoring the accuracy of the materials included on the website and the effectiveness of the system. The selected Applicant must receive approval before the system is launched and any changes are made to the Pennsylvania Program web page hosted by the selected Applicant. The following items must be included on the website, at a minimum:
1. Information regarding any severe weather conditions, civil disorders, fire, epidemics, and quarantines or natural disasters.
 2. Payroll information;
 3. Report utilization of budgets;
 4. Forms/Instructions for CLEs;
 5. Forms/Instructions for Participants;
 6. Program Updates;

7. Training Materials;
8. Service Coordinator Training on the Good to Go Process. The Good to Go process is specific to the OLTL program and is related to the enrollment status of a Participant. It means that the Vendor Fiscal Agent has received and processed all the Participant's employer paperwork and it is complete and correct;
9. ODP and OLTL Overview, including an overview of the ODP and OLTL VF/EA model of service;
10. Information on the Department of Labor's Fair Labor Standard Act;
11. EVV Information; and
12. VF/EA quarterly newsletter.

Each Applicant should describe in its response its approach to the Pennsylvania-Specific Program Website Task and each of its component parts listed above.

Applicant Response

- G. Communication Log.** The selected Applicant must implement and maintain a log for receiving, responding, and tracking all communications from any source that includes the following information:
1. The name and role of the individual or entity that initiated the communication;
 2. The date the communication was received;
 3. The date the communication was retrieved;
 4. Ticket number;
 5. How the communication was submitted;
 6. Which employee received the communication;
 7. The subject of the communication;
 8. Any action taken, including any issues requiring escalation;
 9. Which employee responded to the communication;
 10. The date of the response to the communication;
 11. Whether the communication resulted in any mandated reporting as required by Child Protective Services Law, the Adult Protective Services Act, or the Older Adult Protective Services Act; and
 12. Date and summary of final resolution;

Each Applicant should describe in its response its approach to the Communication Log Task and each of its component parts listed above.

Applicant Response

- H. Grievances.** The selected Applicant must implement and maintain a grievance procedure that includes:
1. An Advisory/Grievance Committee that includes CLEs and program participants, which meets either in person or via telephone or video conference at least quarterly to discuss the provision of VF/EA FMS and to evaluate any grievances filed or feedback provided by CLEs and participants;
 2. Acknowledging complaints from CLEs and participants within one business day;

3. Tracking activities related to the receipt of complaints;
4. Resolving VF/EA FMS related complaints and grievances within five business days of receipt; and
5. Responding, in writing, to the individual or entity that initiated the grievance with the outcome.

Each Applicant should describe in its response its approach to the Grievances Task and each of its component parts listed above.

Applicant Response

- I. **Satisfaction Survey.** The selected Applicant must conduct annual CLE Satisfaction Surveys of CLEs through the utilization of a tool developed by the selected Applicant and approved by ODP and OLTL. Surveys must be distributed no later than January 31st of each year and are to only be distributed to CLEs enrolled as of the preceding December 31st. The selected Applicant must submit the survey data, and its analysis thereof, to ODP and OLTL no later than April 30th of each year.
 1. The selected Applicant shall collect and analyze survey data and prepare and submit a CLE Satisfaction Survey Report to ODP and OLTL based on the following survey questions, at a minimum:
 - a. Experience with the CLE enrollment process;
 - b. Experience with the SSP and DCW enrollment process;
 - c. Satisfaction with CLE orientation and skills training, and any annual training provided by the selected Applicant;
 - d. Satisfaction with customer service interactions;
 - e. Satisfaction with payroll process, including timeliness of SSP and DCW payments;
 - f. Satisfaction with user interface of web-based portal; and
 - g. Additional comments/concerns.
 2. Where the surveys received for any year demonstrate an overall satisfaction of less than 95%, the selected Applicant shall develop and submit to the Department for approval, along with its submission of the survey data and its analysis thereof, a corrective action plan based on the results of the CLE Satisfaction Survey as follows:
 - a. Develop a corrective action plan that specifically address any issues raised in each of the annual CLE Satisfaction Surveys; and
 - b. Implement the corrective action plan within 15 calendar days of receiving approval by the Department.

Each Applicant should describe in its response its approach to the Satisfaction Survey Task and each of its component parts listed above.

Applicant Response

J. Coordinating and Communicating with Supports Coordination Organizations, Support Coordination Entities, Administrative Entities, OLTL, and ODP. A Supports Coordination Organization (“SCO”) supports ODP in coordinating services and provides supports for people with intellectual disabilities and their families. A Support Coordination Entity (“SCE”) provides supports for elderly and disabled individuals in the OLTL programs by developing individualized service plans, authorizing said plans, and coordinating additional community services. An Administrative Entity (“AE”) is a county/joinder or non-governmental entity with an agreement or contract with the Department to perform operational and administrative functions delegated by the Department, related to ODP’s approved Waivers. The selected Applicant must:

1. Coordinate its activities and communicate effectively with SCOs, AEs, SCEs, OLTL, and ODP staff;
2. Attend and participate in ad hoc meetings with ODP and OLTL stakeholders, upon the Department’s request;

Each Applicant should describe in its response its approach to the Coordinating and Communicating with Supports Coordination Organizations, Support Coordination Entities, Administrative Entities, OLTL, and ODP Task and each of its component parts listed above.

Applicant Response

K. For OLTL Direct Care Workers Only, Providing Direct Care Worker Orientation and Skills Training. The selected Applicant shall use the existing orientation subcontractor to satisfy the pre-service orientation experience requirements. The selected Applicant must:

1. Verify that all newly hired Direct Care Workers (“DCW”) in the Act 150 or OBRA Waiver have completed an in-person, pre-service orientation. In the limited situations where in-person, pre-service orientation is not possible due to geographical limitations, the selected Applicant shall verify that the newly hired DCW has completed pre-service orientation by a DHS-approved alternative means.
2. Advertise and notify DCWs of this pre-service requirement and the means by which they may enroll in and complete this pre-service orientation.
3. Maintain documentation to verify each DCW’s completion of this pre-service orientation along with the Qualified DCW Employment Packet. This pre-service orientation and documentation must be completed before a DCW is given clearance to provide services.
4. Once per year, review the content of the DCW pre-service orientation. Pre-service orientation must, as minimum, cover the following topics: operational procedures and paperwork, roles and responsibilities in independent living system, workplace safety, transparency and fraud, eligibility for public benefits, and worker rights and responsibilities. The content of the pre-service orientation shall be consistent across the Commonwealth as well as consistent with information provided through

supports brokers, SCEs, and other elements of the participant-directed program. DCW pre-service orientation must provide a basic understanding of the functions and requirements of the participant-directed programs, including the role and responsibility of the participants as the employer to direct, supervise, train, and select the DCW.

5. Provide DCW pre-service orientation. The selected Applicant must have experience in supporting the training and orientation of home caregivers such as DCWs, in labor-management training partnerships, and in the development of relevant orientation curriculum and have statewide capacity to implement a consistent, timely pre-service orientation program.
6. Pay the DCW an hourly wage not to exceed the maximum DCW hourly wage rate in the applicable region in which the DCW is to provide services for all time spent in DCW pre-service orientation. The selected Applicant shall include the payment for the hours of this pre-service orientation in the first paycheck after a DCW has been cleared to provide services.
7. Invoice and seek reimbursement via DHS Medicaid Management Information Systems payment process for the payment to the DCW for his or her wages for the time spent in this pre-service orientation, with the provision that such paid time shall not exceed four hours.

Each Applicant should describe in its response its approach to the For OLTL Direct Care Workers Only, Providing Direct Care Worker Orientation and Skills Training Task and each of its component parts listed above.

Applicant Response

L. Providing Common Law Employer Orientation and Skills Training. The selected Applicant must:

1. Provide a minimum of bi-weekly web trainings for new and other interested CLEs covering navigation of, and functions performed using, the selected Applicant's web-based portal system and CLE responsibilities.
 - a. The selected Applicant must post the training schedule on the selected Applicant's designated website.
2. Implement and maintain a CLE orientation process that uses a standard curriculum and materials approved by ODP and OLTL;
3. Provide to CLEs, prior to their employment of qualified SSPs or DCWs, a standard orientation that includes a review of the program documents and rules including the following:
 - a. A review of the information and forms contained in the CLE, SSP, DCW and Vendor enrollment packets and instructions on how they should be completed;
 - b. The role and responsibilities of the selected Applicant's organization, including level of interaction with qualified SSPs, DCWs, vendors, and support coordinators and the incident reporting system;
 - c. The functions performed by the selected Applicant;
 - d. The selected Applicant's hours of operation;

- e. Key contacts at the selected Applicant;
 - f. The selected Applicant's toll-free telephone, TTY and fax numbers, and web address including instructions on how to navigate the website for Pennsylvania program information;
 - g. Instructions on how to access reports from the selected Applicant's web-based portal;
 - h. A Participant Bill of Rights approved by ODP and OLTL;
 - i. The Common Law Employer Handbook;
 - j. The protocol for returning calls/voice mail messages from CLEs, participants, and SSPs or DCW;
 - k. The process for receipt and processing of timesheets and processing of qualified SSP or DCW payroll including the schedule for approving payroll and paydays;
 - l. Provide training for CLEs on the selected Applicant's EVV system;
 - m. The process for purchasing approved goods and services from vendors, paying for mileage reimbursement, and submitting invoices for payment including the schedule for submitting invoices and the payment schedule;
 - n. The process and timeframe for resolving issues and complaints;
 - o. Effective practices for creating job descriptions, recruiting, screening, interviewing, hiring, establishing work schedules, training, supervising, completing and submitting time sheets, completing SSP and DCW evaluations, and dismissing SSPs and DCWs from employment;
 - p. The process for reviewing workplace safety issues and strategies for effective management of workplace injuries, as well as a review of Workman's Compensation;
 - q. The need to inform qualified SSPs or DCWs of their right to file unemployment and workers' compensation insurance claims, when appropriate;
 - r. The requirement of and process for completing and submitting Worker Termination Forms to the selected Applicant within 24 hours of when a qualified SSP or DCW ceases working for the CLE;
 - s. The process and timeline for conducting the CLE satisfaction surveys; and
 - t. CLE Responsibilities.
4. Provide CLE training at least once per calendar year to all enrolled CLEs using a standard curriculum and materials approved by ODP and OLTL;
 5. Assist CLEs with completing CLE packets and forms, as requested;
 6. Provide new CLE orientation and skills training within five business days of receipt of the completed CLE enrollment packet. The Applicant cannot provide a Good To Go notification until the CLE has completed the new CLE orientation and skills training ("New CLE Training"). The New CLE Training shall be conducted using a platform or in a location agreed upon between the new CLE and the selected Applicant. Documentation must be completed and obtained by both parties upon completion of the New CLE Training;
 7. Identify CLEs who may need or desire additional employer skills training in consultation with the SCOs, AEs, SCE's, OLTL, and ODP.

Each Applicant should describe in its response its approach to the Providing Common Law Employer Orientation and Skills Training Task and each of its component parts listed above.

Applicant Response

M. Enrolling Individuals with the Applicant as the Common Law Employer. The selected Applicant must:

1. Have and follow written policies and procedures related to the completion of the tasks listed below;
2. Have written internal controls, including segregation of duties, related to the completion of the tasks listed below;
3. Prepare and receive ODP or OLTL approval of a *Common Law Employer Enrollment Packet*. The selected Applicant must submit the packet and any subsequent revisions to ODP or OLTL 30 calendar days prior to distributing the packet or making any changes to an existing packet. The packet must include, at a minimum:
 - a. Cover letter or brochure that includes the selected Applicant's staff contact information, days and hours of operation, toll-free number and TTY/TDD number, availability of VF/EA FMS materials in alternate print, roles and responsibilities of the selected Applicant, CLE, waiver/program participant, qualified SSPs, and vendor, as applicable;
 - b. Verification that the selected Applicant approved the completed SSP required information and forms in order to let the CLE know that the SSPs are enrolled and qualified to provide support;
 - c. ODP and OLTL Back-up Qualified SSP and DCW and Natural Supports Staff Designation Form and Instructions;
 - d. ODP and OLTL Common Law Employer Agreement Form and Instructions;
 - e. ODP and OLTL Employee Qualification Form and Instructions;
 - f. ODP and OLTL Common Law Employer Monthly Progress Notes Form and Instructions;
 - g. Semi-completed Form SS-4, Application for Employer Identification Number, and instructions;
 - h. Semi-completed Form 2678, Employer/Payer Appointment of Agent, and instructions;
 - i. Semi-completed Form 8821, Tax Information Authorization, and instructions;
 - j. Semi-completed Form PA Form UC-884 PA Unemployment Compensation Power of Attorney and instructions;
 - k. Semi-completed Form PA-100, PA Enterprise Registration, and instructions for registering participant as an employer for state income tax withholding and unemployment tax filing and payment purposes;
 - l. PA New Hire Form (form PA BUR 1575) and instructions or generic form to collect the required information for electronic filing by the selected Applicant;
 - m. The process for qualified employee employment status change;
 - n. Qualified SSP or DCW Termination Form;

- o. Appropriate paperwork for obtaining a workers' compensation insurance policy;
 - p. FMS Individual Termination Form;
 - q. Workplace safety information including but not limited to:
 - Participant site and home safety checklist;
 - Procedures for identifying and reporting on qualified employees' injuries for workers' compensation insurance purposes;
 - Procedures for addressing emergencies;
 - List of emergency contacts and telephone numbers (home and cell if available); and
 - Universal precautions procedures, safe lifting techniques, and body mechanics.
 - r. Qualified SSP or DCW Timesheet and instructions;
 - s. The due date and payment schedule for Qualified SSP Timesheets and authorized goods and services, vendor services;
 - t. Information regarding the navigation and use of the Applicant's EVV system;
 - u. The Common Law Employer Enrollment Forms Check List; and
 - v. A self-addressed stamped envelope, and options to fax or scan/email.
4. Develop and implement an Online CLE Enrollment Process;
 5. Upon receiving a request for an individual to become a CLE, assign the individual an Enrollment Specialist whose direct contact information is provided to the individual in their Common Law Employer Packet;
 6. Provide the Common Law Employer Enrollment Packets, as described above, to the individual requesting to become a CLE within three business days of receipt of the request;
 7. After review of the Common Law Employer Enrollment Packet, the assigned Enrollment Specialist must follow-up with the perspective CLE within two business days to provide any incorrect or incomplete information required for completion and to track the follow-ups;
 8. Collect and process completed documents and forms included in the Common Law Employer Enrollment Packet and review for completeness
 9. Enroll CLEs within five business days of their completion of the New CLE Training;
 10. Apply for (through the completion and submission of the IRS Form SS-4, Application for Employer Identification Number) and obtain a FEIN for each CLE it represents as agent;
 11. Maintain a copy of the completed IRS Form SS-4 and Notice of Federal EIN in each CLE's file;
 12. Register each CLE as an employer with the PA Department of Revenue using the Form PA-100, PA Enterprise Registration, for state income tax withholding;
 13. Obtain a PA Employer Withholding Account Identification Number for each participant it represents as employer agent for state income tax ("SIT") withholding purposes;
 14. Maintain a copy of the Form PA-100 and the PA Employer Withholding Account Identification Number for SIT purposes in each CLE's file;

15. Register each CLE as an employer with the PA Department of Labor and Industry using the Form PA-100, PA Enterprise Registration, for state unemployment insurance (“SUI”) taxes;
16. Obtain a PA Employer UC Account Identification Number for each CLE for SUI purposes; and
17. Maintain a copy of the Form PA-100 and a PA Employer UC Account Identification Number in each CLE’s file.

Each Applicant should describe in its response its approach to the Enrolling Individuals with the Applicant as the Common Law Employer Task and each of its component parts listed above.

Applicant Response

- N. Enrolling Qualified SSPs, DCWs, and Vendors.** The selected Applicant must:
1. Prepare and receive ODP or OLTL approval of a Qualified SSP or DCW Employment Enrollment Packet. Thirty calendar days prior to distributing the initial packet or to implementing any subsequent changes thereto, the selected Applicant must submit to ODP for approval the initially proposed packet or the subsequently proposed revisions. The selected Applicant shall include in the packet, at a minimum, the following information:
 - a. An introductory letter;
 - b. The SSP or DCW application and instructions (including information reporting on the relationship between the CLE and the qualified SSP or DCW);
 - c. The Qualified SSP Agreement;
 - d. A Notice form for pre-employment criminal background checks and state criminal background check (Form SP-164), Federal Bureau of Investigation (“FBI”) Criminal History Check, and DHS Child Abuse History Check (Form CY-113) forms and instructions;
 - e. IRS Form W-4, Employee Withholding Allowance Certificate with instructions;
 - f. US CIS Form I-9 Employment Eligibility Verification with instructions;
 - g. PA New Hire Reporting Form and instructions or generic form to collect the required new hire reporting information for electronic filing by the selected Applicant;
 - h. The SSP or DCW Rate Sheet;
 - i. Timesheet due dates and the payday schedule;
 - j. Notice of Availability of Direct Deposit information and form; and
 - k. The Qualified SSP or DCW Employment Enrollment Checklist.
 - l. Self-addressed stamped envelope and options to fax or scan/email.
 2. Assist SSP or DCW with completion of forms, if requested;
 3. Enroll SSPs and DCWs within five business days of receipt of a complete, qualified enrollment packet, unless the selected Applicant requests an exception in writing within this timeframe and the exception is granted by ODP and OLTL;
 - a. This includes the completed SSP or DCW Rate Sheet which must be submitted by an authorized representative from the assigned AE or SCO.

4. Prepare a Vendor Payment Packet. The selected Applicant must submit the initial packet and any subsequent revisions to ODP and OLTL for approval 30 calendar days prior to issuing the initial packet or making any changes to an existing packet. The selected Applicant must include the following information, at a minimum:
 - a. The Vendor Payment Information Form
 - b. IRS Form W-9, Request for Taxpayer Identification Number and Certification and instructions for vendors who provide approved goods and services;
 - c. IRS Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding and instructions for when to use the form;
 - d. The Vendor Payment Packet Checklist; and
 - e. A self-addressed stamped envelope and options to fax or scan/email;
5. Distribute the Qualified SSP or DCW Employment Enrollment Packet and the Vendor Payment Packet to the CLE within three business days of receipt of request;
6. Follow up with the CLE within two business days where incorrect, incomplete, or necessary information has yet to be received;
7. Collect and process completed documents and forms and file with the appropriate Federal, state, and local government agencies. Copies of all documentation must be retained in the applicable Qualified SSP, DCW or Vendor file;
8. Process SSPs' IRS Forms W-4;
9. Maintain copies of IRS Forms W-4 in each qualified SSP's or DCW's file;
10. Maintain copies of the US CIS Form I-9, Employment Eligibility Verification in each qualified SSP's file;
11. Submit the required documentation for State Police Criminal Background Check (Form SP-164), FBI Criminal Background Check, and DHS Child Abuse Clearance (Form CY-113) for the CLE's SSP candidate;
12. National Provider Indicator ("NPI"). As part of the SSP and DCW hiring process, the selected Applicant must obtain for SSPs and DCWs an NPI using taxonomy code "Attendant Care Provider" and include the home address for the SSP's or DCW's business mailing address.
13. Receive and maintain background results on each CLE's SSP or DCW candidates on file and provide results to the CLE upon request;
14. Confirm each qualified SSP's or DCW's social security number and vendor's social security number or FEIN, as appropriate, through the SSA's *Business Services Online* system;
15. Collect information on whether a qualified SSP or DCW meets one of the criteria to be FICA/FUTA or SUTA exempt per Section 3 of IRS Publication 15 and PA Unemployment Compensation ("UC") Law Section 4(1)(4)(5), respectively;
16. Report participants' new hires through the PA New Hires Program within 20 calendar days of hire;
17. Maintain copies of New Hire Reporting documentation in qualified SSPs' or DCWs' files;
18. Develop and implement a SSP and DCW Online Enrollment process; and
19. Develop and implement an Online Vendor Enrollment Process.

Each Applicant should describe in its response its approach to the Enrolling Qualified SSPs, DCWs, and Vendors Task and each of its component parts listed above.

