

REQUEST FOR PROPOSALS FOR

**MEDICAID MANAGEMENT INFORMATION SYSTEMS
2020 PLATFORM PROJECT
INFORMATION TECHNOLOGY CONSULTING
AND QUALITY ASSURANCE SERVICES**

ISSUING OFFICE

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HUMAN SERVICES
BUREAU OF FINANCIAL OPERATIONS
DIVISION OF PROCUREMENT & CONTRACT MANAGEMENT
HEALTH & WELFARE BUILDING, ROOM 402
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HARRISBURG, PA 17120**

RFP NUMBER

13-17

DATE OF ISSUANCE

May 11, 2018

REQUEST FOR PROPOSALS FOR

MMIS 2020 PLATFORM PROJECT

Information Technology Consulting and Quality Assurance Services

RFP NUMBER: 13-17

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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-PWRFPQUESTIONS@PA.GOV	Potential Offerors	May 31, 2018 2:00 PM EST
Pre-Proposal Conference: Keystone Building – Forest Room 400 North Street Harrisburg, PA 17120	DHS/Potential Offerors	May 31, 2018 10:00 AM EST
Answers to Potential Offeror questions posted to the DGS website at http://www.emarketplace.state.pa.us/Search.aspx no later than this date.	DHS	June 11, 2018
Please monitor website for all communications regarding the RFP.	Potential Offerors	Ongoing
Sealed proposal must be received by the Issuing Office at: Commonwealth of Pennsylvania Department of Human Services Bureau of Financial Operations Division of Procurement & Contract Management Room 402 Health and Welfare Building 625 Forster Street Harrisburg, PA 17120	Offerors	July 2, 2018 2:00 PM EST

PART I - GENERAL INFORMATION

I-1. Purpose. This request for proposals (“RFP”) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the Department of Human Services’ (“Department” or “DHS”) consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for Information Technology Consulting and Quality Assurance (“ITC/QA”) services in support of the Medicaid Management Information System (“MMIS”) 2020 Platform Project. This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

I-2. Issuing Office. DHS Office of Administration, Bureau of Financial Operations, Division of Procurement and Contract Management (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be Michelle Smith, RA-PWRFPQUESTIONS@PA.GOV, the Project Officer for this RFP. Please refer all inquiries to the Project Officer.

I-3. Overview of Project.

- A. The Commonwealth is procuring a new MMIS to replace its aging Provider Reimbursement and Operations Management Information System (“PROMIS^e™”). The new MMIS, known as the MMIS 2020 Platform, will provide a modular enterprise-wide system providing automated support for the Department’s programs in both the fee-for-service (“FFS”) and managed care organization (“MCO”) delivery systems, the Children’s Health Insurance Program (“CHIP”), various waiver programs, the Low Income Home Energy Assistance Program (“LIHEAP”), and the Medical Assistance Provider Incentive Repository (“MAPIR”). The MMIS 2020 Platform will support almost three (3) million individuals who are enrolled in the Department’s programs. The system must meet all current federal and state regulations and technology standards, including the Center for Medicare & Medicaid Services (“CMS”) Conditions and Standards set forth at 42 CFR §433.112, which includes the Medicaid Information Technology Architecture (“MITA”).

The Department has worked with CMS to develop a plan to transition from the current monolithic system to a modular solution. Using multiple contractors, each responsible for providing and supporting separate modular solutions, the MMIS 2020 Platform will conform to CMS’s goal of a loosely coupled service-oriented architecture (“SOA”).

Except for three (3) modules already in place, the Department will use a phased-in and agile implementation strategy to implement various modules of the MMIS 2020 Platform, aligned to Pennsylvania’s Medical Assistance (“MA”) program business operations structure. Selected Offeror(s) will provide modules capable of interfacing with the new MMIS as well as the legacy system (PROMIS^e™) during the transition period from the legacy system to the modular solution. A systems integrator, referred to as the System Integrator (“SI”)/Data Hub (“DH”) contractor, will be responsible for system interoperability; each module contractor will cooperate with DHS’s Quality Assurance (“QA”) Program; and the entire MMIS 2020 Platform Project is subject to independent verification and validation (“IV&V”) oversight.

To achieve its vision, the Department will issue multiple RFPs to procure the new modules. The new functional modules when coupled with existing functionality will comprise the new MMIS. Through this RFP, the Department is seeking a qualified Offeror to provide ITC/QA services for the entire MMIS 2020 Platform Project. The Department will award a single contract responsible for both the ITC and QA services. Additional detail is provided in Part III, Technical Submittal of this RFP.