Applicant Response

- O. Requalification of Support Service Professionals.** The selected Applicant must:
1. Develop and implement a Qualified SSP and DCW Qualification Form. The selected Applicant must submit to ODP or OLTL the packet and any subsequent revisions for approval 120 calendar days prior to the expiration of its current qualification.
 2. Have written internal controls, including segregation of duties, related to the completion of the tasks listed below.
 3. Assist SSPs, DCWs, or CLEs with completion of forms, if requested.
 4. Enroll SSPs or DCWs within three business days of receipt of a complete, qualified enrollment packet.
 5. Complete mailing of the SSP or DCW Qualification Form and Letter within 10 business days of receipt of the letter from ODP or OLTL. The selected Applicant must provide the CLE and the identified ODP or OLTL program representative a copy of the letter.
 6. Weekly SSP/DCW Requalification Report. Prepare weekly reports on the progress of completed SSP or DCW requalification's, the format of which to be reviewed and approved by ODP or OLTL at least 120 calendar days prior to the expiration of its current qualification.
 7. Engage in follow-up activities at least six times during the requalification period for any SSP or CLE who has yet to submit a correctly completed qualification form and track these activities in a format which is easily presentable upon request.

Each Applicant should describe in its response its approach to the Requalification of Support Service Professionals Task and each of its component parts listed above.

Applicant Response

- P. Processing a Common Law Employer's Disenrollment from a VF/EA FMS Organization.** Upon a CLE's disenrollment from a VF/EA FMS Organization, the selected Applicant must:
1. Revoke the IRS Form 2678 with the CLE, when appropriate;
 2. Maintain a copy of the revoked Form 2678 and the IRS revocation confirmation letter (LTR 4228C) in the CLE's archived file;
 3. Revoke the IRS Form 8821 with the CLE, when appropriate;
 4. Maintain a copy of the revoked Form 8821 in the CLE's archived file;
 5. Retire the CLE's FEIN, when appropriate;
 6. Maintain a copy of the documentation of the FEIN retirement in the CLE's archived file;
 7. Revoke the PA UC-884, Power of Attorney with the CLE, when appropriate;
 8. Maintain a copy of the revoked PA UC-884, Power of Attorney in the CLE's archived file;

9. Retire the CLE's PA Department of Revenue state income tax withholding employer tax account number, when appropriate, by filing the PA Department of Revenue Form REV-1706, Business Cancellation Form;
10. Maintain a copy of the PA Department of Revenue Form REV-1706 in the CLE's archived file;
11. Retire the CLE's State Department of Labor and Industry state unemployment insurance tax employer tax account number, when appropriate, by using the PA Form UC-2B, Employer's Report of Employment and Business Changes;
12. Maintain a copy of the PA Form UC-2B in the CLE's archived file;
13. Compute, withhold, and file final state income tax taxes (even when the final filing is zero wages);
14. Deposit final state income tax (even when the final filing is zero wages);
15. Maintain a copy of the final state income tax filing, deposit, and related correspondence in the CLE's archived file;
16. Compute, withhold, and file final state unemployment taxes (even when the final filing is zero wages);
17. Deposit final state unemployment taxes (even when the final filing is zero wages);
18. Maintain copies of the documentation of the filing and payment of the CLE's final state income tax and unemployment taxes in the CLE's archived file;
19. Terminate the CLE's workers' compensation insurance policy, when appropriate and submit any premium refund to the Department (for example, via offset of future payment); and
20. Maintain documentation related to terminating the CLE's workers' compensation insurance policy in the CLE's archived file.

Each Applicant should describe in its response its approach to the Processing a Common Law Employer's Disenrollment from a VF/EA FMS Organization Task and each of its component parts listed above.

Applicant Response

- Q. Processing and Distributing Qualified SSPs Payroll and Related Taxes and Insurances.** The selected Applicant must:
1. Determine if the qualified SSP is a family member, who is exempt from paying into FICA and FUTA and SUTA, and process payroll and related Federal taxes accordingly;
 2. Maintain documentation on the relationship of the CLE to the qualified SSP or DCW in the SSP's or DCW's file;
 3. Determine if a qualified SSP or DCW is a non-resident of Pennsylvania and the appropriate method to be used for state income tax withholding;
 4. Maintain documentation on the qualified SSP's or DCW's non-Pennsylvania resident status in the worker's file;
 5. Verify qualified SSP or DCW hourly wage is in compliance with Federal, state, and PA Department of Labor and Industry wage and hour rules for domestic service workers;

6. Develop written instructions to inform the SSP or DCW on how to submit for time worked;
7. Collect, verify, and process qualified SSP or DCW time sheets per PA Department of Labor & Industry requirements;
8. Maintain copies of time sheets in each qualified SSP's or DCW's file;
9. Develop written instructions to inform the SSP or DCW of how to implement EVV requirements;
10. Compute, withhold, file, and track Federal income tax withholding quarterly in the aggregate using the selected Applicant's separate FEIN and using the IRS Form 941, Employer's Quarterly Federal Tax Report and IRS Form 941 Schedule R, Allocation for Aggregate Form 941 Filers and Schedule B, Report of Tax Liability for Semi-Annual Schedule Depositors, as appropriate;
11. Process requests for voluntary deductions from the wages paid to a SSP or DCW for the convenience of those employees as permitted and authorized by Section 3 of the Wage Payment and Collection Law (43 P.S. § 260.3) and its implementing regulations, provided that the third-party receiving the deductions is a not-for-profit organization in good standing exempt from taxes under Section 501(c) of the Internal Revenue Code. When requests for voluntary deductions are made, the cost of processing such voluntary requests for deductions and transmittal of those deductions to the third-party shall be borne by the third-party, with the proviso that said costs shall be limited to the actual and reasonable costs of modifying the existing payroll system to permit these periodic deductions. When processing such requests, the selected Applicant shall:
 - a. Create an accurate payroll deduction mechanism that deducts the applicable payments for each two-week pay period and transmits the payments on a monthly basis to the third-party;
 - b. Print the amount deducted on the SSP's or DCW's payroll form; and
 - c. Maintain a record keeping system which provides an accurate list of those SSPs or DCWs who have submitted signed authorizations for the voluntary deductions and the transmittal of those deductions to the third-party.

The authorization for voluntary deductions shall cease when any of the following occur:

- a. The SSP or DCW has been terminated from employment;
 - b. The SSP or DCW withdraws its authorization for voluntary deductions; or
 - c. The third-party provides notice that it will no longer accept deductions from the SSP or DCW.
12. Compute, withhold, file, and track Medicare and Social Security taxes ("FICA") quarterly in the aggregate using the selected Applicant's separate FEIN, using the IRS Form 941, Employer's Quarterly Federal Tax Report, along with IRS Forms 941 Schedule R, Allocation for Aggregate Form 941 Filers and Schedule B, Report of Tax Liability for Semi-Annual Schedule Depositors, as appropriate;
 13. Maintain copies of the filed IRS Forms 941, Schedule R and Schedule B and related correspondence in the selected Applicant's file;

- 14.** Deposit Federal income tax withholding electronically (“EFTS filing”) in the aggregate using the selected Applicant’s separate FEIN per IRS depositing rules;
- 15.** Maintain copies of Federal income tax withholding deposit documentation in the selected Applicant’s file;
- 16.** Deposit FICA in the aggregate electronically (EFTS filing) using the selected Applicant’s separate FEIN per IRS depositing rules;
- 17.** Maintain copies of FICA deposit documentation in the selected Applicant’s file;
- 18.** Compute, withhold, and file FUTA annually in the aggregate using the selected Applicant’s separate FEIN and the IRS Form 940, Employer’s Annual Federal Unemployment (FUTA) Report, Schedule R, Allocation Schedule for Form 940 Filers and Schedule A, Multi-State Employer and Credit Reduction Information, as appropriate;
- 19.** Maintain copies of filed Form 940, Schedules A and R, as appropriate, and related documentation in the selected Applicant’s files;
- 20.** Deposit FUTA in the aggregate electronically (EFTS filing) using the selected Applicant’s separate FEIN per IRS depositing rules;
- 21.** Maintain copies of FUTA deposit documentation in the selected Applicant’s file;
- 22.** Create a User ID/Password and register PA Employer Withholding Account Identification Number to electronically file returns and payments when using e-TIDES Internet Filing Systems at <http://www.etides.state.pa.us>;
- 23.** Maintain copies of all documentation related to e-TIDES authorization for state income tax withholding in the selected Applicant’s file;
- 24.** Compute and withhold, at the current PA SIT tax rate, state income tax withholding for each CLE’s qualified SSP (resident or nonresident);
- 25.** Deposit state income tax withholding for each CLE’s qualified SSP or DCW (resident or nonresident) electronically using the e-TIDES Internet Filing System based on the payment filing frequency determined by PA Department of Revenue (semi-monthly, monthly, or quarterly);
- 26.** Maintain copies of state income tax withholding deposits and related correspondence in each CLE’s file;
- 27.** File quarterly reconciliations of state income tax withholding, including zero wages for each CLE (resident or nonresident), electronically using the e-TIDES Internet Filing System;
- 28.** Maintain copies of quarterly reconciliations of state income tax withholding and other related documentation and correspondence in each CLE’s file;
- 29.** File an annual reconciliation (along with the accompanying individual wage statements) for each CLE (resident or nonresident) electronically using the e-TIDES Internet Filing System;
- 30.** Maintain copies of the annual reconciliation (Form REV-1667 and other appropriate documentation) and related correspondence in each CLE’s file;
- 31.** File for and receive authorization from the PA Department of Labor and Industry to file state unemployment taxes electronically through the Pennsylvania Unemployment Compensation Management System (“UCMS”);
- 32.** Maintain copies documentation related to UCMS for state unemployment insurance taxes in the selected Applicant’s file;

33. Determine if any CLE has qualified SSPs or DCWs that are exempt from filing and paying state unemployment insurance taxes pursuant to the Fair Labor Standards Act and process them accordingly;
34. Compute, withhold, and file state unemployment insurance tax quarterly for each CLE (even when zero wages are reported) using the UCMS;
35. Maintain a report in each CLE's file of wages paid and correspondence in each calendar year for its qualified SSP or DCW who is non-tax-liable under § 131 of the Internal Revenue Code;
36. Deposit state unemployment insurance tax quarterly for each CLE (including last filing even when zero wages are reported) using the UCMS;
37. Maintain copies of state unemployment insurance deposits and correspondence in each CLE's file;
38. File state income tax withholding for non-PA resident employees, (Form REV 420, Employee's Statement of Non residence in PA and Authorization to Withhold State Income Tax, and Form REV-419, Employee Non-Withholding Application, and others as required), as appropriate;
39. Maintain copies of non-PA resident employee state income tax withholding filings and correspondence in each qualified SSP's or DCW's file;
40. Deposit state income tax withholding for non-PA resident SSPs or DCWs, as appropriate, and maintain copies of filings, payments, and correspondence in each qualified SSPs or DCWs file;
41. Maintain copies of non-PA resident SSP or DCW state income tax withholding payments and correspondence in each qualified SSP's or DCW's file;
42. File local earned income taxes ("EIT") and local services taxes ("LST"), per the requirements of the jurisdiction;
43. Maintain copies of the EIT and LST forms and any additional correspondence in each CLE's and qualified SSP's or DCW's file;
44. Deposit local EIT and LST, per the requirements of the jurisdiction;
45. Maintain copies of proof for payments and any additional correspondence in each CLE's and qualified SSP's or DCW's file;
46. Reconcile the filing and payment of local EIT withholding and applicable LST for each CLE, as required, using each locality's reconciliation forms, as applicable;
47. Maintain copies of local EIT withholding and applicable LST reconciliation forms and correspondence in each CLE's file;
48. Process all judgments, garnishments, tax levies, or other related holds on qualified SSPs or DCWs pay as may be required by Federal or state governments;
49. Maintain copies of judgments, garnishments, tax levies, and other related hold documentation in qualified SSPs' or DCWs' files;
50. Generate and disburse payment to SSPs or DCWs for each two-week pay period on or before the Friday that follows it;
51. Process direct deposit of qualified SSPs' or DCWs' payroll options as requested;
52. Maintain copies of direct deposit documentation in qualified SSPs' or DCWs' files;
53. Develop and maintain a system for managing improperly issued payroll options, stop payments on payroll transactions, and for the re-issuance of lost, stolen, or improperly issued payroll transactions including:

- a. Maintenance of a log of voided and reissued transactions, including all pertinent information;
 - b. Proper authorization of all stop payments and re-issuances; and
 - c. Timeframe for re-issuance payroll and issuance of stop payment request.
54. Research and resolve any tax notices received from the IRS, PA Department of Revenue, and PA Department of Labor and Industry regarding SSP tax liabilities/liens;
 55. Maintain an accounting system of all tax notices received from the IRS, PA Department of Revenue, and PA Department of Labor and Industry regarding SSP liabilities/liens; and
 56. Process Department of Labor and Industry Reason for Separation Notice for SSPs or DCWs who no longer work for a participant within 10 calendar days of receipt of notice.

Each Applicant should describe in its response its approach to the Processing and Distributing Qualified SSPs Payroll and Related Taxes and Insurances Task and each of its component parts listed above.

Applicant Response

R. End of Year Tax and Other Activities. The selected Applicant must:

1. Maintain a written procedure for reminding all CLEs and qualified SSPs or DCWs that they are required to notify the selected Applicant of all address or phone number changes prior to mailing out tax information in January of each year;
2. Develop and maintain a process through which notifications of SSP or DCW changes of address can be cross-checked with the relevant participant's address to determine if an FSLA Department of Labor exemption or any applicable IRS tax exemption will be met, as well as any impact on payroll requirements.
3. Process refunds of over-collected FICA for SSPs or DCWs in accordance with state and Federal requirements;
4. Maintain documentation related to FICA refunding in each applicable CLE and qualified SSP or DCW file;
5. Process, file and distribute IRS Forms W-2, *Wage and Tax Statement* for all qualified SSPs or DCWs in accordance with IRS instructions for agents. As part of this process, the total gross payroll per the Form W-2 must be reconciled to the calendar year's total gross payroll;
6. Verify that each qualified SSP's or DCW's social security number matches the name and date of birth information obtained from SSA's *Business Services Online* prior to submitting IRS Forms W-2 to SSA each calendar year;
7. Maintain copies of the Federal copy of Forms W-2 and related documentation in each qualified SSP's or DCW's file;
8. Process and file IRS Form W-3, *Transmittal of Wage and Tax Statement*, as appropriate (Note: If IRS Forms W-2 are filed electronically the IRS Form W-3 is not necessary);
9. Maintain copies of IRS Form W-3, as appropriate, in the selected Applicant's file;

10. Process any returned qualified SSP or DCW payroll options or vendor payments in accordance with PA Unclaimed Property Laws; and
11. Maintain copies of PA Unclaimed Property-related documentation in the qualified SSP's, DCW's, or vendor's file.

Each Applicant should describe in its response its approach to the End of Year Tax and Other Activities Task and each of its component parts listed above.

Applicant Response

- S. Processing and Tracking Payments for Vendor-Delivered Participant-Directed Goods and Services and Mileage Reimbursement.** The selected Applicant must:
1. Receive, verify, process, and pay all invoices from vendors providing outcome-based participant-directed goods and services, including but not limited to assistive technology and specialized supplies, in accordance with the participant's authorized ISP;
 2. Maintain the appropriate payment-related documentation in the vendor's file;
 3. Process any returned vendor payments in accordance with PA Unclaimed Property Laws;
 4. Process and file IRS Forms 1099-Misc, Miscellaneous Income, as applicable, for mileage reimbursement to individuals who are not SSPs or DCWs that provide transportation services to participants when such individuals earn more than \$600 in a calendar year and maintain copies of such documentation in those individuals' files; and
 5. File an applicable IRS Form 1096, when not filing the IRS Form 1099-Misc electronically, for individuals who receive mileage reimbursement with the IRS and the PA Department of Revenue and maintain copies of such documentation in the individual's files.

Each Applicant should describe in its response its approach to the Processing and Tracking Payments for Vendor-Delivered Participant-Directed Goods and Services and Mileage Reimbursement Task and each of its component parts listed above.

Applicant Response

- T. Establishing and Maintaining Files and Documentation.** The selected Applicant must:
1. Establish and maintain CLE files in an accurate, complete, secure, and confidential manner and for the required period of time as mandated by applicable Federal, state, and local rules and regulations. These files shall include, but not be limited to, the following information:
 - a. CLE's name;
 - b. CLE's address and email address, if available;
 - c. CLE's phone number (home and cell, if available);
 - d. Participant's MA Identification ("MCI") Number;
 - e. Participant's emergency contact person;

- f. Participant's emergency contact person's phone number (home and cell, if available) and email address (if available);
- g. Completed Common Law Employer Enrollment Packet forms as outlined in **Part III, Section III-6.M**;
- h. Verification of qualified Common Law Employer orientation (as needed);
- i. Completed Qualified SSP or DCW Employment Enrollment Packet and Vendor Payment Packet forms as outlined in **Part III, Section III-6.N**;
- j. Copy of the revoked IRS Form 2678, IRS confirmation of IRS Form 2678 revocation and any related correspondence from the IRS, as applicable;
- k. Copy of the letter retiring CLE's FEIN, when applicable;
- l. Copy of the IRS Form 8821 renewal and any related correspondence from the IRS, as applicable;
- m. Copy of the IRS Form 8821 revocation and any related correspondence with the IRS, as applicable;
- n. Copy of the PA Form UC-2B, Employer's Report of Employment Business Change, revoking the individual's SUTA account number and Power of Attorney, when appropriate;
- o. Copy of the PA DOR Form REV-1706, Business Account Cancellation, when appropriate;
- p. Copies of all PA DOR Forms PA-W3, Employer Quarterly Return of Income Tax Withheld (for remittance monthly and semi-monthly) including final return filed (even if its zero reporting) or copies of proof of filing if return filed electronically;
- q. Copies of the Form PA-501 Employer Quarterly Deposit Statement of Withholding Tax or copies of proof of filing if return filed electronically;
- r. Copies of all Forms PA REV-1667, (Annual Reconciliation) or copies of proof of filing if return filed electronically;
- s. SIT and SUI account numbers;
- t. Copies of documentation of all payments of SIT withholding or payment receipt if payments are made electronically;
- u. Copies of filing and payments of income tax withholding for PA non-resident employees, as applicable;
- v. Copy of Form UC-851, Notice of Pennsylvania Unemployment Compensation Responsibilities (provides the UC account number assigned as well as other UC tax information);
- w. Copies of Form UC-657, Contribution Rate Notice;
- x. Copies of quarterly Form UC-2, Employer's Report for Unemployment Compensation, and Form UC-2A, Employer's Quarterly Report of Wages Paid to Each Employee or copy of proof or filing if return filed electronically;
- y. Copies of proof of payment of UC taxes for individual or payment receipt if payment is made electronically;
- z. Copies of all individual-specific state unemployment insurance benefits payments;
- aa. Copies of the PA UC-2B, Employer's Report of Employment Business Change, when appropriate;

- bb.** Copy of registration of CLE with local taxation authorities as an employer for purpose of locality tax filing and payment;
 - cc.** Copies of all CLE local earned income tax and locality tax filings, or copy of proof of filing if return filed electronically;
 - dd.** Copies of all CLE local EIT and LST payments or payment receipts if payments are made electronically;
 - ee.** Copies of documentation related to any FICA refunding (employee portion) process and returned to eligible, qualified SSPs or DCWs;
 - ff.** Copies of documentation related to any FICA refunding (employer portion) processed and returned to the state Treasury;
 - gg.** Copies of workers' compensation insurance policies, premium invoices and documentation of payments, refunds, and all notices and correspondence;
 - hh.** Copies of completed workers' compensation audit reports, as applicable; and
 - ii.** Copies of Qualified SSP or DCW Termination Form.
- 2.** Establish and maintain current SSPs' or DCWs' files in an accurate, complete, secure, and confidential manner and for the required period of time as mandated by applicable Federal, state, and local rules and regulations. Files shall include, but not be limited to, the following information:
- a.** CLE's name;
 - b.** CLE's address;
 - c.** CLE's phone numbers (home and cell, if available);
 - d.** CLE's email address, if available;
 - e.** SSP's or DCW's name;
 - f.** SSP's or DCW's address;
 - g.** SSP's or DCW's phone numbers (home and cell, if available);
 - h.** SSP's or DCW's email address, if available;
 - i.** CLE's MCI Number;
 - j.** CLE's emergency contact person;
 - k.** Copy of the Qualified SSP or DCW Employment Enrollment Packet forms as described in **Part III, Section III-6.N**;
 - l.** Copies of documentation verifying the SSP's or DCW's social security number matches the name and date of birth information obtained through the Social Security Administration's *Business Service Online*;
 - m.** Dates of employment for each qualified SSP or DCW;
 - n.** Copies of qualified SSP or DCW State Police Criminal Background, FBI Criminal History Clearance, and DHS Child Abuse History Clearance (as applicable) consent forms (State Police Criminal Background Check Form SP-164, PA DHS/OCYF Child Abuse History Clearance Form CY-113, and FBI Criminal History Clearance form) and results;
 - o.** Determination of qualified SSP's or DCW's state of residence;
 - p.** If a worker is a non-PA resident, copy of Form REV-419, Employee's Non withholding Application, and Form REV-420, Employee's Statement of Non residence in Pennsylvania and Authorization to Withhold Other State's Income Tax, as applicable and required;

- q. Copies of filings and payments of out-of-state income tax withholding, when applicable;
 - r. Copies of SSP's or DCW's time sheets;
 - s. Copy of completed State New Hire Reporting documentation;
 - t. Copies of documentation regarding any judgments, garnishments, and tax levies or any related holds on the SSP's or DCW's pay as may be required by Federal or state government;
 - u. Copies of completed IRS Forms W-2 and W-2(c), as applicable;
 - v. Copies of documentation regarding any FICA refunds processed (employee portion) and copies of cancelled refund checks;
 - w. Copies of documentation of requests for verification of SSP or DCW wages requested by Federal and state agencies, as applicable;
 - x. Copies of documentation of any workers' compensation insurance claims filed by SSP or DCW or documentation that the selected Applicant made every attempt to obtain the documentation;
 - y. Copies of documentation of submission of SSP or DCW returned/not cancelled payroll options, FICA refund checks, or any other payments due to the PA Department of Treasury, Bureau of Unclaimed Property;
 - z. Copy of the Qualified SSP or DCW Termination Form; and
 - aa. Copy of the completed PA Department of Labor & Industry Reason for Separation Notice, if applicable.
3. Establish and maintain files for each vendor and any person who received mileage reimbursement, in an accurate, complete, secure, and confidential manner and for the required period of time as mandated by applicable Federal, state, and local rules and regulations. Files shall include, but not be limited to, the following documents:
- a. A copy of the Vendor Payment Packet forms as described in **Part III, Section III-6.N**;
 - b. Copies of invoices and receipts for authorized services rendered;
 - c. Copies of payments made for authorized services rendered;
 - d. A copy of vendor's completed Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes, and Income Tax Withholding and IRS worker employment status ruling letter, as applicable;
 - e. Copy of IRS Forms W-9, Request for Taxpayer Identification Number and Certification; and
 - f. Copies of the IRS Form 1099-M, Miscellaneous Income, when an individual who receives mileage reimbursement is paid \$600 or more in a calendar year.
4. Establish and maintain the selected Applicant's files in an accurate, complete, secure, and confidential manner and for the required period of time as mandated by applicable Federal, state, and local rules and regulations. Files shall include, but not be limited to, the following information:
- a. Copy of the Applicant's MA Provider Agreement;
 - b. Documentation regarding registration with the Pennsylvania Department of State to do business in the state;
 - c. Documentation verifying financial viability as described in **Section III-5**;

- d. Documentation regarding the IRS Form SS-4 to receive the selected Applicant's separate FEIN, FEIN Notification from the IRS, and the retirement of the selected Applicant's separate FEIN, when/if applicable;
 - e. Aggregate filings of IRS Forms 941 (Federal income tax withholding and FICA [Social Security and Medicare]) with individual-level income tax withholding, Schedules R and Schedule B, IRS Form 941-X, as appropriate, for each CLE and qualified SSP;
 - f. Aggregate payments of FICA and Federal income tax withholding and the individual-level tax payment back-up for each individual/qualified SSP or DCW;
 - g. Documentation of the receipt of aggregate FICA refunds and documentation at the individual-level related to FICA refunds;
 - h. Aggregate filings of IRS Forms 940 (FUTA) and Schedule R and the individual FUTA filing back-up for each CLE;
 - i. Aggregate payment of FUTA and the individual-level payment back-up for each CLE;
 - j. All communications with Federal, state, and local tax, labor and workers' compensation insurance, and DHS, OLTL, ODP, SCEs, and AEs, as applicable; and
 - k. Other documentation, as applicable.
5. Make specific documentation and records pertaining to any particular individual and his or her CLE and qualified SSPs or DCWs and vendors, available to the individual upon request.

Each Applicant should describe in its response its approach to the Establishing and Maintaining Files and Documentation Task and each of its component parts listed above.

Applicant Response

- U. Procure Workers' Compensation Insurance.** The selected Applicant must competitively procure a broker or third-party administrator ("TPA") to provide workers' compensation insurance for CLEs. The selected Applicant must provide ongoing management and oversight of the broker or TPA. This includes, but is not limited to:
- 1. Monitoring the broker/TPA services, including:
 - a. Adjuster handling regarding medical condition, disability, independent medical exams, malingering, and fraud;
 - b. Case Loads.
 - 2. Continual review of claims with dollar valuations and descriptions of the incidents;
 - 3. Conduct analysis for trends in the loss experience which require intervention, as necessary;
 - 4. Enforcing and collecting reimbursement from a liable party when a loss is caused by a third-party.

Each Applicant should describe in its response its approach to the Procure Workers' Compensation Insurance Task and each of its component parts listed above.

Applicant Response

V. Managing Workers' Compensation Insurance for Common Law Employers. The selected Applicant must:

1. Manage the initial application and receipt of individual workers' compensation insurance policies for each CLE;
2. Manage the renewal of individual workers' compensation insurance policies for each CLE;
3. Manage the timely payment of each CLE's individual workers' compensation insurance premium;
4. Provide wage information to workers' compensation insurer(s) to determine qualified SSP or DCW benefits, when requested;
5. Facilitate the workers' compensation insurer's(s') annual audit process, including hosting staff on-site, and providing necessary documentation; and
6. Maintain the following information related to workers' compensation insurance in each CLE's file:
 - a. Workers' compensation insurance application and renewal documentation for each CLE;
 - b. Workers' compensation insurance policies for each CLE;
 - c. Workers' compensation premium documentation for each CLE;
 - d. Qualified SSPs' or DCWs wage documentation for determining workers' compensation insurance benefits; and
 - e. Relevant workers' compensation insurance audit related documentation for each CLE.

Each Applicant should describe in its response its approach to the Managing Workers' Compensation Insurance for Common Law Employers Task and each of its component parts listed above.

Applicant Response

W. Turnover Services. Turnover is defined as those activities that are required for the selected Applicant to turnover Grant services to a successor Applicant or to Commonwealth resources. During the turnover period, the selected Applicant shall work cooperatively with any successor and the Department.

Prior to the expiration or termination of the purchase order, the selected Applicant must provide for a smooth and timely transition of its services to DHS and its successor. The selected Applicant must cooperate with DHS and supply DHS and any of its successor grantees or contractors with all required information during the turnover process; and pay all costs related to the transfer of materials and responsibilities as a normal part of doing business with the Commonwealth.

The Applicant must describe how it shall transition its processes to DHS and its vendors prior to the expiration or termination of the purchase order.

- 1. Turnover Requirements.** The selected Applicant must plan and manage the turnover in an orderly fashion so as to avoid any disruption to services. The selected Applicant must:
 - a.** Provide a Turnover Plan six months prior to the end of the purchase order term or within 30 calendar days after notification of termination by the Department.
 - b.** Implement the approved Turnover Plan three months prior to the end of the purchase order term or the date specified by the Department after notification of termination.
 - c.** Maintain service delivery staffing levels during the turnover period with no reduction in staffing.
 - d.** Not restrict or prevent the selected Applicant's staff from accepting employment or positions with the Department or with any successor. The Department will work with the selected Applicant on the timing of any transition of its staff.
 - e.** Provide to the Department or any successor, within 15 business days of a request, documentation and records required by the Department.
 - f.** Respond in a reasonable time to all Department requests regarding turnover information.
 - g.** Work closely with the Department to complete the turnover of responsibilities and the necessary knowledge transfer by the end of the purchase order period.
 - h.** Execute the approved Turnover Plan in cooperation with the successor's Implementation Plan, if any.

- 2. Turnover Plan.** The selected Applicant must develop and implement a DHS-approved Turnover Plan covering the turnover of the operational business activities and systems to either the Department or its designee. The Turnover Plan must be a comprehensive document detailing the proposed schedule, activities, systems, and resource requirements associated with the turnover tasks. Additionally, the Turnover Plan must be provided in a format and on media specified by the Department. The Turnover Plan must include, at a minimum:
 - a.** A description of staffing resources including skill sets and experience required to support a successful turnover. Identify a manager to manage and coordinate all turnover activities.
 - b.** A turnover organizational chart.
 - c.** An outline of key points and considerations, turnover success criteria, and the major tasks and subtasks pertinent to a successful turnover with minimum impact to operations.
 - d.** A plan and implementation schedule for sharing and transitioning responsibilities and operational support information to the Department or a successor.
 - e.** An explanation of how the selected Applicant shall manage the Turnover Plan, accurately assess progress, and mitigate variances for a successful turnover.

- f. Description of how the selected Applicant shall transfer all relevant data, materials, documentation, and other pertinent information to the Department.
 - g. Provide for the transfer of correspondence, records, documentation of outstanding issues, and other service delivery support documentation.
- 3. Turnover Results Report.** Following turnover of service delivery, the selected Applicant must submit to the Department, within 30 calendar days after the completion of Turnover activities, a Turnover Results Report. Turnover shall not be considered complete and final payment shall not be made until the Department receives and approves the Turnover Results Report and all requested documentation. The Turnover Results Report must include, at minimum, the following information:
- a. An abstract or summary of the selected Applicant's turnover approach and Project activities in terminology that will be meaningful to management and others generally familiar with the subject areas;
 - b. A description of the selected Applicant's data collection and analysis used pursuant to the Project;
 - c. A summary of findings, conclusions, and recommendations for improving the selected Applicant's Project activities;
 - d. All supporting documentation; including but not limited to flow-charts, forms, questionnaires, and other documents, as requested by the Department; and
 - e. A time-phased work plan for implementing the recommendations.

The selected Applicant shall be financially responsible for maintaining operations during Turnover. All costs relating to the transfer of materials and responsibilities shall be paid by the Applicant. The Department or successor Applicant shall only be financially responsible for the cost of modifying any existing operations.

Each Applicant should describe in its response its approach to the Turnover Services Task and each of its component parts listed above.

Applicant Response

III-7. Requirements.

- A. Disaster Recovery ("DR").** The selected Applicant must develop and document a disaster recovery plan for electronic records and files maintained by the selected Applicant. The selected Applicant must utilize reasonable data backup and disaster recovery procedures to prevent loss of information and an interruption in the use of its proposed systems.
- 1. The Applicant should describe its data backup and disaster recovery plans for restoring and maintaining operations during natural or human-induced disasters, or any other occurrence that damages systems or data.

2. The Applicant should provide detailed information regarding its backup and DR systems, architecture/frameworks, capabilities, governance, and procedures.
3. The Applicant should describe how its backup and DR plans enable the continuation of critical business processes for the protection and security of the data.
4. The Applicant should describe the testing process and testing frequency for its data backup and DR plans as well as the frequency with which each is reviewed and updated.

Applicant Response

B. Emergency Preparedness.

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

1. Describe how you anticipate such a crisis would impact your operations.
2. Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or, at a minimum, summarize how your plan addresses the following aspects of preparedness:
 - a. Employee training (describe your organization's training plan, and how frequently your plan shall be shared with employees).
 - b. Identified essential business functions and key employees necessary to carry them out.
 - c. Contingency plans for:
 - i. How your organization shall handle staffing issues when a portion of key employees is incapacitated.
 - ii. How employees in your organization shall carry out the essential functions if measures prevent from coming to the primary workplace.
 - d. How your organization shall communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
 - e. How and when your emergency plan shall be tested, and if the plan shall be tested by a third-party.

Applicant Response

C. Customer Service Transformation. The Commonwealth is committed to improving digital interactions with citizens as well as individuals and entities that conduct business with or on behalf of the Commonwealth (each a “Business Partner”). Customer Service Transformation was launched to help the Commonwealth achieve these objectives and is based on the following six design principles:

1. A single online destination for services;
2. Secure access to services through a single login;
3. Consistent and user-friendly online experience across all services;
4. A consolidated and streamlined digital footprint;
5. Continuous improvement through customer feedback; and
6. A single phone number to direct citizens or Business Partners to the services they are seeking.

Applicants are expected to acknowledge these principles. The selected Applicant shall align its performance and deliverables under the Contract awarded from this RFA with these principles, according to the following requirements.

Design Principles and Requirements:

1. Keystone Login provides:
 - a. A single online destination for services that enables citizens and Business Partners to locate services and conduct business in the Commonwealth, even if they do not know which agency to contact. Citizens and Business Partners can still navigate directly to services on agency websites, if they wish.

The selected Applicant must be able to integrate with the single online destination, starting with PA.GOV. The selected Applicant shall be able to receive and validate the credentials of a citizen or Business Partners that were previously authenticated from an active session.

- b. Secure access to services through a single login:

The Commonwealth implemented a single login system known as Keystone Login. The purpose of Keystone Login is to provide a consistent and secure approach to account administration. The Keystone Login offers citizens and Business Partners a single online point of access to services offered by multiple Commonwealth agencies or other Business Partners. It is critical that, by using

Keystone Login, any citizen or Business Partner can work with any Commonwealth agency or other Business Partner through the Commonwealth's external facing applications using a single login credential.

The consistent and modern authentication standards available through Keystone Login will increase convenience for citizens and Business Partners by simplifying account management and eliminating the need to remember multiple usernames and passwords, while also strengthening the Commonwealth's security posture. In addition, Keystone Login provides the ability for a citizen or Business Partner to create a single profile managed by Keystone Login.

The selected Applicant shall register with and utilize the Commonwealth's Keystone Login.

Applications that utilize Keystone Login can leverage authentication methods through one of the following approaches; (1) via a series of Application Programming Interfaces ("APIs"), or (2) as a redirect to the Keystone Login Portal. A detailed Developer Integration Guide will be provided to the selected Applicant; however, to aid in determining the level of effort, a summary version of the Developer Integration Guide and the Keystone Login Branding Guidelines are available at the following location: <http://keystonelogindevelopers.pa.gov>.

Applicants should review the summary revision of the Developer Integration Guide and the Keystone Login Branding Guidelines prior to responding to this RFA to gain an understanding of the mandatory APIs and services to be made available to citizens and Business Partners.

Applicants should acknowledge in their applications that they shall utilize the Keystone Login for citizens. If an Applicant requires any additional information to verify the identification of citizens through the authentication process provided by Keystone Login, the Applicant must identify the additional required information in its Technical Submittal. Additionally, the Applicant must commit to utilizing the Keystone Login for Business Partners when required by the Commonwealth.

- c. If the selected Applicant is responsible for helpdesk calls from application users, the selected Applicant shall provide Tier 1 Helpdesk support. Keystone Login provides an internal admin dashboard designed to provide Helpdesk information to add a caller with several Tier 1 level tasks. This is a secure internal administration site; hence, the selected Applicant shall need a COPA account, along with VPN in order to access this site and be provided access by the Commonwealth. The dashboard provides the following information:

Exception Logs: A log of all the errors that occur in the Keystone Login site, calls to Keystone Login APIs, and the Admin site. The list can be searched and filtered by different parameters (Username, Email Address, Start Date, End Date, Agency, or Application). Returns: ID, Log Date, Username, User Email, Application Code, Message, Method, File Path, Line Number and Stack Trace.

User Logs: A log of all user activity. The list can be searched and filtered by different parameters (Username, Email Address, Start Date, End Date, Agency, or Application). Returns: ID, Log Date, Username, User Email, Application Code, User Event Type, and Message.

Search: Used for searching users in Commonwealth domains. Search also provides the ability to edit Keystone Login accounts, unlock accounts when locked, and change or reset passwords. User search: Username, Email Address, First Name, Last Name, Phone or Domain. Returns: Name, Username, Domain with buttons to see Details, User Logs, Exception Logs, Reset Password, Change Password, Edit, or Social Logins.

2. A consistent and user-friendly online experience across all services:
A common look and feel increases trust by enabling citizens and Business Partners to easily recognize official services provided by the Commonwealth. This also includes ensuring that online services and information are accessible to all citizens and Business Partners, regardless of ability.

The selected Applicant shall comply with the Commonwealth's web site and mobile application design standards, including ITPs SFT002 – Commonwealth of PA Website Standards, NET005 – Commonwealth External and Internal Domain Name Services, and SFT 009 – Application Development and RFA requirements specified in **Part III, Section III-7**.

The selected Applicant must acknowledge and demonstrate compliance to relevant Federal, state, and local laws, regulations, rules, and legislation, including:

- Title III of the Americans with Disabilities Act (“ADA”), which prohibits discrimination on the basis of disability;
- Section 508 Amendment to the Rehabilitation Act of 1973, which requires all Federal agencies’ electronic and information technology to be accessible to those with disabilities; and
- Section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability for entities receiving Federal funds.

In addition, the selected Applicant must acknowledge compliance with the Web Content Accessibility Guidelines (“WCAG”) 2.0, which are industry standards. The selected Applicant must provide quarterly reports that demonstrate compliance with WCAG. Refer to the Commonwealth ITP ACC001 – Information Technology Accessibility Policy for additional information.

3. A consolidated and streamlined digital footprint:

The Commonwealth is looking to streamline its online presence and make information easier to find by eliminating or consolidating small, outdated, or low traffic Commonwealth websites.

The selected Applicant must use the PA.GOV domain for proposed websites. By using PA.GOV, citizens and Business Partners will know that they are utilizing official services from the Commonwealth.

4. Continuous improvement through customer feedback:

The Commonwealth will be collecting feedback from our citizen and Business Partners regarding the Customer Service Transformation. The Commonwealth may use the feedback to identify new opportunities to improve and innovate services.

The selected Applicant shall collect satisfaction and feedback related data from citizens and Business Partners.

5. A single phone number to direct citizens to the services they are seeking:

The Commonwealth intends to make it easier for citizens and Business Partners to find the services they are seeking by calling a single Commonwealth phone number. Citizens and Business Partners may still contact agencies directly through existing call centers and phone numbers, if they wish.

The selected Applicant shall collaborate in this initiative where appropriate.

Applicants should describe their strategies for incorporating the Customer Service Transformation design principles and requirements in their operation of the Project.

Applicant Response

- D. Lobbying Certification and Disclosure of Lobbying Activities.** This Project will be funded, in whole or in part, with Federal monies. Public Law 101-121, Section 319, prohibits Federal funds from being expended by the recipient or by any lower tier sub-recipients of a Federal contract, Grant, loan, or a cooperative agreement to pay any person for influencing, or attempting to influence, a Federal agency or Congress in connection with the awarding of any Federal contract, the making of any Federal Grant or loan, or entering into any cooperative agreement. All parties who submit applications in response to this RFA must sign the **Lobbying Certification Form**, attached as **Appendix G**, and if applicable, complete the **Disclosure of Lobbying Activities Form**, also attached as part of **Appendix G**.

Applicant Response

- E. Subcontracting with a Reporting Agent.** The selected Applicant may not subcontract with a reporting agent for the purpose of delegating VF/EA FMS tasks.

Applicant Response

- F. Performance and Payment Bonds.** The selected Applicant must provide executed performance and payment bonds during the Readiness Review period, each in the sum of six months of the estimated annual Agreement amount, with the Commonwealth as the obligee. The surety will be a surety company or companies listed in the Federal Registry of Surety Companies and approved by the State Corporation Commission to transact business in the Commonwealth of Pennsylvania. No payment will be due and payable to the selected Applicant, even if the Agreement has been performed in whole or in part, until the bonds have been delivered and approved by the Department. The payment bond will be used to cover delinquent payments to qualified SSPs, vendors, individuals providing transportation for mileage reimbursement, and Federal state and local tax and workers' compensation insurance premium payments up to the maximum of the full value of the bond in the event that the selected Applicant is unable to properly, promptly, and efficiently perform the Agreement or the Agreement is terminated by default or bankruptcy.