A block diagram of the MMIS 2020 Platform can be found in **Appendix A, MMIS 2020 Platform Block Diagram**; a description of the MMIS 2020 Platform Service and Module Contractors can be found in

Appendix B, MMIS 2020 Platform Service Contractor and Module Description; the proposed procurement timeline can be found in **Appendix C, MMIS 2020 Platform Timeline**; a detailed description of Pennsylvania’s current MMIS including a block diagram of the “as is” data flow can be found in **Appendix D, Pennsylvania’s Current MMIS**; and the Department’s MMIS 2020 Platform Governance Plan is found in **Appendix E, MMIS 2020 Platform Governance Plan** of this RFP.

B. MMIS Stakeholders. Pennsylvania’s MMIS operates and will continue to operate in an environment that includes a wide variety of stakeholders. In addition to the MMIS 2020 Platform Service and Module contractors identified in **Appendix B, MMIS 2020 Platform Service Contractor and Module Description**, the list below represents stakeholders who are invested in the MMIS 2020 Platform. Note: some stakeholders may change or be added during the course of the contract.

1. Federal Stakeholders. CMS is part of the United States Department of Health and Human Services (“DHHS”). This is Pennsylvania’s federal partner for the MA and MMIS 2020 Platform. CMS provides the primary funding for the MMIS 2020 Platform, and requires states to have an MMIS that aligns with its Conditions and Standards and MITA 3.0. In addition to funding, CMS provides guidance, consultation, project support, and certification for the MMIS and approves the procurements and resulting contracts.

2. Pennsylvania Stakeholders:

a. Department of Human Services. DHS has eight (8) program offices that administer services and provide care to support Pennsylvania’s most vulnerable citizens. Through the Department’s Office of Medical Assistance Programs (“OMAP”), the Department is responsible for purchasing health care services for almost three (3) million Pennsylvania residents and enrolling providers who administer the care. OMAP works closely with these providers to process their claims, establish rates and fees, and contract and monitor MCOs. Additionally, the Department works to ensure the integrity of the program, in part by detecting and deterring provider and recipient fraud, waste, and abuse.

Other DHS program offices provide specialized MA services, which include support for long-term living, developmental disability services, and mental health and substance abuse services.

b. Office for Information Technology. The Pennsylvania Office of Administration Office for Information Technology (“OA-OIT”) oversees investments in and performance of all Information Technology (“IT”) systems across the Commonwealth. OA-OIT establishes and implements policies, standards, and guidelines regarding planning, management, acquisition, and security of IT assets in all Commonwealth agencies under the Governor’s jurisdiction. OA-OIT provides direct oversight for large, enterprise-wide initiatives, such as IT consolidation, Commonwealth shared services, and cyber security. OA-OIT is also responsible for administering the IV&V contract for the MMIS 2020 Platform.

c. Treasury Department. The Pennsylvania Treasury Department is an independent department of state government led by the State Treasurer. Its paramount responsibility is safeguarding and managing the state’s financial assets. The Treasury Department makes payments on behalf of the Commonwealth, including MA payments.

d. Office of Comptroller Operations. The Comptroller prepares and issues the Commonwealth’s comprehensive annual financial report and the state-level single audit. The Office oversees the Commonwealth’s uniform accounting, payroll, and financial reporting systems, and provides auditing, financial management, accounts payable and receivable services, and miscellaneous specialized services.

Specific to the MMIS, the Comptroller generates weekly payment files and financial reports, reviews and validates payments in advance of Treasury processing, is the secondary signoff of all edit/audit resolution procedures, assigns Financial Internal Order codes, including annual Federal Financial Participation (“FFP”) updates, generates the CMS64 and supports oversight and audit of FFP drawdown, supports annual end of State and Federal Fiscal Year rollover activities, reviews and approves weekly Gross Adjustments, and identifies Provider Electronic Fund Transfer (“EFT”) Payment failures.

3. Other Stakeholders:

- a. **Managed Care Organizations.** MCOs are health care providers or groups of medical service providers who enter into agreements with states to offer and administer managed care health plans, such as Medicaid. MCOs operate on capitation-based compensation models, receiving per-member-per-month payments for the provision of managed care services.
- b. **External Stakeholders.** The Commonwealth’s current MMIS, PROMIS^eTM, interacts with numerous other external contractors, agencies, and providers including, and subject to change, the Pennsylvania Medical Society, Mercer Health & Benefits, LLC, PeopleSoft, Myers and Stauffer, First DataBank, and Surescripts.