Applicant Response

- G. Regulatory Requirements.** The selected Applicant must be knowledgeable of the Federal and state statutes, regulations, and restrictions as may be amended, and comply with those applicable to this Agreement, including but not limited to the following items. The selected Applicant must:
1. Operate in accordance with § 3504 of the IRS) Code, Revenue Procedure 70-6, 1970-1 C.B. 420, as modified by IRS Proposed Notice 2003-70 and IRS REG-137036-08 and any other future revenue procedures, notices, or publications promulgated by the IRS.
 2. Operate in compliance with state and local tax laws, Federal and state labor laws, and state workers' compensation insurance laws.
 3. Follow record retention procedures of all applicable Federal, state, and local government agencies.
 4. Establish and maintain all archived files in an accurate, secure, and confidential manner and for the required period of time as mandated by applicable Federal, state, and local rules and regulations.
 5. Comply with Department Medical Assistance Bulletin 99-11-05 titled "Provider Screening of Employees and Contractors for Exclusion from Participation in Federal Health Care Programs and the Effect of Exclusion on Participation" and any revisions or updates thereto.
 6. Comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, by providing all persons with limited English proficiency meaningful access to its services, including but not limited to the translation of material into other languages for training sessions, as identified by ODP.

7. Comply with Section 12006 of the 21st Century Cures Act (the “CURES Act”), P.L. 114-255, added Section 1903(l) of the Social Security Act (SSA). Section 1903(l) provides that states must require the use of an electronic visit verification (EVV) system for personal care services (PCS) and home health care services (HHCS) that require an in-home visit by a provider.
8. Operate in accordance with § 36.303 of the ADA through the provision of translation and interpreter services (for example, American Sign Language, and services for persons with Limited English Proficiency), materials in alternate print including but not limited to large print or braille, and materials in languages other than English.

Applicant Response

H. Vendor/Fiscal Employer Agent Participant-Directed Service Model Requirements. The selected Applicant must be aware of and understand the structure of the ODP and OLTL Vendor/Fiscal Employer Agent Participant-Directed Services Model as set forth in the following documents:

- The ODP Consolidated Waiver;
- The ODP Community Living Waiver;
- The ODP P/FDS Waiver;
- The ODP ISP Manual for Individuals with an Intellectual Disability;
- Department Developmental Programs Bulletin 00-08-14, Vendor Fiscal/Employer Agent Financial Management Services (VF/EA FMS), or its successor;
- ODP Communication on VF/EA Financial Management Services (FMS) Wage Ranges and Benefit Allowances; and
- The Pennsylvania Guide to Participant-Directed Services, or its successor;
- The OLTL Act 150 program; and
- The OLTL OBRA Waiver.

Applicant Response

I. Conflict Free Requirements. The selected Applicant must be free of any conflict of interest with any providers that render ODP and OLTL-funded services now or in the future during the term of this Grant. To ensure an objective, unbiased process, the selected Applicant, and any of its subcontractors must be free of real or perceived conflicts of interest:

1. The selected Applicant and its subcontractors may not be a part of or affiliated with any provider that renders ODP and OLTL-funded services now or in the future during the term of this Grant and must remain wholly independent from any such provider. Neither the governing body of the selected Applicant nor individual members of the governing body may be affiliated with any provider that renders ODP and OLTL-funded services now or in the future during the term of this Grant, nor may the selected Applicant or its subcontractors be affiliated with or a subsidiary of any provider that renders ODP and OLTL-funded services now or in the future during the term of this Grant.

2. No personnel assigned to the Project may work for any provider that renders ODP and OLTL-funded services now or in the future during the term of this Grant. However, personnel assigned to the Project may receive direct services or supports from such provider as long as the services are purchased at fair rates that are either privately paid for by the participant, through an ODP or OLTL-funded program, or any other third-party program.

The Commonwealth may reject an application from an Applicant that has been determined to have a conflict of interest. As part of its response, each Applicant must submit complete organizational information that includes an organization chart listing all subsidiaries, a listing of all agreements that the Applicant has within Pennsylvania, and a listing of any agreements of its subsidiaries associated with any ODP or OLTL-funded home and community-based services provider doing business in Pennsylvania.

Applicant Response

- J. Office Requirements.** The selected Applicant must establish a presence during Transition in each region, as defined by CHC and ODP, which is available to conduct in-person meetings with individuals, families, and representatives at least five days a week during regular business hours (8:30 a.m. through 5:00 p.m.) and with, at minimum, evening hours (5:00 p.m. through 8:00 p.m.) one day per week. Refer to **Appendix I**, for the CHC, and **Appendix J**, for the ODP regions.
1. All physical site(s) utilized must be accessible and meet all ADA standards.
 2. The selected Applicant must have a physical site and the equipment that is appropriate to support the provision of VF/EA FMS as required by this RFA.
 3. The selected Applicant be able to obtain meeting rooms including equipment, Microsoft® Office Software, network connectivity, supplies, clerical assistance, and administrative support needed to perform the Project.

Applicant Response

- K. Department of State.** The selected Applicant must be qualified and registered with the Pennsylvania Department of State to do business in Pennsylvania.

Applicant Response

- L. Medicaid Enrolled Provider.** The selected Applicant must be an enrolled provider in the Pennsylvania MA Program.

Applicant Response

- M. Criminal Background Clearances.** The selected Applicant must, at its expense, arrange for a criminal background clearance from the Pennsylvania State Police and child abuse clearances per the Child Protective Services Law (23 Pa. C.S. Chapter 63).

The selected Applicant must obtain written results from the Pennsylvania State Police and Office of Children, Youth and Families' DHS-ChildLine and Abuse Registry for each of its employees who performs any work on this Agreement or who would have access to information protected by HIPAA, as well as the employees of any of its subcontractors; and all SSPs who will:

1. Have access to Commonwealth facilities, either through on-site or remote access;
2. Be employed by the CLE; or
3. Perform work related to this RFA.

Criminal background checks are conducted via the "Request a criminal history background check" link found on the Pennsylvania State Police Website at <http://www.psp.pa.gov>. The selected Applicant must conduct the required criminal background checks for each relevant individual prior to that individual's initial access to Commonwealth facilities or employment as an SSP. Child abuse clearances are obtained from www.compass.state.pa.us/cwis.

If staff that perform work related to this RFA or a potential SSP has not been a Pennsylvania resident for the previous two years, the selected Applicant and CLE employee must obtain a Federal Criminal History Record from the FBI, in addition to the Criminal History Record from the State Police.

Before the Commonwealth will permit access to Commonwealth facilities or employment as an SSP, the selected Applicant must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a selected Applicant employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concern about building, system, or personal security or is otherwise job-related, the selected Applicant shall not assign that employee to any Commonwealth service program, shall not permit access to any participant's home, shall remove any access privileges already given to the employee, and shall not permit that employee remote access unless the agency consents to such access, in writing, prior to access. The Commonwealth may, in its absolute discretion, withhold its consent.

Applicant Response

- N. Current, Comprehensive, Pennsylvania-Specific VF/EA FMS Organization Procedures Manual.** The selected Applicant must prepare and maintain a Pennsylvania-specific VF/EA FMS Organization Procedures Manual ("Manual"). This Manual must include procedures and internal controls for all VF/EA FMS organization tasks and requirements outlined in this RFA. The Manual must be submitted to the Commonwealth during the selected Applicant's Readiness Review period, for review and approval. The selected Applicant shall update the Manual at

least annually or more frequently, as necessary, and provide all updates for formal review and approval by the Department before integrating the change. The selected Applicant shall submit and make the Manual available to the Department in electronic format. The selected Applicant shall post the Manual on their website. The selected Applicant shall also provide documentation to ODP and OLTL on an annual basis that all procedures and internal controls for all VF/EA FMS organization tasks and requirements outlined in this RFA have been implemented.

Applicant Response

O. System Requirements. The selected Applicant must be capable of accessing the following Department systems, demonstrating its ability to use these systems, and explaining how these systems would be used:

1. The Department's claims processing and management information system, currently, PROMIS^e™ or its successor, the Commonwealth's claims processing and management information system. Information is available at: <http://www.dhs.pa.gov/provider/promise/index.htm>
2. HCSIS, or its successor, the information system used to maintain waiver participants' records specific to the Consolidated, P/FDS, and Adult Autism waivers. HCSIS information is available at: <https://www.hcsis.state.pa.us/hcsis-ssd/>.
3. EVS, or its successor, is the Department's system for verifying Medicaid recipient eligibility. Information is available at: <https://www.dhs.pa.gov/providers/FAQs/Pages/ACCESS-EVS-FAQ.aspx>
4. The selected Applicant must have an EVV system which captures the six items required under the CURES Act and can interface with the DHS Aggregator. The six items required under the CURES Act are:
 - The type of service provided;
 - The name of the individual receiving the service;
 - The date of service delivery;
 - The location of service delivery;
 - The name of the individual providing the service; and
 - The time the service begins and ends.
5. Any new or updated software or operating system packages required by Federal or state regulations, policies, and procedures.

Applicant Response

P. Information Handling. The selected Applicant must abide by the Commonwealth's specific regulations and requirements concerning confidentiality of information and

Health Insurance Portability and Accountability Act (“HIPAA”) requirements (See **Part VII, IT Contract Terms and Conditions, Exhibit A.**)

The nature of VF/EA FMS requires the handling of sensitive information. All personnel, including subcontractors, assigned to the provision of VF/EA FMS by the selected Applicant must comply with applicable Federal and state laws, regulations, and rules regarding the security and confidentiality of information individuals receiving MA services.

Such compliance shall include:

1. All personnel and subcontractors of the selected Applicant must comply with the provisions of HIPAA.
2. All personnel and subcontractors of the selected Applicant must receive training in confidentiality regulations, including HIPAA Privacy and Security training and MA confidentiality requirements.
3. All personnel and subcontractors of the selected Applicant must sign a confidentiality Agreement. Personnel policies must provide for disciplinary procedures relevant to violation of the signed confidentiality Agreement.
4. No confidential or sensitive information may be used by the selected Applicant or subcontractors or given to another agency other than for the purpose of carrying out obligations of the Agreement.

The selected Applicant must develop and maintain adequate measures to prevent unauthorized access, copying, and distribution of information during work on this Project. The selected Applicant must properly dispose of both hard and electronic working copies of information during work on this Project, as well as any remaining information upon the completion of the Project.

Sensitive information may need to be transferred from other agencies or shared with the Commonwealth during the course of the Agreement period and transitioned to another vendor at the conclusion of this Agreement. The selected Applicant shall follow Commonwealth procedures for information handling and sharing. The selected Applicant shall properly retain records for six years after becoming fully inactive or until the disposition of court hearings, audits, and appeals are complete.

Applicant Response

- Q.** Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every Pennsylvania worker 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 all applicable Pennsylvania state labor and workforce safety laws. Such certification shall be made through **Appendix K** the Worker Protection and Investment Certification Form (BOP-2201) and submitted with the bid, proposal or quote.

Applicant Response

III-8. Reports and Project Control. The selected Applicant shall submit proposed formats and data sources for each of the reports that follow for Department approval during the selected Applicant's Readiness Review period. The Department shall have read-only access to the accounting and information systems for validation of all data contained in reports and to perform ad hoc data queries. The selected Applicant must provide all required reports via File Transfer Process using the Department's e-gov application or another secure electronic file transfer process approved by the Department. The following are the minimum fields of data that need to be included on all participant generated reports: Participant's Name, Medical Assistance ID, Participant Number, Region, County of Residence, County AE, CLE Name, CLE ID Number, and Waiver.

The selected Applicant shall create and submit each of the following reports:

A. Pay Period Report. A report that is generated at the end of each pay period. The selected Applicant shall submit this report to the applicable CLE, so long as the CLE has provided a valid physical or electronic address to the selected Applicant, as well as the Department within two business days after each Friday pay date, and it shall include the following information:

1. Pending Timesheets.

- Date of Pay Period;
- Timesheets that were not paid with an explanation for non-payment;
- W code for each service not paid; and
- The number of units and dollars needed to make payment.

2. Denied Claims.

- W code for each service;
- Denial Code;
- Reason;
- Internal Control Number ("ICN") Number; and
- Reason Code.

3. 40/60 Report.

- A list of SSPs who are relatives or legal guardians of the participant and who provide more than 40 hours of Companion, Home and Community Habilitation services, or both Companion and Home and Community Habilitation services to the participant under the Consolidated, Community Living, or P/FDS waivers in any given work week; and
- Cases where multiple SSPs who are relatives or legal guardians of the participant provide a collective total of more than 60 hours of Companion or Home and Community Habilitation services to the participant under the Consolidated, Community Living, and P/FDS waivers in any given work week.

4. Overtime.

- A list of CLEs that have paid overtime, including the associated participant;
- The amount of overtime paid;
- The SSP that received the overtime payment; and
- The total amount of overtime the CLE incurred during the fiscal year to date.

5. EVV Exceptions.

- The name of the SSP who manually edited the timesheet;
- The procedure code for which the edit occurred;
- The date and time at which the edit occurred;
- The number of cumulative edits for the participant for the pay period and for the fiscal year.

6. Utilization.

- Date of the pay period;
- W code for each service;
- Number utilized units and dollars paid to date;
- Number of units and dollars remaining in the fiscal year; and
- Date of information generated and from where the data is pulled.

Applicant Response

B. Bi-Payroll Denied Claims Report. The selected Applicant shall generate and submit this report to the Department by the Tuesday that follows each second payroll period, which ends on a Friday. This report shall contain a cumulative list of denied claims that have not been resolved after two payroll periods from the date of the initial denial. The following information shall be included:

- Participant's name;
- Procedure code;
- ICN;
- Action taken to follow-up and resolve Error Status Codes and actions associated with denied claims; and
- The date the denied claim was resolved and approved for payment.

Applicant Response

C. Monthly Report. The selected Applicant shall generate and submit this report to the Department at the end of each calendar month, within five business days after the end of month. In addition, this report must include the following:

1. CLE Enrollment. The following information must be included:

- Date the referral was received;
- Was the referral received by a referral form;
- If "no," who sent it;
- Date the enrollment packet was sent to the CLE;
- Date the packet was received back;

- Was the packet completed correctly;
- Questions with incomplete information;
- Date the selected Applicant followed up with the CLE on an incomplete packet;
- Number of times the selected Applicant needed to follow-up with the CLE before a completed packet was received;
- Date the completed packet was received;
- Date of the CLE training;
- Date of the CLE enrollment; and
- Total number of days to enroll the CLE.

2. SSP Enrollment.

- Date the referral was received;
- Was the referral received by a referral form;
- If “no,” who sent it;
- Date the SSP packet was sent;
- Date the enrollment packet was sent to the CLE;
- Date the packet was received back;
- Was the packet completed correctly;
- Questions with incomplete information;
- Date the selected Applicant followed up with the CLE on an incomplete packet;
- Number of times the selected Applicant needed to follow-up with the CLE before a completed packet was received;
- Date the completed packet was received; and
- Total number of days to enroll the SSP.

3. Customer Service Support Requests.

- The number of support requests received as well as the time and date each was received;
- The wait time before each support request was answered;
- If a support request is in a form of a phone call, provide the number of lost calls;
- Summary of reasons for support request;
- How resolution was achieved;
- Number of customer service surveys completed; and
- Level of Satisfaction.

4. Grievances.

- The date received;
- The subject;
- The date of all correspondence;
- Name of responsible employee;
- Actions taken for resolution; and
- Resolution date.

5. Budget Utilization.

- Date of the pay period;

- W code for each service;
- Number utilized units and dollars paid to date;
- Number of units and dollars remaining in the fiscal year; and
- Date of information generated and from where the data is pulled.

Applicant Response

D. Quarterly and Annual Status Reports. The selected Applicant shall generate and submit this report to the Department at the end of each quarter, within 15 business days after the quarter has ended. This report must include the following:

1. Activities and Problem Identification Summary. This must cover activities and issues encountered during the reporting period. Each fourth quarterly report must be an annual progress report covering activities and issues of the past full Agreement year as well as recommendations for the next Agreement year. The selected Applicant shall present all figures by month, region, county, waiver program, and in the aggregate; additional categories apply for some statistics and are listed individually. Quarterly and annual status reports must include:

- The number of referrals received, from Supports Coordinators, by Supports Coordination Organization, as described in Section III-6.J.
- The number of individuals who stopped receiving VF/EA FMS from the selected Applicant; this number must also be presented by reason for termination, if known; and
- For the annual status report only, identify any trends in the provision of FMS and an explanation of how both best practices and lessons learned shall be acted upon.

2. SSP and CLE Report.

- Address of the CLE;
- Email address of the CLE;
- Relationship to the Participant;
- A list of enrolled SSPs qualified to render services;
- SSP names;
- SSP mailing addresses;
- SSP email addresses, if available;
- SSP phone numbers (home and cell, if available);
- SSP average numbers of hours worked for the month;
- SSP hire dates;
- SSP payroll statuses (direct deposit or check);
- SSP live-in exemptions;
- SSP service qualified to provide and wage rate;
- SSP dates of the last qualification determination;
- A list of participants that have active authorizations for services;
- Each SSP's hourly rate;
- The CLE's relationship to each SSP employed by the CLE;
- Each CLE's SUTA rate;

- A list of each SSP that is tax exempt; and
- Other information specified by ODP or OLTL.

Applicant Response

E. Annual Quality Report. The selected Applicant shall generate and submit this report to the Department by November 30th of each year. The following information must be included:

- 1. SUTA Rate.** The Applicant must provide the new CLE SUTA rate for the new calendar year.
- 2. Quality Management Plan.** The Applicant must provide the following:
 - a.** A summary of the quality management tools utilized throughout the year; and
 - b.** An updated quality management plan.

Applicant Response

F. Requalification Report. The selected Applicant shall generate and submit a report to the Department containing a list of qualified SSPs, organized by service qualified, and status of each with regard to qualification during re-qualification period. ODP and OLTL will specify the frequency, data elements, and process for this report prior to the beginning of the Requalification Process.

Applicant Response

III-9. Performance Standards. The Commonwealth has developed a set of minimum Performance Standards, defined below, which the selected Applicant must meet or exceed in order to be in good standing. The selected Applicant’s performance shall be reviewed and assessed as is outlined below. The Department’s Grant Administrator will give written notice to the selected Applicant of each failure to meet a Performance Standard. The Department may, at its discretion, assess liquidated damages, as specified below, for a selected Applicant’s failure to meet the applicable Performance Standard. The first three months after the Effective Date are a transition period and the Department will not impose damages based on a failure to meet these Performance Standards. Where an assessment is defined as an “up to” amount, the dollar value will be set at the discretion of the Department. If the Department does not assess liquidated damages in a particular instance, the Department is not precluded from pursuing other or future assessments relating to those performance standards and their associated damages.

Describe your ability to meet or exceed these minimum Performance Standards.

CATEGORY	CRITERIA	NON-COMPLIANCE
1. CLE Orientation	The selected Applicant shall provide CLE orientation to each new CLE within five business days from the date it receives a correctly completed and submitted CLE enrollment packet for that CLE.	For each instance in which the CLE orientation date is greater than five business days after the date the selected Applicant receives a correctly completed and submitted CLE enrollment packet for that CLE, ODP and OLTL may assess liquidated damages of up to 10% of the total PMPM amount of the relevant participant.
2. CLE Enrollment	The selected Applicant shall enroll each new CLE within five business days from date that CLE completed New CLE Training.	For each instance in which the enrollment date for a given CLE is greater than five business days after the date that CLE completed New CLE Training, ODP and OLTL may assess liquidated damages of up to 10% of the total PMPM amount of the relevant participant.
3. SSP/DCW Enrollment	The selected Applicant shall enroll each new, vendor, SSP, or DCW within five business days from the date it receives a correctly completed and submitted SSP or DCW enrollment packet for that SSP or DCW, unless an exception is requested in writing within this timeframe and is granted by ODP and OLTL.	For each instance in which the enrollment date for a given vendor, SSP, or DCW is greater than five business days after the date the selected Applicant receives a correctly completed and submitted vendor, SSP, or DCW enrollment packet for that vendor, SSP, or DCW, and an exception was not granted by ODP or OLTL, ODP and OLTL may assess liquidated damages of up to 10% of the total PMPM amount of the relevant participant.
4. Incomplete Form Notification	The selected Applicant shall notify the relevant CLE within two business days from the date it receives an incomplete or incorrectly submitted CLE, SSP, DCW, or Vendor enrollment packet.	For each instance in which the selected Applicant does not notify the relevant CLE within two business days from the date it receives an incomplete or incorrectly submitted CLE, SSP, DCW, or Vendor enrollment packet, ODP and OLTL may assess liquidated damages of up to 10% of the total PMPM amount of the relevant participant.
5. Payroll	The selected Applicant shall correctly calculate and timely distribute payments to SSPs, DCWs, and Vendors in accordance with the established payment schedule.	If under 95% of all payments to SSPs, DCWs, and Vendors are calculated correctly and distributed timely in accordance with the payment schedule of every two weeks, ODP and OLTL may assess liquidated damages based on the following tiered structure: <ul style="list-style-type: none"> • 94%-90% of payments to SSPs, DCWs, or Vendors incorrectly calculated and/or untimely - \$500

		<ul style="list-style-type: none"> • 89%-80% of payments to SSPs, DCWs, or Vendors incorrectly calculated and/or untimely - \$1,000 • Below 80% of payments to SSPs, DCWs, or Vendors incorrectly calculated and/or untimely - \$2,000
6. Pay Period Reports	The selected Applicant shall, within two business days after the end of each payroll period, submit a bi-weekly Pay Period Report via mail or electronic mail to ODP, OLTL, and each enrolled CLE that has provided a valid physical or electronic mailing address to the selected Applicant.	For any calendar month in which the selected Applicant submits less than 95% of all Pay Period Reports to ODP, OLTL, and each enrolled CLE for whom the selected Applicant has a valid address within two business days after the end of each payroll period, ODP and OLTL may assess liquidated damages of up to 0.5% of the total PMPM for all participants.
7. Bi-Payroll Denied Claims Reports	The selected Applicant shall submit a cumulative report showing denied claims that have not been resolved after two payroll periods from the date of the initial denial. The selected Applicant shall submit this report on the Tuesday that follows each second payroll period.	For any calendar month in which there are denied claims that have not been resolved after two payroll periods from the date of the initial denial and for which ODP and OLTL have not granted an exception, ODP and OLTL may assess liquidated damages of up to 0.5% of the total PMPM for all participants.
8. Budget Utilization	The selected Applicant shall report utilization of budgets with at least 95% accuracy when compared to the utilization recorded in the Department's currently utilized data information system for a sample each quarter.	If the selected Applicant reports utilization of budgets at less than 95% accuracy when compared to the Department's currently utilized data information system, ODP and OLTL may assess up to 0.5% of the total PM/PM for all participants.
9. Reports	The selected Applicant shall submit all reports listed in Section III-8 – Reports and Project Control accurately, including incorporation of the minimum fields of data set forth at the beginning of that section.	For each occurrence when the Department finds more than five errors on any report submitted to it, ODP and OLTL will assess liquidated damages of up to \$200.00 and require a corrected resubmission of the inaccurate report within three business days.
10. Reports	The selected Applicant shall submit each report listed in the following sections of this RFA by the due date set forth in its respective section: <ul style="list-style-type: none"> • Section III-6.A.4 – Transition Results Report 	For any report that the selected Applicant fails to submit to the Department and/or a CLE, if applicable, on or before the due date specified for that report, ODP and OLTL may assess liquidated damages of up to \$100.00 for each day the report is past due. This includes corrected resubmissions of

	<ul style="list-style-type: none"> • Section III-6.C.6 – Bank Account Activity Report • Section III-6.I.1. – CLE Satisfaction Survey Report • Section III-6.O.6 – Weekly SSP/DCW Requalification Report • Section III-6.W.3 – Turnover Results Report • Section III-8 – Reports and Project Control 	inaccurate reports required pursuant to Performance Standard 9.
11. CLE Satisfaction Survey	The selected Applicant shall analyze the Customer Satisfaction Surveys distributed to CLEs before January 31 st of each year and submit the results in a report to the Department no later than April 30 th of that same year. If the total satisfaction rate is less than 95% for a given year, the selected Applicant also must submit a corrective action plan it reasonably expects the Department will approve by April 30 th of that year.	For any year in which the total satisfaction rate, as detailed in the report the selected Applicant submits to the Department, is less than 95%, the Applicant shall develop a corrective action plan to address any issues raised in the surveys and receive approval from the Department therefor. Where the selected Applicant fails to submit an adequate corrective action plan by April 30 th of the relevant year, ODP and OLTL may assess liquidated damages of up to \$5,000.00.
12. Formal Complaints/Grievance	The selected Applicant shall provide an acknowledgement of any complaint or grievance within one business day and ultimately resolve the complaint or grievance within five business days, both measured from the date of receipt by the selected Applicant. The selected Applicant shall also track complaints and grievances and report them to the Department as part of the Monthly Report.	For any formal complaint or grievance the selected Applicant receives and fails to provide an acknowledgement of within one business day, ultimately resolve within five business days, or adequately report to the Department as part of Monthly Reports submitted while it is pending, ODP and OLTL may assess liquidated damages of up to \$200.00.
13. Customer Service	Answer support requests via phone, voicemail, email, and chat during the Core Hours of Monday through Friday, 9:00 AM-7:00 PM Eastern Standard Time and every Saturday from 9:00 am until 1:00 pm, in compliance with the following applicable time threshold:	For any calendar month in which the selected Applicant does not answer the support requests in compliance with the applicable time threshold, ODP and OLTL may assess liquidated damages of up to two percent of the total PMPM for all participants.

	<ul style="list-style-type: none"> • For calendar months in which there are 500 or fewer support requests, such requests are answered within ten minutes at least 95% of the time; • For calendar months in which there are between 501 and 1,000 support requests, such requests are answered within ten minutes at least 90% of the time; • For calendar months in which there are between 1,001 and 1,500 support requests, such requests are answered within ten minutes at least 85% of the time; and • For calendar months in which there are more than 1,500 support requests, such requests are answered within ten minutes at least 80% of the time. 	
<p>14. Support Request Response Time</p>	<p>For each request, the selected Applicant must resolve support requests within the following applicable time frame.</p> <p>For requests received during the Core Hours specified above:</p> <ul style="list-style-type: none"> • 30 minutes during calendar months in which the selected Applicant receives no more than 500 support requests; • Within one hour during calendar months in which the selected Applicant receives between 501 to 1,000 support requests; • Within three hours during calendar months in which the selected Applicant receives between 1,001 to 1,500 support requests; and • Within five hours during calendar months in which the selected Applicant receives 	<p>For any calendar month in which the selected Applicant does not respond to the support requests in compliance with the applicable time frame, the Department may assess liquidated damages of up to one percent of the total PMPM for all participants.</p>

	<p>more than 1,500 support requests</p> <p>For requests received after Core Hours:</p> <ul style="list-style-type: none"> • Within one business day of the request's receipt 	
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- A.** For any deficiency, including ones relating to the Performance Standards, the selected Applicant shall prepare and submit a corrective action plan for any observation or finding contained in a notice of deficiency. The selected Applicant must submit the corrective action plan to the Department within 10 business days of notification of the deficiency or such longer time as may be agreed to by the Department.
- B.** The corrective action plan must include, but is not limited to:
1. Brief description of the findings;
 2. Specific steps the selected Applicant shall take to correct the situation or reasons why it believes corrective action is not necessary;
 3. Name(s) and title(s) of responsible staff person(s);
 4. Timetable for performance of the corrective action steps;
 5. Monitoring that shall be performed to implement corrective action;
 6. Signature of the selected Applicant's Program Manager or a senior executive.
- C.** The selected Applicant must implement the corrective action plan within the timeframe agreed to by the parties for that particular corrective action plan. Failure to implement a corrective action plan, in the manner agreed to, may result in further action by the Department, including, but not limited to, a finding of default.
- D.** In the event the Department determines a deficiency to be a serious non-compliance with the selected Applicant's obligations under the Agreement, the Department may find the selected Applicant in default.

Applicant Response

PART IV

COST SUBMITTAL

IV-1. Cost Submittal. The information requested in this **Part IV** shall constitute the Cost Submittal. The Cost Submittal shall be submitted as a separate attachment and shall not be submitted as part of the Technical Submittal. The total proposed cost should be broken down into the components set forth in **Appendix C – Cost Submittal Worksheet**. The percentage of commitment to SDBs and VBEs should not be stated in the Cost Submittal. Applicants should **not** include any assumptions in their cost submittals. If the Applicant includes assumptions in its Cost Submittal, the Department may reject the application. Applicants should direct in writing to the Issuing Officer pursuant to **Part I, Section I-9** any questions about whether a cost or other component is included or applies. All Applicants shall then have the benefit of the Department’s written answer so that all applications are submitted on the same basis.

PART V

SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE PARTICIPATION INFORMATION

- V-1. SDB and VBE Participation Goals.** The Issuing Office and BDISBO have set the SDB Participation Goal and a VBE Participation Goal for this RFA, which are listed in **Part I, Section I-11** of this RFA. The SDB and VBE Participation Goals were calculated based upon the market availability of SDBs and VBEs for work scopes identified for this solicitation.

Applicants now must agree to meet the SDB and VBE Participation Goals in full or demonstrate they have made Good Faith Efforts to meet the Goals and obtain an approved waiver or their application will be disqualified from further consideration.

- V-2. SDB Participation Submittal, Appendix D.** Applicants should submit the SDB Participation Submittal and associated required documentation in accordance with the Instructions for Completing SDB Participation Submittal and SDB Utilization Schedule and with the submission requirements of **Part 1, Section I-13.A**.

- V-3. VBE Participation Submittal, Appendix E.** Applicants should submit the VBE Participation Submittal and associated required documentation in accordance with the Instructions for Completing VBE Participation Submittal and VBE Utilization Schedule and with the submission requirements of **Part 1, Section I-13.A**.

NOTE: Equal employment opportunity and Contract compliance statements referring to company equal employment opportunity policies or past Contract compliance practices do not constitute proof of SDB or VBE Status or entitle an Applicant to receive credit towards the SDB or VBE participation goals.

- V-4. Contract Requirements—SDB and VBE Participation.**

A. SDB and VBE Participation Documents. All documents completed and submitted by the selected Applicant in connection with its SDB Participation Submittal (including the SDB Participation Submittal, SDB Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of SDB Participation Goal) and its VBE Participation Submittal (including the VBE Participation Submittal, VBE Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of VBE Participation Goal) shall be incorporated into the Agreement by reference.

B. Required Contract Terms. All Agreements containing SDB and VBE participation must contain the following provisions to be maintained through the initial term and any subsequent options or renewals:

1. Each SDB participation commitment and each VBE participation commitment which was credited and the total percentage of the SDB participation commitments

and VBE participation commitments made at the time of application submittal or Agreement negotiations, as applicable, become contractual obligations of the selected Applicant upon execution of its Agreement with the Commonwealth.

2. For purposes of monitoring compliance with the selected Applicant's SDB and VBE participation commitments, the Agreement cost is the total amount paid to the selected Applicant throughout the initial Agreement term and any extensions.
3. The selected Applicant cannot alter its overall SDB or VBE commitments or commitments made to individual SDB or VBE subcontractors without written approval from the Department and BDISBO.
4. Both the overall percentage of SDB and VBE commitments, and individual SDB and VBE commitments must be maintained if the Agreement is assigned to another prime.

C. Subcontract requirements.

1. The selected Applicant and each SDB listed on the SDB Utilization Schedule and VBE listed on the VBE Utilization Schedule must enter into a final, definitive subcontract signed by the selected Applicant and the SDB or VBE within 30 calendar days of the final execution date of the Commonwealth Agreement. A Model Form of Small Diverse Business/Veteran Business Enterprise Subcontractor Agreement which may be used to satisfy this requirement – is available as **Appendix F**.
2. In addition to any requirements in the selected Applicant's Contract documents, the subcontract must contain:
 - a. The specific work, supplies or services the SDB or VBE will perform; location for work performed; how the work, supplies or services relate to the Contract; and the specific timeframe during the initial term and any extensions, when the work, supplies or services will be provided or performed;
 - b. The fixed percentage commitment and/or associated estimated dollar value that each SDB or VBE will receive based on the final negotiated cost for the initial term of the Agreement and any extensions of the Agreement;
 - c. Payment terms requiring payment to the SDB or VBE for work satisfactorily completed within 14 calendar days of the selected Applicant's receipt of payment from the Commonwealth for such work. Subcontractors are encouraged to utilize electronic payment methods;
 - d. Commercially reasonable terms for the applicable business or industry that are no less favorable than the terms of the selected Applicant's Agreement with the Commonwealth and that do not place disproportionate risk on the SDB or VBE

relative to the nature and level of the SDB's or VBE's participation in the Agreement; and

- e. The requirement that the SDB or VBE submit utilization reports to BDISBO.
3. If a subcontract is required by the solicitation document and the subcontract terms omit any of the information required in subparagraph 2 but that information is otherwise reflected within the selected Applicant's SDB Participation Submittal, VBE Participation Submittal, or associated documents (SDB Utilization Schedule, VBE Utilization Schedule, and Letters of Commitment), the information listed in the SDB Participation Submittal, VBE Participation Submittal, or associated documents is incorporated into the subcontract. To the extent that any subcontract terms conflict with the requirements of subparagraph (2) or information contained within the selected Applicant's SDB Participation Submittal or VBE Participation Submittal and associated documents, the order of precedence is as follows: 1) the requirements of subparagraph 2, 2) the selected Applicant's SDB Participation Submittal, VBE Participation Submittal and associated documents; and 3) the terms of the subcontract.
4. If the selected Applicant and a SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule cannot agree upon a definitive subcontract within 30 calendar days of the final execution date of the Commonwealth Agreement, the selected Applicant must provide written notification to the Department and BDISBO.
5. The selected Applicant must provide a copy of any required subcontract with an SDB or VBE to BDISBO or the Department within 10 business days of receiving such a request.

D. Utilization Reports.

1. The selected Applicant must submit a Monthly Utilization Report to BDISBO and the DHS Grant Administrator in the format required by BDISBO and within 10 business days of the end of each month of the Agreement term and any subsequent extensions. In the Monthly Utilization Report, the selected Applicant must list payments made to each SDB or VBE subcontractor and any unpaid invoices over 30 calendar days old received from an SDB or VBE subcontractor, and the reason payment has not been made. This information will be used to track and confirm the actual dollar amount paid to SDB or VBE subcontractors and will serve as a record of fulfillment of the contractual commitment(s). If there was no activity, the selected Applicant must complete the form by stating "No activity". A late fee of \$100.00 per day may be assessed against the selected Applicant if the Utilization Report is not submitted in accordance with the schedule above.
2. The selected Applicant must include in its subcontracts with its SDB and VBE subcontractors a requirement that the SDB and VBE subcontractors submit to

BDISBO, within the time frame set forth within the solicitation document, a report identifying the prime Contract, and listing:

- a. Payments received from the selected Applicant within the time frame covered by the report, and
- b. Invoices for which the subcontractor has not been paid.

E. Noncompliance with SDB and/or VBE commitments.

1. Upon BDISBO notifying the Department that a selected Applicant did not comply with the SDB commitments or VBE commitments, the Department will notify the selected Applicant in writing of BDISBO's findings and will specify the corrective actions to be taken. The selected Applicant must initiate the corrective actions within 10 business days and complete them within the time specified by DHS.
2. If DHS determines that material noncompliance with SDB or VBE provisions exists and that the selected Applicant refuses or fails to take the corrective action required by DHS, DHS, in consultation with BDISBO, may impose any and all remedies available under the Agreement as it deems appropriate. Such remedies include, but are not limited to, withholding of payments; termination of the Agreement along with consequential damages; revocation of the selected Applicant's SDB, and/or VBE status; a determination that the selected Applicant's SDB or VBE participation submittal be deemed non-responsible in future procurements; and/or any actions under the Commonwealth's Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth.

PART VI

CONTRACTOR PARTNERSHIP PROGRAM

VI-1. General Information – CPP. The CPP was created by the Department to address workforce needs by connecting beneficiaries of Temporary Assistance for Needy Families (“TANF”) to jobs while simultaneously helping to fill the hiring needs of employers. The program is a collaborative effort between DHS and its contractors and Grantees to lift families out of poverty.

CPP requires entities who are awarded a Contract or Agreement with DHS to establish a hiring target that supports TANF beneficiaries in obtaining employment with the contractor, Grantee, or their subcontractors for jobs within their organizations. The Department encourages selected Applicants to consider TANF beneficiaries not only for employment opportunities that will be created through the award of an Agreement but also for general employment opportunities within the organization. DHS staff will work cooperatively with selected Applicants to assist in meeting their hiring targets by assisting with the identification of qualified job applicants through the Department’s employment and training programs and providing technical assistance as needed. Participating Applicants may also be eligible to receive hiring incentives, such as the Work Opportunity Tax Credit.

Through CPP, DHS expects not only to increase the employment rate for individuals receiving TANF cash assistance, but to continue to contribute to the economic growth of the Commonwealth.

For more information about the Contractor Partnership Program, please contact: RA-BETPCPP@pa.gov or 1-866-840-7214.

VI-2. Participation Requirements. Entities who are awarded a Contract or Agreement valued at a minimum of \$5 million through a competitive procurement process are automatically included in CPP. To receive credit towards meeting the CPP requirements and maintain good standing, these entities must hire or make good faith efforts to hire individuals currently receiving TANF cash assistance. This includes but is not limited to individuals receiving TANF who are currently participating in Department employment and training programs as well as TANF beneficiaries outside of these programs.

The Department’s vision for CPP is that selected Applicants are able to obtain employment for TANF beneficiaries in a number equal to 10% of the average of the annual number of a selected Applicant’s new hires in Pennsylvania over each of the prior three years.

VI-3. RFA Requirements. Applicants must provide a written narrative that addresses the following and must include the information in the CPP Submittal of their application.

A. Applicant’s name, telephone number and mailing address.

- B. Type of business entity (for example, not-for-profit, government entity, public corporation, university).
- C. Address of the company's headquarters; if located in Pennsylvania, include county.
- D. The name, title, phone number, mailing address, and email of the Applicant's point of contact for the CPP.
- E. Address of all satellite offices located in Pennsylvania, including the county.
- F. A list of the subcontractors' names, address, and phone number; if located in Pennsylvania, include the county.
- G. Type of services being provided under the Agreement.
- H. Type of services provided by Applicant.
- I. Based on the calculation below, the anticipated number of positions that will be established as the hiring target.

For each of the prior three years, provide the number of new hires at your organization's Pennsylvania offices. The hiring targets will be 10% of the average of the annual number of new hires in Pennsylvania over each of the last three years. Hiring targets can be discussed with the Office of Income Maintenance CPP staff to determine if a waiver or reduction of this requirement is warranted.

- J. Type of positions anticipated to be available during Agreement term.
- K. Describe the strategies that will be used to identify and recruit TANF individuals.
- L. Describe the methods that will be used to retain the individuals once they are employed, including opportunities for professional development.
- M. Identify the staff and processes that will be used to meet the CPP requirement, including the reporting requirements.
- N. Provide a brief explanation of any additional efforts that will be made to meet and maintain TANF hiring commitments.

The Department will not evaluate the CPP Submittal. After an Applicant is selected for negotiations, the Department's Office of Income Maintenance Bureau of Employment Programs will review the CPP Submittal and may request changes or clarifications during negotiations. All information submitted is subject to approval by DHS.

VI-4. Agreement Requirements. The approved hiring target will become a performance target, included as part of the Agreement. Hiring targets will apply to the full term of the Agreement, including any extensions. After an Agreement has become effective, selected Applicants must establish a login for the DHS data tracking system, the Commonwealth Workforce Development System ("CWDS"), create a business folder, and complete and submit all required forms to the CPP staff. The selected Applicant must complete the Quarterly Employment Report on a quarterly basis to document the number of TANF beneficiaries hired for that quarter. OIM will monitor the submission of the Quarterly Employment Report in CWDS and will share the information with the Program Office responsible for the Agreement.

Quarters	Begin Date	End Date	Reports Due*
1 – First	July 1	September 30	October 15
2 – Second	October 1	December 31	January 15
3 – Third	January 1	March 31	April 15
4 – Fourth	April 1	June 30	July 15

**if the 15th falls on a weekend or state holiday, the report is due the next business day.*

The selected Applicant, regardless of the Effective Date of the Agreement must complete the Quarterly Employment Report based on the schedule above. If an Agreement begins in the middle of a quarter, the information reported will be based on activity that occurred from the Effective Date through the end of the quarter. If no activity occurred, an entry reporting zero hires must still be submitted via CWDS.

In addition, selected Applicants must report information documenting the use and outcomes of their hiring strategies and demonstrating their good faith efforts to hire TANF beneficiaries on a quarterly basis. The Department will work with the selected Applicants to develop a form and submission requirements for this reporting.

Verification Process

Data entered in CWDS will be cross referenced with the Client Information System (“CIS”) to confirm TANF eligibility; CIS will automatically credit the selected Applicant whenever a TANF hire is submitted. The CPP staff and the Project Manager will work together to ensure that selected Applicants are meeting their hiring goals.

PART VII

IT CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS.