C. Future State MMIS 2020 Platform. Pennsylvania’s future MMIS will be comprised of an enterprise platform that will support modular components, products, solutions, and services. This may include Commercial Off-The-Shelf (“COTS”) or Modified Off-The-Shelf products on premises (Commonwealth hosted) or remotely hosted, newly procured components, Software as a Service (“SaaS”), and legacy applications that utilize custom code.

During the transition from PROMIS^eTM to the MMIS 2020 Platform, the selected Offeror will interact with the existing PROMIS^eTM contractor and the MMIS 2020 Platform contractors, as they are on-boarded to ensure the ongoing operations of the Department’s programs and transition to the MMIS 2020 Platform.

The future MMIS will use an Enterprise Service Bus (“ESB”) that will serve as a message broker and will support web services and Application Program Interfaces to exchange data across the MMIS. The Operational Data Store (“ODS”) is the repository for transactional data; the data that needs to be shared across the solution will be synchronized with the ODS. Users will use Common Portals as a central landing page to access MMIS functionality. The requests on the Common Portals to access specific functionality or take action upon specific data elements will be routed to the appropriate module. The MMIS 2020 Platform will use a centralized Customer Relationship Management (“CRM”) tool as the central repository for customer contacts allowing designated staff to view a holistic picture of the interactions with customers.

Pennsylvania will have a SI/DH Contractor to oversee the SOA and ESB environments and provide the CRM tool. Modules will support the MA Business Functions as described in **Appendix B, MMIS 2020 Service Contractor and Module Description.**

To support effective data flow between modules, a comprehensive ESB will act as the communication broker and web services orchestrator to provide message-oriented middleware, transformation, and routing intelligence for the MMIS. The ESB will allow for data management throughout the system and data sharing between the integrated and interfaced components, the On-Line Transactional Processing ODS, and into the On-Line Analytical Processing Data Warehouse.

The disparate modules will be integrated via the DH and an ESB, through which module-to-module communication will occur. The DH will interface with all necessary federal, Commonwealth, and business

partners. Data will be stored temporarily in an ODS and long-term in the Enterprise Data Warehouse (“EDW”). While **Appendix A, MMIS 2020 Platform Block Diagram** contains the block diagram of the MMIS 2020 Platform’s conceptual architecture, Figure 1 below is an expanded block diagram illustrating the interaction across the MMIS 2020 Platform aligned to MITA business areas. Figure 1 also represents the final future state after the phased implementations are complete. Note: Because MMIS 2020 Platform is designed around Pennsylvania’s MA Business model, the MMIS 2020 Platform Project will use the MMIS module checklist sets for certification.

Lastly, the Department will be procuring these functions as described in **Appendix B, MMIS 2020 Platform Service Contractor and Module Description** and **Appendix C, MMIS 2020 Platform Timeline**.

Pennsylvania’s future MMIS 2020 Platform interactions, aligned to MITA business areas, is shown in Figure 1.