- (a) Agency. The Department of Human Services.
- (b) Commonwealth. The Commonwealth of Pennsylvania.
- (c) Contract. The integrated documents as defined in [Section 10, Order of Precedence](#).
- (d) Contracting Officer. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- (e) Data. Any recorded information, regardless of the form, the media on which it is recorded or the method of recording.
- (f) Days. Calendar days, unless specifically indicated otherwise.
- (g) Developed Works. All of the fully or partially complete property, whether tangible or intangible prepared by the Contractor for ownership by the Commonwealth in fulfillment of the requirements of this Contract, including but not limited to: documents; sketches; drawings; designs; works; papers; files; reports; computer programs; documentation; data; records; software; samples; literary works and other works of authorship. Developed Works include all material necessary to exercise all attributes of ownership or of the license granted in [Section 44, Ownership of Developed Works](#).
- (h) Documentation. All materials required to support and convey information about the Services or Supplies required by this Contract, including, but not limited to: written reports and analyses; diagrams maps, logical and physical designs; system designs; computer programs; flow charts; and disks and/or other machine-readable storage media.
- (i) Expiration Date. The last valid date of the Contract, as specified in the Contract documents to which these IT Contract Terms and Conditions are attached.
- (j) Services. All Contractor activity necessary to satisfy the Contract.
- (k) Software. A collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).

- (l) Solicitation. Request for Applications No. 07-21.
- (m) Supplies. All tangible and intangible property including, but not limited to, materials and equipment provided by the Contractor to satisfy the Contract.

2. TERM OF CONTRACT.

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

3. COMMENCEMENT OF PERFORMANCE.

- (a) General. The Contractor shall not commence performance and the Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred, until the Effective Date has occurred:
- (b) Prohibition Prior to Effective Date. No Commonwealth employee has the authority to verbally direct the commencement of any Service or delivery of any Supply prior to the date performance may commence. The Contractor waives any claim or cause of action for any Service performed or Supply delivered prior to the date performance may commence.

4. EXTENSION OF CONTRACT TERM.

The Commonwealth may, upon notice to the Contractor, to extend the term of the Contract for up to **three months** upon the same terms and conditions.

5. ELECTRONIC SIGNATURES.

- (a) The Contract may be electronically signed by the Commonwealth.
- (b) The Commonwealth and the Contractor specifically agree as follows:
 - (i) *Written signature not required*. No handwritten signature shall be required in order for the Contract to be legally enforceable.

(ii) *Validity; admissibility.* The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law or regulation. The parties agree not to contest the validity or enforceability of the Contract executed electronically, or acknowledgement issued electronically, under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement executed or issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

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

6. CONTRACT SCOPE.

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

7. ACCESS TO COMMONWEALTH FACILITIES.

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

8. NON-EXCLUSIVE CONTRACT.

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

9. INFORMATION TECHNOLOGY POLICIES.

(a) General. The Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (located at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the

accessibility standards set out in IT Policy [ACC001, Accessibility Policy](#). The Contractor shall ensure that Services and Supplies procured under the Contract comply with the applicable standards. If such standards change during the Contractor's performance, and the Commonwealth requests that the Contractor comply with the changed standard, then any incremental costs incurred by the Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

- (b) Waiver. The Contractor may request a waiver from an Information Technology Policy (ITP) by providing detailed written justification as to why the ITP cannot be met. The Commonwealth may waive the ITP in whole, in part or conditionally, or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.

10. ORDER OF PRECEDENCE.

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

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

11. CONTRACT INTEGRATION.

- (a) Final contract. This Contract constitutes the final, complete, and exclusive Contract between the parties, containing all the terms and conditions agreed to by the parties.
- (b) Prior representations. All representations, understandings, promises, and agreements pertaining to the subject matter of this Contract made prior to or at the time this Contract is executed are superseded by this Contract.
- (c) Conditions precedent. There are no conditions precedent to the performance of this Contract except as expressly set forth herein.
- (d) Sole applicable terms. No contract terms or conditions are applicable to this Contract except as they are expressly set forth herein.
- (e) Other terms unenforceable. The Contractor may not require the Commonwealth or any user of the Services or Supplies acquired within the scope of this Contract to sign, click through, or in any other way agree to any terms associated with use of or interaction with those Services and/or Supplies, unless the Commonwealth has

approved the terms in writing in advance under this Contract, and the terms are consistent with this Contract. Further, changes to terms may be accomplished only by processes set out in this Contract; no quotations, invoices, business forms or other documentation, or terms referred to therein, shall become part of this Contract merely by their submission to the Commonwealth or their ordinary use in meeting the requirements of this Contract. Any terms imposed upon the Commonwealth or a user in contravention of this subsection (e) must be removed at the direction of the Commonwealth and shall not be enforced or enforceable against the Commonwealth or the user.

12. INDEPENDENT PRIME CONTRACTOR.

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

13. SUBCONTRACTS.

The Contractor may subcontract any portion of the Services or Supplies described in this Contract to third parties selected by Contractor and approved in writing by the Commonwealth, whose approval shall not be unreasonably withheld. Notwithstanding the above, if Contractor has disclosed the identity of subcontractor(s) together with the scope of work to be subcontracted in its Application, award of the Contract is deemed approval of all named subcontractors. The existence of a subcontract shall not change the obligations of Contractor to the Commonwealth. Upon request of the Commonwealth, the Contractor must provide the Commonwealth with an un-redacted copy of the subcontract agreement between the Contractor and the subcontractor. The Commonwealth may, for good cause, require that the Contractor remove a subcontractor from the Project. The Commonwealth will not be responsible for any costs incurred by the Contractor in replacing the subcontractor if good cause exists.

14. OTHER CONTRACTORS.

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

this section as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

15. ENHANCED MINIMUM WAGE.

- (a) Enhanced Minimum Wage. Contractor shall pay no less than \$12.00 per hour, as may be adjusted in subsection (b)m to its employees for all hours worked directly performing the services called for in this Contract, 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 20% of their time performing ancillary services in a given work week.
- (b) Adjustment. Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- (c) Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:
 - (i) exempt from the minimum wage under the Minimum Wage Act of 1968;
 - (ii) covered by a collective bargaining agreement;
 - (iii) required to be paid a higher wage under another state or federal law governing the services, including the [*Prevailing Wage Act*](#) and Davis-Bacon Act; or
 - (iv) required to be paid a higher wage under any state or local policy or ordinance.
- (d) Notice. Contractor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- (e) Records. Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- (f) Sanctions. Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to,

termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.

- (g) Subcontractors. Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

16. COMPENSATION.

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

17. BILLING REQUIREMENTS.

- (a) Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:
 - (i) Vendor name and “Remit to” address, including SAP Vendor number;
 - (ii) Bank routing information, if ACH;
 - (iii) SAP Purchase Order number;
 - (iv) Delivery Address, including name of Commonwealth agency;
 - (v) Description of the supplies/services delivered in accordance with SAP Purchase Order (include Purchase Order line number if possible);
 - (vi) Quantity provided;
 - (vii) Unit price;
 - (viii) Price extension;
 - (ix) Total price; and
 - (x) Delivery date of supplies or services.

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

18. PAYMENT.

- (a) Payment Date. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
 - (i) the date on which payment is due under the terms of the Contract;
 - (ii) **30 days** after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or
 - (iii) the payment date specified on the invoice if later than the dates established by [paragraphs \(a\)\(i\)](#) and [\(a\)\(ii\)](#), above.
- (b) Delay; Interest. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within **15 days** after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act of December 13, 1982, P.L. 1155, No. 266, 72 P. S. § [1507](#), (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ [2.31—2.40](#) (relating to interest penalties for late payments to qualified small business concerns).
- (c) Payment should not be construed by the Contractor as acceptance of the Service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications.

19. ELECTRONIC PAYMENTS.

- (a) The Commonwealth will make contract payments through the Automated Clearing House (ACH). Within **10 days** of award of the Contract, the Contractor must submit or must have already submitted its ACH information within its user profile in the Commonwealth’s procurement system (SRM).

- (b) The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
- (c) It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

20. ASSIGNABILITY.

- (a) Subject to the terms and conditions of this section, the Contract is binding upon the parties and their respective successors and assigns.
- (b) The Contractor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Commonwealth, which consent may be withheld at the sole and absolute discretion of the Commonwealth.
- (c) For the purposes of the Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, encumbrance, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- (d) Any assignment consented to by the Commonwealth shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- (e) Notwithstanding the foregoing, the Contractor may, without the consent of the Commonwealth, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Commonwealth together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Contract.
- (f) A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, is not considered to be an assignment. The Contractor shall give the Commonwealth written notice of any such change of name.

21. INSPECTION AND ACCEPTANCE.

- (a) Developed Works and Services.

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

- (vii) *Correction upon Rejection.* Upon the Contractor's receipt of the Commonwealth's written notice of rejection, which must identify the reasons for the failure of the work product to comply with the specifications, the Contractor shall have **15 business days**, or such other time as the Commonwealth and the Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected item, certifying to the Commonwealth, in writing, that the failures have been corrected, and that the items have been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted items and certification, the Commonwealth shall have **30 business days** to test the corrected items to confirm that they are in compliance with the specifications. If the corrected items are in compliance with the specifications, then the Commonwealth shall provide the Contractor with its acceptance of the items in the completed milestone.
- (viii) *Options upon Continued Failure.* If, in the opinion of the Commonwealth, the corrected items still contain material failures, the Commonwealth may either:
 - (1) Repeat the procedure set forth above; or
 - (2) Proceed with its rights under [Section 26, Termination](#), except that the cure period set forth in [Subsection 26\(c\)](#) may be exercised in the Commonwealth's sole discretion.

22. DEFAULT.

The Commonwealth may, subject to the provisions of [Section 23, Notice of Delays](#), and [Section 64, Force Majeure](#), and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in [Section 26, Termination](#)) the whole or any part of this Contract for any of the following reasons:

- (i) Failure to begin Services within the time specified in the Contract or as otherwise specified;
- (ii) Failure to perform the Services with sufficient labor, equipment, or material to insure the completion of the specified Services in accordance with the Contract terms;
- (iii) Unsatisfactory performance of the Services;
- (iv) Failure to meet requirements within the time periods(s) specified in the Contract;

- (v) Multiple failures over time of a single performance standard or a pattern of failure over time of multiple performance standards;
- (vi) Failure to provide a Service that conforms with the specifications referenced in the Contract;
- (vii) Failure or refusal to remove material, or remove, replace or correct any Supply rejected as defective or noncompliant;
- (viii) Discontinuance of Services without approval;
- (ix) Failure to resume a Service, which has been discontinued, within a reasonable time after notice to do so;
- (x) Insolvency;
- (xi) Assignment made for the benefit of creditors;
- (xii) Failure or refusal, within **10 days** after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due subcontractors for materials furnished, labor supplied or performed, for equipment rentals or for utility services rendered;
- (xiii) Failure to protect, repair or make good any damage or injury to property;
- (xiv) Breach of any provision of this Contract;
- (xv) Any breach by Contractor of the security standards or procedures of this Contract;
- (xvi) Failure to comply with representations made in the Application; or
- (xvii) Failure to comply with applicable industry standards, customs and practice.

23. NOTICE OF DELAYS.

Whenever the Contractor encounters any difficulty that delays or threatens to delay the timely performance of this Contract (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to the Commonwealth stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Commonwealth of any rights or remedies to which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with [Section 25, Changes](#).

24. CONDUCT OF SERVICES.

- (a) Following the Effective Date of the Contract, Contractor shall proceed diligently with all Services and shall perform such Services with qualified personnel, in accordance with the completion criteria set forth in the Contract.
- (b) In determining whether the Contractor has performed with due diligence, the Commonwealth may measure the amount and quality of the Contractor's effort against the representations made in the Application. The Contractor's Services shall be monitored by the Commonwealth and the Commonwealth's designated representatives. If the Commonwealth reasonably determines that the Contractor has not performed with due diligence, the Commonwealth and the Contractor will attempt to reach agreement with respect to such matter. Failure of the Commonwealth or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of [Section 28, Contract Controversies](#).

25. CHANGES.

- (a) At any time during the performance of the Contract, the Commonwealth or the Contractor may request a change to the Contract. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If the Commonwealth is the requestor of the change, the Contractor will inform the Commonwealth of any charges for investigating the change request prior to incurring such charges. If the Commonwealth and the Contractor agree on the results of the investigation and any necessary changes to the Contract, the parties must complete and execute a change order to modify the Contract and implement the change. The change order will be evidenced by a writing in accordance with the Commonwealth's change order procedures. No work may begin on the change order until the Contractor has received the executed change order. If the parties are not able to agree upon the results of the investigation or the necessary changes to the Contract, a Commonwealth-initiated change request will be implemented at Commonwealth's option and the Contractor shall perform the Services; and either party may elect to have the matter treated as a dispute between the parties under [Section 28, Contract Controversies](#). During the pendency of any such dispute, Commonwealth shall pay to Contractor any undisputed amounts.
- (b) Changes outside the scope of this Contract shall be accomplished through the Commonwealth's procurement procedures and may result in an amended Contract or a new contract. No payment will be made for services outside of the scope of the Contract for which no amendment has been executed.

26. TERMINATION.

(a) For Convenience.

- (i) The Commonwealth may terminate the Contract, or a Purchase Order issued against the Contract, in whole or in part, without cause by giving Contractor **30 days'** prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective.

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

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

In no event shall the Contractor be paid for any loss of anticipated profit (by the Contractor or any subcontractor), loss of use of money, or administrative or overhead costs.

Failure to agree on any termination costs shall be a dispute handled in accordance with [Section 28, Contract Controversies](#), of this Contract.

- (ii) The Contractor shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such Services performed during the **30-day** notice period, if such Services are requested by the Commonwealth, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under this Contract.
- (iii) The above shall not be deemed to limit the Commonwealth's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.

- (b) Non-Appropriation. Any payment obligation or portion thereof of the Commonwealth created by this Contract is conditioned upon the availability and

appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance or full performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract in whole or in part. The Contractor shall be reimbursed in the same manner as that described in [subsection \(a\)](#) to the extent that appropriated funds are available.

- (c) **Default.** The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within **30 days**, or if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.
- (i) Subject to [Section 36, Limitation of Liability](#), in the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection (c), the Commonwealth may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the Services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated Services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.
- (ii) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism and unusually severe weather. The Contractor shall notify the Contracting Officer promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.
- (iii) Nothing in this subsection (c) shall abridge the Commonwealth's right to suspend, debar or take other administrative action against the Contractor.
- (iv) If it is later determined that the Commonwealth erred in terminating the Contract for default, then the Contract shall be deemed to have been terminated for convenience under [subsection \(a\)](#).
- (v) If this Contract is terminated as provided by this subsection (c), the Commonwealth may, in addition to any other rights provided in this

subsection (c), and subject law and to other applicable provisions of this Contract, require the Contractor to deliver to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such Software, Data, Developed Works, Documentation and other materials as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated.

- (d) The rights and remedies of the Commonwealth provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- (e) The Commonwealth's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- (f) Following exhaustion of the Contractor's administrative remedies as set forth in [Section 28, Contract Controversies](#), the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

27. BACKGROUND CHECKS.

- (a) The Contractor, at its expense, must arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth Data or Commonwealth facilities (including leased facilities or facilities owned by third parties but utilized by the Commonwealth), either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <https://www.psp.pa.gov/Pages/Criminal-History-Background-Check.aspx>. The background check must be conducted prior to initial access and on an annual basis thereafter.
- (b) Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that an employee of the Contractor or an employee of a subcontractor of the Contractor has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to cure any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.

- (c) The Commonwealth specifically reserves the right of the Commonwealth to conduct or require background checks over and above that described herein.

28. CONTRACT CONTROVERSIES.

- (a) Pursuant to Section [1712.1](#) of the *Commonwealth Procurement Code*, 62 Pa. C.S. § [1712.1](#), in the event of a claim arising from the Contract or a purchase order, the Contractor, within **6 months** after the cause of action accrues, must file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Contractor or the Contracting Officer requests mediation, and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract or Purchase Order in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract or Purchase Order.

29. CONFIDENTIALITY, PRIVACY AND COMPLIANCE.

- (a) General. The Contractor shall protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. Unless the context otherwise clearly

indicates the need for confidentiality, information is deemed confidential only when the party claiming confidentiality designates the information as “confidential” in such a way as to give notice to the other party (for example, notice may be communicated by describing the information, and the specifications around its use or disclosure, in the Solicitation or in the Proposal). Neither party may assert that information owned by the other party is such party’s confidential information. Notwithstanding the foregoing, all Data provided by, or collected, processed, or created on behalf of the Commonwealth is Confidential Information unless otherwise indicated in writing.

- (b) Copying; Disclosure; Termination. The parties agree that confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon expiration or termination of this Contract or any license granted hereunder, the receiving party will return to the disclosing party, or certify as to the destruction of, all confidential information in the receiving party’s possession, other than one copy (where permitted by law or regulation), which may be maintained for archival purposes only, and which will remain subject to this Contract’s security, privacy, data retention/destruction and confidentiality provisions. A material breach of these requirements may result in termination for default pursuant to [Subsection 26\(c\)](#), in addition to other remedies available to the non-breaching party.

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

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

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

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

30. PCI SECURITY COMPLIANCE.

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

31. DATA BREACH OR LOSS.

- (a) The Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the [Breach of Personal Information Notification Act](#), Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329.
- (b) For Data and Confidential Information in the possession, custody, and control of the Contractor or its employees, agents, and/or subcontractors:
 - (i) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information (“Incident”) to the Commonwealth within **1 hour** of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access,

use, release, loss, destruction or disclosure of such Data or Confidential Information.

- (ii) The Contractor shall provide timely notice to all individuals that may require notice under any applicable law or regulation as a result of an Incident. The notice must be pre-approved by the Commonwealth. At the Commonwealth's request, Contractor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.
 - (iii) The Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.
- (c) As to Data and Confidential Information fully or partially in the possession, custody, or control of the Contractor and the Commonwealth, the Contractor shall diligently perform all of the duties required in this section in cooperation with the Commonwealth, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

32. INSURANCE.

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

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

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

33. CONTRACTOR RESPONSIBILITY PROGRAM.

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

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

- (f) The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab

34. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS.

The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

35. TAXES-FEDERAL, STATE AND LOCAL.

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

36. LIMITATION OF LIABILITY.

- (a) General. The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of **\$250,000** or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:
 - (i) for bodily injury;
 - (ii) for death;
 - (iii) for gross negligence or intentional or willful misconduct;
 - (iv) for damage to real property or tangible personal property for which the Contractor is legally liable;
 - (v) under [Section 40, Patent, Copyright, Trademark and Trade Secret Protection](#);

- (vi) under [Section 31, Data Breach or Loss](#); or
 - (vii) under [Section 39, Virus, Malicious, Mischievous or Destructive Programming](#).
- (b) The Contractor will not be liable for consequential or incidental damages, except for damages as set forth in [paragraphs \(a\)\(i\)—\(vii\)](#) above, or as otherwise specified in the Contract.

37. COMMONWEALTH HELD HARMLESS.

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

38. SOVEREIGN IMMUNITY.

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

39. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING.

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

- (b) The Contractor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).
- (c) In the event of destruction or modification of Software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages.
- (d) The Contractor shall be responsible for reviewing Commonwealth software security standards and complying with those standards.
- (e) The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the Contractor to provide Services to the Commonwealth for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made.
- (f) The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing services to the Commonwealth. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contract.
- (g) The Commonwealth will not be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

40. PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET PROTECTION.

- (a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, trademarks or trade dress, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and

in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the [Commonwealth Attorneys Act](#), Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG, however, in its sole discretion and under the terms it deems appropriate, may delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement that prevents the Commonwealth from continuing to use the Developed Works as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor, at its expense, will provide whatever cooperation OAG requests in the defense of the suit.

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

- (ii) obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.
- (e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- (f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
 - (i) any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
 - (ii) any license fee less an amount for the period of usage of any software; and
 - (iii) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (g) Notwithstanding the above, the Contractor shall have no obligation for:
 - (i) modification of any product, service, or deliverable provided by the Commonwealth;
 - (ii) any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
 - (iii) use of the product, service, or deliverable in other than its specified operating environment;
 - (iv) the combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
 - (v) infringement of a non-Contractor product alone;
 - (vi) the Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or
 - (vii) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.

- (h) The obligation to indemnify the Commonwealth, under the terms of this section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

41. CONTRACT CONSTRUCTION.

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

42. USE OF CONTRACTOR AND THIRD PARTY PROPERTY.

(a) Definitions.