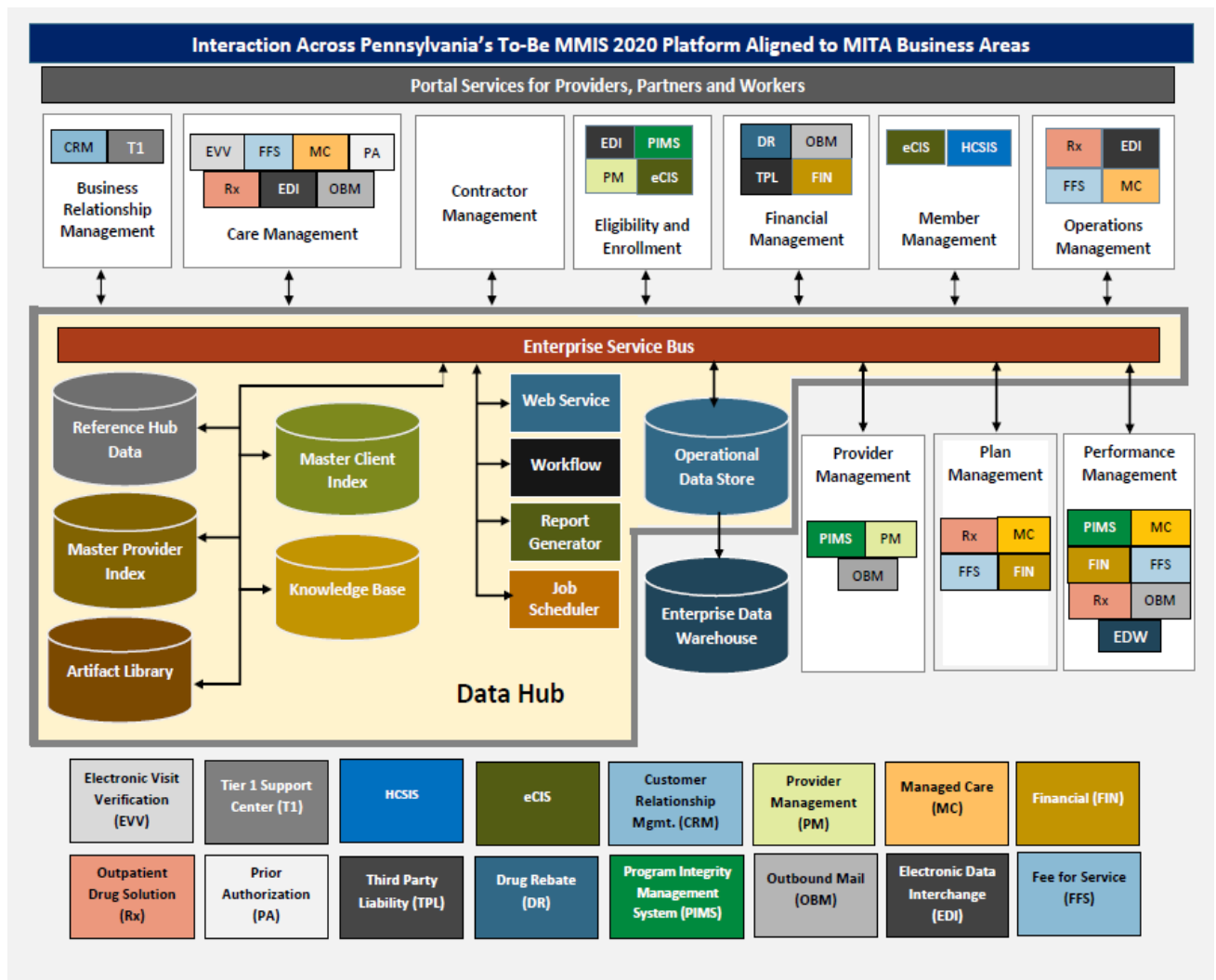


Figure 1: Pennsylvania's To-Be MMIS Solution Aligned to MITA Business Areas

Future MMIS Interfacing Systems: Below is a list of interfaces and interactions that have been identified for Pennsylvania’s MMIS 2020 Platform. Note: this list is only a starting point for the modular

environment: the selected Offeror must interact with these interfaces, which may change and include additional interfaces.

Table 1: Future MMIS Interfacing Systems

MMIS 2020 Platform Modules and Ancillary Systems
Data Hub
Drug Rebate
Client Information System (“CIS”)/eCIS
Home and Community Services Information System
Enterprise Data Warehouse
Electronic Data Interchange (“EDI”) Solution
Prior Authorization (“PA”) Solution
Program Integrity and Data Analytics Solution
Managed Care Administration Solution
Financial Solution
Provider Management Solution
Third Party Liability (“TPL”) Solution
FFS Solution
Outpatient Drug Solution (Rx)
Outbound Mail
Care Management (TruCare)
Program Integrity Management System
Electronic Visit Verification
Tier 1 MMIS 2020 Platform Support Center
Enterprise Document Management Solution
Medical Assistance Online Provider Enrollment Portal
DHS-Connect
Master Provider Index
Bureau of Hearings and Appeals Database
MAPIR
LIHEAP
First Health
DHS SOA Gateway (for use with web services)
DHS Secure Data Exchange Services
National Entities and Interfaces
CMS and other federal agencies (e.g., the Internal Revenue Service)
DHHS Centers for Disease Control and Prevention National Immunization Surveys
National Plan and Provider Enumeration System
National Drug Pricing Compendia
Relevant federal databases
Commonwealth Entities
Pennsylvania DHS
Pennsylvania Department of Health

Pennsylvania Department of State
Pennsylvania Department of Drug and Alcohol Programs
Pennsylvania Department of Treasury
Pennsylvania Department of Aging
Pennsylvania Department of Corrections
Pennsylvania Department of Education
Pennsylvania Patient and Provider Network
Other Entities
MCOs/county contractors
Quality contractors (e.g., all paid databases, provider profiles)
Social Assistance Management System to support the Office of Long-Term Living
Financial institutions
Private insurance commercial carriers
Health Information Organization
Actuarial Contractor
Enrollment Broker
InterQual, Milliman & Robertson
Encoder
Noridian

I-4.Objectives.