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

in accordance with the terms of the Contract, the Contractor shall gain the written approval of the Commonwealth prior to the use of the Third Party Property or the integration of the Third Party Property into the Supplies or Services. Third Party Property approved by the Commonwealth is hereby licensed to the Commonwealth as necessary to meet the Contract requirements.

- (iii) If the Third Party requires a separate license agreement, the license terms shall be acceptable to the Commonwealth and will be separately negotiated and executed between the Commonwealth and the Third Party.
 - (iv) If the use or integration of the Third Party Property is not approved in writing under this section, the Third Party Property shall be deemed to be licensed under [paragraph \(b\)\(i\)](#) above.
 - (v) If the Contract expires or is terminated for default pursuant to [subsection 28\(c\)](#) before the Contract requirements are complete, all rights are granted for a duration and for purposes necessary to facilitate Commonwealth's or a Commonwealth-approved vendor's completion of the Supplies, Services or Developed Works under this Contract. The Contractor, in the form used by Contractor in connection with the Supplies, Services, or Developed Works, shall deliver to Commonwealth the object code version of such Contractor Property, the Third Party Property and associated licenses immediately prior to such expiration or termination to allow the Commonwealth to complete such work.
 - (vi) Where third party users are reasonably anticipated by the Contract, all users are granted the right to access and use Contractor Property for the purposes of and within the scope indicated in the Contract.
- (c) The Commonwealth will limit its agents and contractors' use and disclosure of the Contractor Property as necessary to perform work on behalf of the Commonwealth.
 - (d) The parties agree that the Commonwealth, by acknowledging the Contractor Property, does not agree to any terms and conditions of the Contractor Property agreements that are inconsistent with or supplemental to this Contract.
 - (e) Reports. When a report is provided under this Contract, but was not developed specifically for the Commonwealth under this Contract, the ownership of the report will remain with the Contractor; provided, however, that the Commonwealth has the right to use, copy and distribute the report within the executive agencies of the Commonwealth.

43. USE OF COMMONWEALTH PROPERTY.

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

- (a) Confidentiality of Commonwealth Property. All Commonwealth Property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract shall be considered confidential information under [Section 29, Confidentiality, Privacy, and Compliance](#).
- (b) License grant and restrictions. During the term of this Contract, Commonwealth grants to Contractor and its subcontractors for the limited purpose of providing the Services covered under this Contract, a limited, nonexclusive, nontransferable, royalty-free right (subject to the terms of any third party agreement to which the Commonwealth is a party) to access, use, reproduce, and modify Commonwealth Property in accordance with the terms of the Contract. The Commonwealth’s license to Contractor is limited by the terms of this Contract.
 - (i) The Contractor hereby assigns to the Commonwealth its rights, if any, in any derivative works resulting from Contractor’s modification of the Commonwealth Intellectual Property. Contractor agrees to execute any documents required to evidence this assignment and to waive any moral rights and rights of attribution provided for in Section 106A of Title 17 of the United States Code, the *Copyright Act of 1976*, as amended.
 - (ii) Neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Intellectual Property. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this section.
- (c) Reservation of rights. All rights not expressly granted here to Contractor are reserved by the Commonwealth.
- (d) Termination of Commonwealth license grant.
 - (i) *Rights Cease.* Upon the expiration or termination for any reason of Contractor’s obligation to provide the Services under this Contract, all rights granted to Contractor under this section shall immediately cease.
 - (ii) *Return Commonwealth Property.* Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Intellectual Property (including any related source code then in Contractor’s possession or under its control) in the form in use as of the Effective Date of such expiration or termination (except that Commonwealth Data shall be turned over in a form acceptable to the Commonwealth).

- (iii) *List of utilized Commonwealth Property/Destruction.* Within **15 days** after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Intellectual Property in use as of the date of such expiration or termination. Concurrently therewith, Contractor shall destroy or erase all other copies of any of the Commonwealth Software then in Contractor's possession or under its control unless otherwise instructed by Commonwealth, in writing; provided, however, that Contractor may retain one archival copy of such Commonwealth Software, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.
- (e) Effect of license grant termination. Consistent with the provisions of this section, Contractor shall refrain from manufacturing, copying, marketing, distributing or using any Commonwealth Software or any other work which incorporates the Commonwealth Software.
- (f) Commonwealth Property Protection.
 - (i) Contractor acknowledges Commonwealth's exclusive right, title and interest, including without limitation copyright and trademark rights, in and to Commonwealth Data, Commonwealth Software and the Developed Works developed under the provisions of this Contract, and Contractor shall not, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title, and interest, and shall not use or disclose the Commonwealth Data, Commonwealth Software or the Developed Works without Commonwealth's written consent, which consent may be withheld by the Commonwealth for any reason.
 - (ii) Contractor shall not, in any manner, represent that Contractor has any ownership interest in the Commonwealth Data, Commonwealth Software or the Developed Works.

44. OWNERSHIP OF DEVELOPED WORKS.

Unless otherwise specified in the Contract, including the Solicitation, ownership of all Developed Works shall be in accordance with the provisions set forth in this section.

- (a) Rules for usage for Developed Works.
 - (i) *Property of Contractor.* If Developed Works modify, improve, contain, or enhance application software programs or other materials generally licensed by the Contractor, then such Developed Works shall be the property of the Contractor, and Contractor hereby grants Commonwealth an irrevocable, nonexclusive, worldwide, fully paid-up license (to include source code and

relevant documentation) in perpetuity to use, modify, execute, reproduce, display, perform, prepare derivative works from and distribute, within the Commonwealth, such Developed Works.

- (1) For purposes of distribution under the license grant created by this section, Commonwealth includes any government agency, department, instrumentality, division, unit or other office that is part of the Commonwealth of Pennsylvania, together with the State System of Higher Education (including any of its universities), any county, borough, commonwealth, city, municipality, town, township special purpose district, or other similar type of governmental instrumentality located within the geographical boundaries of the Commonwealth of Pennsylvania.
 - (2) If federal funds are used in creation of the Developed Works, the Commonwealth also includes any other state government as well as the federal government.
- (ii) *Property of Commonwealth/licensor.* If the Developed Works modify, improve or enhance application software or other materials not licensed to the Commonwealth by the Contractor, then such modifications, improvements and enhancements shall be the property of the Commonwealth or its licensor.
- (b) Copyright Ownership.
- (i) *Works made for hire; general.* Except as indicated in [paragraph \(a\)\(i\)](#), above, Developed Works developed as part of the scope of work for the Project, including Developed Works developed by subcontractors, are the sole and exclusive property of the Commonwealth and shall be considered “works made for hire” under the *Copyright Act of 1976*, as amended, 17 United States Code.
 - (ii) *Assignment.* In the event that the Developed Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, Contractor agrees to assign and, upon their authorship or creation, expressly and automatically assigns, all copyright interests, proprietary rights, trade secrets, and other right, title, and interest in and to such Developed Works to Commonwealth. Contractor further agrees that it will have its subcontractors assign, and upon their authorship or creation, expressly and automatically assigns all copyright interest, proprietary rights, trade secrets, and other right, title, and interest in and to the Developed Works to the Commonwealth.
 - (iii) *Rights to Commonwealth.* Commonwealth shall have all rights accorded an owner of copyright under the United States copyright laws including, but

not limited to, the exclusive right to reproduce the Developed Works in multiple copies, the right to distribute copies by sales or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the Developed Works and the right to display the Developed Works.

- (iv) *Subcontracts.* The Contractor further agrees that it will include the requirements of this section in any subcontractor or other agreement with third parties who in any way participate in the creation or development of Developed Works.
 - (v) *Completion or termination of Contract.* Upon completion or termination of this Contract, Developed Works, or completed portions thereof, shall immediately be delivered by Contractor to the Commonwealth.
 - (vi) *Warranty of noninfringement.* Contractor represents and warrants that the Developed Works are original and do not infringe any copyright, patent, trademark, or other intellectual property right of any third party and are in conformance with the intellectual property laws and regulations of the United States.
- (c) Patent ownership. Contractor and its subcontractors shall retain ownership to patentable items, patents, processes, inventions or discoveries (collectively, the Patentable Items) made by the Contractor during the performance of this Contract. Notwithstanding the foregoing, the Commonwealth shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. Commonwealth may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. Commonwealth understands and agrees that any third party disclosure will not confer any license to such Patentable Items.
 - (d) Federal government interests. Certain funding under this Contract may be provided by the federal government. Accordingly, the rights to Developed Works or Patentable Items of Contractors or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. [Part 401](#), 42 C.F.R. § 443.112, 45 C.F.R. § 95.617, and other applicable law or regulations.
 - (e) Usage rights. Except as otherwise covered by this section either Party, in the ordinary course of conducting business, may use any ideas, concepts, know-how, methodologies, processes, components, technologies, algorithms, designs, modules or techniques relating to the Services.
 - (f) Contractor's copyright notice obligations. Contractor will affix the following Copyright Notice to the Developed Works developed under this section and all accompanying documentation: "*Copyright* © [year] by the Commonwealth of

Pennsylvania. All Rights Reserved.” This notice shall appear on all versions of the Developed Works delivered under this Contract and any associated documentation. It shall also be programmed into any and all Developed Works delivered hereunder so that it appears at the beginning of all visual displays of such Developed Works.

45. SOURCE CODE AND ESCROW ITEMS OBLIGATIONS.

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

46. CONTRACTOR HOSTED SECURITY, LOCATION, STATUS AND DISPOSITION OF DATA.

Unless the Solicitation specifies otherwise:

- (i) All Data must be stored within the United States;
- (ii) The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor’s or its subcontractors’ possession;
- (iii) All Data shall be provided to the Commonwealth upon request, in a form acceptable to the Commonwealth and at no cost;
- (iv) Any Data shall be destroyed by the Contractor at the Commonwealth’s request;

- (v) Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy and accessibility requirements of this Contract; and
- (vi) The Contractor shall comply with the provisions set forth in [Exhibit B, Requirements for Non-Commonwealth Hosted Applications/Services](#).

47. PUBLICATION RIGHTS AND/OR COPYRIGHTS.

- (a) Except as otherwise provided in [Section 44, Ownership of Developed Works](#), the Contractor shall not publish any of the results of the work without the written permission of the Commonwealth. The publication shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the Commonwealth of Pennsylvania." The Contractor shall not include in the documentation any copyrighted matter, unless the Contractor provides the Commonwealth with written permission of the copyright owner.
- (b) Except as otherwise provided in the Contract, the Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

48. CHANGE IN CONTRACTOR'S OWNERSHIP.

In the event that the Contractor should change ownership, the Commonwealth shall have the exclusive option of:

- (i) continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract;
- (ii) continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs; or
- (iii) immediately terminating this Contract.

49. OFFICIALS NOT TO BENEFIT.

No official or employee of the Commonwealth and no member of its General Assembly who exercises any functions or responsibilities under this Contract shall participate in any decision relating to this Contract which affects their personal interest or the interest of any corporation, partnership, or association in which they are, directly or indirectly, interested; nor shall any such official or employee of the Commonwealth or member of its General Assembly have any interest, direct or indirect, in this Contract or the proceeds thereof.

50. COMPLIANCE WITH LAWS.

- (a) The Contractor shall comply with all federal, state and local laws, regulations and policies applicable to its Services or Supplies, including, but not limited to, all statutes, regulations and rules that are in effect as of the Effective Date of the Contract and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation.
- (b) If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the Services or Supplies provided under this Contract, the Parties shall modify this Contract, via [Section 25, Changes](#), to the extent reasonably necessary to:
 - (i) Ensure that such Services or Supplies will be in full compliance with such laws, regulations and policies; and
 - (ii) Modify the rates applicable to such Services or Supplies, unless otherwise indicated in the Solicitation.

51. THE AMERICANS WITH DISABILITIES ACT.

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

- (a) Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through Contracts with outside Contractors.
- (b) The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from losses, damages, expenses claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of [subsection \(a\)](#).

52. EXAMINATION OF RECORDS.

- (a) The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under this Contract to the extent and in

such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.

- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in [subsection \(c\)](#) below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by applicable laws or regulations, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in [Section 29, Confidentiality, Privacy and Compliance](#).
- (c) The Contractor shall preserve and make available its records for a period of **5 years** from the date of final payment under this Contract.
 - (i) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of **5 years** from the date of any resulting final settlement.
 - (ii) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.
- (d) Except for documentary evidence retained pursuant to [paragraph \(c\)\(ii\)](#) above, the Contractor may in fulfillment of its obligation to retain its records as required by this section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of **2 years** following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth with the concurrence of its auditors.
- (e) The provisions of this section shall be applicable to and included in each subcontract hereunder.

53. SINGLE AUDIT ACT OF 1984.

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

- (a) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in the most current version of [Government Auditing Standards](#) (Yellow Book).

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

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

- (a) Contractor understands that its level of access may allow or require it to view or access highly sensitive and confidential Commonwealth and third party data. This data is subject to various state and federal laws, regulations and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of the Supplies or Services, the Contractor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth agency, including but not limited to, as necessary, HIPAA Business Associate Agreements. This sign-off document, a sample of which is attached as [Exhibit C, Sample Sign-off Document](#), will include a description of the nature of the data which may be implicated based on the nature of the Contractor's access, and will incorporate the Business Associate Agreement if it is applicable.
- (b) The Contractor hereby certifies and warrants that, after being informed by the Commonwealth agency of the nature of the data which may be implicated and prior to the deployment of the Supplies or Services, the Contractor is and shall remain compliant with all applicable state and federal laws, regulations and policies regarding the data's protection, and with the requirements memorialized in every completed and signed sign-off document. Every sign-off document completed by a Commonwealth agency and signed by at least one signatory authorized to bind the Contractor is valid and is hereby integrated and incorporated by reference into this Contract.
- (c) This section does not require a Commonwealth agency to exhaustively list the laws, regulations or policies to which implicated data is subject; the Commonwealth agency is obligated only to list the nature of the data implicated by the Contractor's access, to refer the Contractor to its privacy and security policies, and to specify requirements that are not otherwise inherent in compliance with applicable laws, regulations and policies.
- (d) The requirements of this section are in addition to and not in lieu of other requirements of this Contract, its Exhibits, Appendices and Attachments, having to

do with data privacy and security, including but not limited to the requirement that the Contractor comply with all applicable Commonwealth ITPs, which can be found at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.

- (e) Contractor shall conduct additional background checks, in addition to those required in [Section 27, Background Checks](#), as may be required by a Commonwealth agency in its sign-off documents. The Contractor shall educate and hold its agents, employees, contractors and subcontractors to standards at least as stringent as those contained in this Contract. The Contractor shall provide information regarding its agents, employees, contractors and subcontractors to the Commonwealth upon request.

55. FEDERAL REQUIREMENTS.

If applicable, the Contractor must receive and sign off on particular federal requirements that a Commonwealth agency may be required to include when utilizing federal funds to procure the Supplies and Services. This sign-off document, in addition to any applicable requirements of [Section 54, Agency-Specific Sensitive and Confidential Commonwealth Data](#), will include a description of the required federal provisions, along with the applicable forms necessary for the Contractor and/or Software Licensor to execute, as necessary. Every sign-off document completed by a Commonwealth agency and signed by at least one signatory authorized to bind the Contractor is valid and is hereby integrated and incorporated by reference into this Contract. A sample sign-off document is attached to these Terms as [Exhibit C, Sample Sign-off Document](#).

56. ADDITIONAL FEDERAL PROVISIONS.

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

57. ENVIRONMENTAL PROTECTION.

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

58. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE.

The Contractor agrees:

- (a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or

subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the [Pennsylvania Human Relations Act \(PHRA\)](#) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

- (b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the [PHRA](#) and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- (c) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the [PHRA](#) and applicable federal laws, in the provision of services under the contract.
- (d) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the [Public Employee Relations Act](#), [Pennsylvania Labor Relations Act](#) or [National Labor Relations Act](#), as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- (e) The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- (f) The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of [PHRA](#) and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- (g) The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1

report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

- (h) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- (i) The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- (j) The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

59. CONTRACTOR INTEGRITY PROVISIONS.

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

- (a) Definitions. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:
 - (i) "*Affiliate*" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - (ii) "*Consent*" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or

contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

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

- (iii) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- (iv) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- (v) Contractor certifies to the best of its knowledge and belief that within the last **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;
- (vi) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (vii) had any business license or professional license suspended or revoked;
 - (1) 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
- (viii) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract if

becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- (ix) 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).
- (x) 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.
- (xi) 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.
- (xii) Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office

of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this subsection in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

- (xiii) 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.

60. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS.

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

61. WARRANTIES.

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

- (a) Disruption. The Contractor hereby represents and warrants to the Commonwealth that the Contractor will not cause, or take any action that, directly or indirectly, may cause a disruption of the Commonwealth's operations.

- (b) Nonconformity. In the event of any nonconformity with the foregoing warranties, the Commonwealth will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the Commonwealth, shall within **10 days'** notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the Commonwealth, until such time as the deliverable conforms, in all material respects, to the Service requirements and/or the functional specifications of the Developed Works set forth in this Contract. The Contractor shall have no obligation with respect to nonconformities arising out of:
- (i) Modifications to Developed Works made by the Commonwealth;
 - (ii) Use of the Developed Works not in accordance with the documentation or specifications applicable thereto;
 - (iii) Failure by the Commonwealth to implement any corrections or enhancements made available by the Contractor;
 - (iv) Combination of the Developed Works with any items not supplied or approved by the Contractor; or
 - (v) Failure of any software licensed under a separate license agreement to conform to its specifications or documentation.
- (c) Industry standards. The Contractor hereby represents and warrants to the Commonwealth that the Services shall be performed in accordance with industry standards using the utmost care and skill.
- (d) Right to perform. The Contractor hereby represents and warrants to the Commonwealth that the Contractor has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Developed Works under this Contract.
- (e) Sole warranties. THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

62. LIQUIDATED DAMAGES.

- (a) By accepting this Contract, the Contractor agrees to the delivery and acceptance requirements of this Contract. If a due date is not met, the delay will interfere with the Commonwealth's program. In the event of any such delay, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. The Commonwealth and the Contractor therefore

agree that in the event of any such delay, the amount of damage shall be the amount set forth in this section, unless otherwise indicated in the Contract, and agree that the Contractor shall pay such amount as liquidated damages, not as a penalty. Such liquidated damages are in lieu of all other damages arising from such delay.

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

63. SERVICE LEVELS.

- (a) The Contractor shall comply with the procedures and requirements of the Service Level Agreements, if any, which are made part of this Contract.

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

64. FORCE MAJEURE.

- (a) Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.
- (b) The Contractor shall notify the Commonwealth orally within **5 days** and in writing within **10 days** of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Contract, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.
- (c) In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract.

65. PUBLICITY/ADVERTISEMENT.

The Contractor shall not issue news releases, internet postings, advertisements, endorsements, or any other public communication without prior written approval of the

Commonwealth, and then only in coordination with the Commonwealth. This includes the use of any trademark or logo.

66. TERMINATION ASSISTANCE.

- (a) Upon the Commonwealth's request, Contractor shall provide termination assistance services (Termination Assistance Services) directly to the Commonwealth, or to any vendor designated by the Commonwealth. The Commonwealth may request termination assistance from the Contractor upon full or partial termination of the Contract and/or upon the expiration of the Contract term, including any renewal periods. Contractor shall take all necessary and appropriate actions to accomplish a complete, timely and seamless transition of any Services from Contractor to the Commonwealth, or to any vendor designated by the Commonwealth, without material interruption of or material adverse impact on the Services. Contractor shall cooperate with the Commonwealth and any new contractor and otherwise promptly take all steps required or reasonably requested to assist the Commonwealth in effecting a complete and timely transition of any Services.
- (b) Such Termination Assistance Services shall first be rendered using resources included within the fees for the Services, provided that the use of such resources shall not adversely impact the level of service provided to the Commonwealth; then by resources already included within the fees for the Services, to the extent that the Commonwealth permits the level of service to be relaxed; and finally, using additional resources at costs determined by the Parties via [Section 25, Changes](#).

67. 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.

68. [RIGHT-TO-KNOW LAW](#).

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

- (c) Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the [RTKL](#) for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the [RTKL](#) ("Requested Information"), the Contractor shall:
- (i) Provide the Commonwealth, within **10 days** after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the [RTKL](#); and
 - (ii) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the [RTKL](#) with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the [RTKL](#), or other information that the Contractor considers exempt from production under the [RTKL](#), the Contractor must notify the Commonwealth and provide, within **7 days** of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the [RTKL](#).
- (e) The Commonwealth will rely upon the written statement from the Contractor in denying a [RTKL](#) request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the [RTKL](#). Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within **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.

69. GOVERNING LAW.

This Contract shall be interpreted in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without giving effect to its conflicts of law provisions. Except as set forth in [Section 28, Contract Controversies](#), Commonwealth and Contractor agree that the courts of the Commonwealth of Pennsylvania and the federal courts of the Middle District of Pennsylvania shall have exclusive jurisdiction over disputes under this Contract and the resolution thereof. Any legal action relating to this Contract must be brought in Dauphin County, Pennsylvania, and the parties agree that jurisdiction and venue in such courts is appropriate.

70. CONTROLLING TERMS AND CONDITIONS.

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's website, quotations, invoices, business forms, click-through agreements, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor, and not binding on the Commonwealth.

71. POST-CONSUMER RECYCLED CONTENT; RECYCLED CONTENT ENFORCEMENT.

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

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

72. SURVIVAL.

Sections [10](#), [28](#), [29](#), [31](#), [35](#), [36](#), [37](#), [39](#), [40](#), [43](#), [44](#), [45](#), [46](#), [47](#), [50](#), [52](#), [53](#), [54](#), [61](#), [65](#), [67](#), [68](#), [69](#) and [72](#) and any right or obligation of the parties in this Contract which, by its express terms or nature and context is intended to survive termination or expiration of this Contract, will survive any such termination or expiration shall survive the expiration or termination of the Contract.

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA BUSINESS ASSOCIATE AGREEMENT

Health Insurance Portability and Accountability Act (HIPAA) Compliance

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

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be handled, used or disclosed only in accordance with this Business Associate Agreement (BAA), the Underlying Agreement and the standards established by HIPAA, the HITECH Act and related regulations, and other applicable laws and agency guidance.

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

1. Definitions.

- (a) “**Business Associate**” shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.
- (b) “**Business Associate Agreement**” or “**BAA**” shall mean this Agreement.
- (c) “**Covered Entity**” shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.
- (d) “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, Pub. L. No. 104-191.

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

2. Changes in Law.

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

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

Except as otherwise limited in this BAA, Business Associate shall be permitted to use or disclose PHI provided by or obtained by or obtained on behalf of Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity to perform those services required by the Underlying Agreement, provided that such use or disclosure would not violate the HIPPA Rules if done by Covered Entity. Business Associate agrees to make uses, disclosures and requests for PHI consistent with Covered Entity’s minimum policies and procedures.

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

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

5. Business Associate Obligations.

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

the Business Associate) or should reasonably have been known to the Business Associate to have occurred.

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

of PHI maintained in a designated record set, Business Associate shall make the PHI available to the Covered Entity and incorporate the amendment to enable Covered Entity to comply with 45 CFR § [164.526](#). If any individual requests an amendment from Business Associate or its contractors, subcontractors, agents or representatives, Business Associate shall notify Covered Entity of same within **5 business days**.

- (j) **Provide Accounting of Disclosures.** Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 CFR § [164.528](#). Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, the purpose of the disclosure, and shall include disclosures made on or after the date which is **6 years** prior to the request. Business Associate shall make such record available to the individual or the Covered Entity within **10 business days** of a request for an accounting of disclosures and in accordance with 45 CFR § [164.528](#).
- (k) **Access to Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, created or received by Business Associate on behalf of the Covered Entity, available to the Covered Entity and the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules.
- (l) **Return or Destruction of PHI.** At termination of this BAA, Business Associate hereby agrees to return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this BAA. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this BAA to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.
- (m) **Maintenance of PHI.** Notwithstanding [subsection 5\(l\)](#) of this BAA, Business Associate and its contractors, subcontractors, agents and representatives shall retain all PHI throughout the term of the Underlying Agreement and shall continue to maintain the information required under [subsection 5\(j\)](#) of this BAA for a period of six (6) years after termination of the Underlying Agreement, unless Covered Entity and Business Associate agree otherwise.
- (n) **Mitigation Procedures.** Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this BAA or the HIPAA Rules. Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or

disclosure of PHI by Business Associate in violation of this BAA or the Privacy Rule.

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

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

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

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

6. **Obligations of Covered Entity.**

- (a) **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR § [164.520](#) ([Appendix A](#) to this BAA), as well as changes to such notice.
- (b) **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR § [164.522](#) to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

7. **Survival.**

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

EXHIBIT B
Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this Exhibit B is to define requirements for business or technology solutions and services procured by the Commonwealth that are hosted within the Contractor's or its subcontractor's managed infrastructure.

A. Hosting Requirements

1. The Contractor 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 Contractor shall provide secure access to applicable levels of users via the internet.
3. The Contractor shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth and server capacity.
4. The Contractor or its subcontractors shall maintain all components of the hosted solution with commercially reasonable support and replace as necessary to maintain compliance.
5. The Contractor shall monitor, prevent and deter unauthorized system access. The Contractor 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 Contractor shall comply with state and federal data breach notification statutes and regulations, and shall report security incidents to the Commonwealth within **1 hour** of when the Contractor has reasonable confirmation of such unauthorized access, use, release, or disclosure of data.
6. The Contractor or the Contractor's subcontractor shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, and with at least **3 business days'** notice, to review the hosted system's data center locations and security architecture.
7. The Contractor'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 Contractor or the Contractor's subcontractor shall locate servers in a climate-controlled environment. The Contractor or the Contractor'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 Contractor shall examine applicable system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. The Contractor shall completely test and apply patches for all third-party software products in the server environment before release.
11. The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor shall receive and review their subcontractor's relevant SOC reports, and the Contractor 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 Contractor'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 Contractor 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 Contractor'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 Contractor or its subcontractor setting forth the description and effectiveness of the Contractor's or subcontractor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

The Contractor 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 Contractor shall adhere to Statement on Standards for Attestation Engagements (SSAE) 18 audit standards. The Contractor acknowledges that the SSAE guidance may be updated during the Term of this Contract, and the Contractor shall comply with such updates which shall be reflected in the next annual report.

7. In the event an audit reveals any non-conformity to SSAE standards, the Contractor 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 Contractor or its subcontractor(s);
 - (iii) the dates when each remedial action is to be implemented; and
 - (iv) a summary of potential risks or impacts to the Commonwealth that are associated with the non-conformity(ies).
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 Contractor shall conduct a third-party independent security/vulnerability assessment at its own expense on an annual basis.
2. The Contractor 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 Contractor 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 Contractor shall use industry best practices to provide applicable system intrusion detection and prevention in order to detect intrusions in a timely manner.
5. The Contractor shall use industry best practices to provide applicable malware and virus protection or compensating controls on all servers and network components.
6. The Contractor 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 Contractor shall provide the services, using security technologies and techniques in accordance with industry best practices and the Commonwealth's ITPs set forth in Attachment 1, 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 Contractor shall only host, store or backup Commonwealth Data in physical locations within CONUS.

2. The Contractor shall use industry best practices to update and patch all applicable systems and third-party software security configurations to reduce security risk.
3. The Contractor 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 Contractor shall be solely responsible for applicable data storage required.
5. The Contractor shall encrypt all Commonwealth data in transit and at rest. The Contractor shall comply with ITP-SEC031, and ITP-SEC019, encryption policies and minimum standards or stronger.
6. The Contractor 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 Contractor 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 Contractor-controlled or Contractor-owned electronic device.
8. The Contractor 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 Contractor 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 Contractor shall abide by the applicable Commonwealth's Information Technology Policies (ITPs), a list of the most relevant being attached hereto as Attachment 1.
3. The Contractor 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 Contractor must promptly return to the Commonwealth all Commonwealth's data (and all copies of this information) that is in the Contractor'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 Contractor shall ensure all residual user account(s) are promptly deleted or reset in the solution. The Contractor shall notify the Commonwealth within 10 business days that all user account(s) have been deleted or reset.

ATTACHMENT 1

Information Technology Policies (ITPs) for Outsourced/Contractor(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

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE B – SUBRECIPIENT For-Profit Organizations

The Commonwealth of Pennsylvania, Department of Human Services (DHS), distributes federal and state funds to local governments, nonprofit, and for-profit organizations. Federal expenditures are subject to federal audit requirements, and federal and state funding passed through DHS are subject to DHS audit requirements. Any federal statute prescribing specific policies or specific requirements that differ from the standards provided herein shall govern. The DHS provides the following audit requirements in accordance with the Commonwealth of Pennsylvania, Governor's Office, Management Directive 325.9, as amended December 23, 2014.

Subrecipient means an entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards received directly from a federal awarding agency (see 2 CFR Part 200 § 200.93). For purposes of this audit clause, a subrecipient **is not** a contractor as defined in 2 CFR Part 200 § 200.23.

A. Federal Audit Requirements – For-Profit Organizations

The for-profit organization must comply with all federal and state audit requirements including 2 CFR Part 200 – *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*; and any other applicable law or regulation, as well as any other applicable law or regulation that may be enacted or promulgated by the federal government.

A for-profit organization **is required** to have an audit if it expends a total of \$750,000 or more in federal funds under one or more Department of Health and Human Services (DHHS) federal awards. Title 45, CFR 75.501(i) incorporates the thresholds and deadlines of 2 CFR Part 200 as amended, and provides for-profit organizations with two options regarding the type of audit that will satisfy the audit requirements:

1. A financial audit conducted in accordance with generally accepted *Government Auditing Standards* (The Yellow Book), revised; or
2. An audit that meets the requirements contained in 2 CFR Part 200.

If a for-profit organization expends **total federal awards of less than \$750,000** during its fiscal year, it is exempt from these **federal** audit requirements, but is required to maintain auditable records of federal or state funds that supplement such awards. Records must be available for review by appropriate officials. **Although an audit may not be necessary under the federal requirements, DHS audit requirements may be applicable.**

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE B – SUBRECIPIENT For-Profit Organizations

B. DHS Audit Requirements

A for-profit provider must meet the DHS audit requirements.

Where a Single Audit or program-specific audit is conducted in accordance with the federal audit requirements referenced above, DHS will accept such audit provided that:

1. A full copy of the audit report is submitted as detailed below; **and**
2. The subrecipient shall ensure that the audit requirements are met for the terms of this contract; i.e., the prescribed Agreed-Upon Procedures (AUP) Report(s) and applicable schedule requirement(s). The incremental cost for preparation of the AUP Report(s) and the schedule cannot be charged to federal funding streams.

In the absence of a federally required audit, the entity is responsible for following the annual audit requirements described below, which are based upon the program year specified in this agreement.

If in connection with the agreement, a for-profit organization **expends \$500,000 or more in combined state and federal funds, but less than \$750,000 in federal funds**, during the program year, the subrecipient shall ensure that, for the term of the contract, an independent auditor conducts annual examinations of its compliance with the terms and conditions of this contract (compliance attestations). These examinations shall be conducted in accordance with the American Institute of Certified Public Accountants' Statements on Standards for Attestation Engagements, No. 18, Attestation Standards: Clarification and Recodification (SSAE 18) and shall be of a scope acceptable to the DHS. The initial compliance attestation shall be completed for the program year specified in the contract and conducted annually thereafter. The incremental cost for preparation of the compliance attestation reports cannot be charged to federal funding streams.

The subrecipient shall submit the compliance attestation reports (if applicable) to the DHS within 90 days after the program year has been completed. When the compliance attestation reports are other than unmodified, the subrecipient shall submit to the DHS, in addition to the compliance attestation reports, a plan describing what actions the subrecipient will implement to correct the situation that caused the auditor to issue other than an unmodified report, a timetable for implementing the planned corrective actions, and a process for monitoring compliance with the timetable and a contact person who is responsible for the resolution of the situation.

If the subrecipient enters into an agreement with a subcontractor(s) for performance of any primary contractual duties, the audit requirements are applicable to the subcontractor(s) with whom the subrecipient has entered into an agreement. Consequently, the audit requirements should be incorporated into the sub-contractual document as entered by the subrecipient.

A for-profit entity that **expends less than \$500,000 combined state and federal funds** during the program year is exempt from DHS audit requirements but is required to maintain auditable records for each contract year. Records must be available for review by appropriate officials of the DHS or a pass-through entity.

GENERAL AUDIT PROVISIONS

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE B – SUBRECIPIENT For-Profit Organizations

A for-profit organization is responsible for obtaining the necessary audit and securing the services of an independent, licensed certified public accountant or other independent governmental auditor.

DHS, other state agencies, and federal agencies, or their authorized representatives, may perform additional financial and/or performance audits.

If an audit of this contract is to be performed, the subrecipient will be given advance notice. The subrecipient shall maintain books, records, and documents that support the services provided, that the fees earned are in accordance with the contract, and that the subrecipient has complied with the contract terms and conditions. The subrecipient shall make available, upon reasonable notice, at the office of the subrecipient, during normal business hours, for the term of this contract and the retention period set forth in this Audit Clause, any of the books, records, and documents for inspection, audit, or reproduction by any state or federal agency or its authorized representative.

Except when a longer period is stated in the contract, the subrecipient shall maintain books, records, and documents related to this contract for a period of time that is the greater of five years from the time when the contract expires and all questioned costs or activities have been resolved to the satisfaction of DHS, or as required by applicable federal laws and regulations. Any records that support the services provided, that the fees earned are in accordance with the contract, and that the subrecipient has complied with contract terms and conditions must be maintained. If this contract is completely or partially terminated, subrecipient shall preserve the records relating to and make available for a period of five years from the date of any resulting final settlement.

Audit documentation and audit reports must be retained by the subrecipient's independent auditor for a minimum of five years from the date of issuance of the audit report, unless the subrecipient's auditor is notified in writing by DHS, other state agencies, or federal agencies to extend the retention period. Audit documentation must be made available upon request to authorized representatives of DHS, other state agencies, or federal agencies.

The subrecipient shall retain and shall make available or provide to DHS at DHS's option those records that relate to litigation of the settlement of claims arising out of performance or expenditures under the contract until such litigation, claim, or exceptions have reached final disposition.

Except for documentary evidence delivered pursuant to litigation or the settlement of claims arising out of the performance of the contract, the subrecipient may retain records as required by this Audit Clause using photographs, microphotographs, or other authentic reproductions of such records after the expiration of two years following the last day of the month of reimbursement to the contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by DHS.

SUBMISSION OF AUDIT REPORT TO THE COMMONWEALTH

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE B – SUBRECIPIENT For-Profit Organizations

A. Federally Required Audit Reports

Submit an electronic copy of the audit report package, which shall include the elements outlined in 2 CFR Part 200, Subpart F – Audit Requirements (Subpart F) to the resource account RA-BAFMSingleAudit@pa.gov.

B. DHS Required Audit Reports and Additional Submission by Subrecipients

1. Independent Accountant's Report on Applying Agreed-Upon Procedures – which consist of the following procedures for the funding provided by this agreement for the contract year ending within the entity's fiscal year end under audit:

- (a) Verify by comparison of the amounts and classifications that the supplemental financial schedules listed below, which summarize amounts reported to DHS for fiscal year ended {CONTRACT YEAR END}, have been accurately compiled and reflect the audited books and records of (Auditee). Also verify by comparison to the example schedules that these schedules are presented, at a minimum, at the level of detail that directly mirrors the budget page (Rider 3) of the contract. The Schedule of Revenues and Expenditures should mirror the line items on the budget pages of the contract and include a budget and an actual expenditure column pertaining to this period.

Program Name/ Contract Number Referenced Schedule/Exhibit

(List each individual schedule for all contracts in which the auditee participated.)

- (b) Inquire of management regarding adjustments to reported revenues or expenditures, which were not reflected on the reports submitted to DHS for the period in question.
- (c) Based on the procedures detailed in paragraphs (a) and (b) above, disclose any adjustments and/or findings and identify which have (have not) been reflected on the corresponding schedules.

(List each separately. Indicate whether it has/has not been reflected on the schedule.)

2. Independent Accountant's Report on Applying Agreed-Upon Procedures – which consist of the following procedures for the entity's fiscal year end under audit. All For-Profit Organizations who are submitting a single audit in accordance with Title 45, CFR 75.501(i) are also required to include in their single audit reporting package a supplemental schedule, which is to be subjected to an Agreed-Upon Procedures engagement. The schedule, for which an example is included in this audit clause as Enclosure I, is a reconciliation of the expenditures listed on the Schedule of Expenditures of Federal Awards (SEFA) to the Federal award income received from the Pennsylvania Department of Human Services (DHS), as noted in the revenue audit confirmation received from the Commonwealth of Pennsylvania. The procedures to be performed on the reconciliation schedule are as follows:

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE B – SUBRECIPIENT For-Profit Organizations

- (a) Agree the expenditure amounts listed on the reconciliation schedule under the “Federal Expenditures per the SEFA” column to the audited Schedule of Expenditures of Federal Awards (SEFA).
- (b) Agree the receipt amounts listed on the reconciliation schedule under the “Federal Awards Received per the audit confirmation reply from Pennsylvania” column to the subrecipient Federal amounts that were reflected in the audit confirmation reply from the Office of Budget, Comptroller Operations.
- (c) Recalculate the amounts listed under the “Difference” column.
- (d) Agree the amounts listed under the “Difference” column to the audited books and records of the subrecipient.
- (e) Agree the “Detailed Explanation of the Differences” to the audited books and records of the subrecipient.
- (f) Based on the procedures detailed in paragraphs (a) through (e) above, disclose any adjustments and/or findings which have not been reflected on the corresponding schedules (List each separately.).

PERIOD SUBJECT TO AUDIT

A federally required audit, conducted in accordance with Subpart F, or Title 45, CFR 75.501(i), as appropriate, encompasses the fiscal period of the auditee. **Therefore, the period of the federally required audit may differ from the official reporting period as specified in this agreement.** Where these periods differ, the required supplemental schedule(s) of Revenues and Expenditures and the related Independent Accountant’s Report on Applying Agreed-Upon Procedures must be completed for the official annual reporting period of this agreement that ended during the period under audit and shall accompany the federally required audit.

CORRECTIVE ACTION PLAN

The subrecipient shall prepare a corrective action plan (CAP) to address all findings of noncompliance, internal control weaknesses, and/or reportable conditions disclosed in the audit report. For each finding noted, the CAP should include: (1) a brief description identifying the findings; (2) whether the auditee agrees with the finding; (3) the specific steps taken or to be taken to correct the deficiency or specific reasons why corrective action is not necessary; (4) a timetable for completion of the corrective action steps; (5) a description of monitoring to be performed to ensure that the steps are taken; and (6) the responsible party for the CAP.

REMEDIES FOR NONCOMPLIANCE

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE B – SUBRECIPIENT For-Profit Organizations

The subrecipient's failure to provide an acceptable audit may result in the DHS not accepting the report and initiating actions against the subrecipient that may include the following:

- Disallowing the cost of the audit.
- Withholding a percentage of the contract funding pending compliance.
- Withholding or disallowing administrative costs.
- Suspending subsequent contract funding pending compliance.
- Requiring a corrective action plan.
- Terminating the contract if the failure is not corrected within the time period approved by DHS.
- Assessing liquidated damages up to the amount of \$200 for each calendar day and portion of each calendar day for which each required audit or compliance attestation report is submitted beyond its required due date. Audits submitted without required AUP reports will not be considered acceptable and will be subject to liquidated damages.

TECHNICAL ASSISTANCE

Technical assistance on the DHS' audit requirements and the integration of those requirements with the federal Single Audit requirements will be provided by:

Department of Human Services
Bureau of Financial Operations
Division of Audit and Review
Audit Resolution Section
1st Floor, Forum Place
555 Walnut Street
P.O. Box 2675
Harrisburg, Pennsylvania 17105-2675
Email: RA-pwauditresolution@pa.gov

SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE B – SUBRECIPIENT For-Profit Organizations

SUBRECIPIENT / CONTRACTOR AUDITS									
AUDIT CLAUSE B – SUBRECIPIENT									
For-Profit Organizations									
ENCLOSURE I									
Entity Name									
Year Ended (ORGANIZATION'S FINANCIAL STATEMENT DATE)									
SUPPLEMENTAL SCHEDULE									
RECONCILIATION									
Federal Awards Passed through the Pennsylvania Department of Human Services									
Expenditures per the SEFA to Revenue Received per the Pennsylvania Audit Confirmation Reply									
CFDA Name	CFDA Number	Federal Expenditures per the SEFA	Federal Awards Received per the audit confirmation reply from Pennsylvania	Difference	% Difference	Detailed Explanation of the Differences			
		\$	\$	\$	%				