A. General. This RFP requests project management, IT consulting and QA services, including training and testing – all consistent with the most current industry standards and practices, and DHS and CMS guidelines, standards, and procedures for the DHS’s MMIS 2020 Platform.

1. ITC/QA business objectives include:

- a. Provide ITC/QA services under the strategic leadership of DHS to help DHS transform its MMIS 2020 Platform vision into reality while maintaining operational readiness of the legacy system and fidelity to State and Federal regulations and requirements.
- b. Collaborate and cooperate with the Commonwealth, the MMIS 2020 Platform service and module contractors, the legacy system contractor, and MMIS 2020 Platform stakeholders to ensure the success of the MMIS 2020 Platform Project.
- c. Apply lessons learned and best practices from Medicaid IT and other large IT projects to the MMIS 2020 Platform.
- d. Achieve CMS certification by working closely with the legacy system contractor and MMIS 2020 Platform service and module contractors to provide for the continuity of operations with the legacy system and transition to the MMIS 2020 Platform.
- e. Help guide DHS to the successful implementation and certification of MMIS 2020 Platform within scope, on time and within budget, while maintaining quality. Proactively respond to and act on recommendations of the IV&V Contractor to keep the program on target.
- f. Support all audits, reviews and inspections.

2. Project Management.

- a. Provide project management services to assist DHS plan, organize, and execute the MMIS 2020 Platform while conforming to Commonwealth, federal and industry project management standards and methodologies.
- b. Help DHS identify potential issues and risks and provide recommendations for a revised strategy to eliminate or mitigate their impact.
- c. Establish and maintain the content of the MMIS 2020 Platform artifact library. Note: The SI-DH Contractor will host the MMIS 2020 Platform artifact library.
- d. Establish and maintain the content of the MMIS 2020 Platform knowledge base. Note: The SI-DH Contractor will host the MMIS 2020 Platform knowledge base.

3. IT Consulting.

- a. Provide consulting services to assist DHS adapt its organizational behavior to the MMIS 2020 Platform to better manage and resource the MMIS and improve its overall business performance.
- b. Collect and develop business requirements and complete business gap analyses for new initiatives or changes to the legacy system.
- c. Develop and conduct comprehensive User Acceptance Testing (“UAT”) for the MMIS 2020 Platform services and modules.

4. Quality Management.

- a. Develop a comprehensive quality management solution that includes quality assurance of MMIS 2020 Platform processes, and quality control solutions that builds standards into MMIS 2020 Platform products enabling the MMIS 2020 Platform to function as designed and meet the MMIS business needs. Collaborate with MMIS 2020 Platform service and module contractors and legacy system contractors to identify risks and dependencies that may prevent successful implementation. Provide recommendations for corrective action.
- b. Develop and maintain the MMIS 2020 Platform training program to support the maintenance and operations of the MMIS 2020 Platform for all stakeholders.
- c. Develop and maintain the MMIS 2020 Platform comprehensive user manual.

B. Specific. Under the Commonwealth’s direction, the selected Offeror must provide ITC/QA services for the lifecycle of Pennsylvania’s MMIS 2020 Platform Project, including the transition from the legacy system to the new MMIS. The selected Offeror must provide ITC/QA services, which include project management, IT consulting, and quality assurance and control activities normally associated with the development and deployment of large, complex systems. The specific ITC/QA business objectives include:

1. Project Management.

- a. Assist the Department with the development of the MMIS 2020 Platform charter.

- b. Act as the primary Project Office for the MMIS 2020 Platform.
- c. Develop, execute, and monitor the Integrated Master Plan for compliance across the MMIS 2020 Platform Project.
- d. Participate in CMS milestone reviews throughout the Medicaid Enterprise Certification Lifecycle (“MECL”). Complete the evidence columns of the MMIS Module Checklists.
- e. Track adherence to the project baseline schedule and alert the Department of conflicts to the established schedule.
- f. Provide written status reports that include reporting risks and issues that jeopardize the successful implementation of the MMIS 2020 Platform.
- g. Manage an automated, scalable project management system to implement, track and communicate project scheduling and status.
- h. Schedule and facilitate meetings, requirements gathering and Joint Application Design (“JAD”) sessions, as well as other meetings as required by the Department. Create and maintain meeting artifacts for the central MMIS 2020 Platform artifact library.

2. IT Consulting

- a. Provide the Commonwealth, through business process management, with recommendations on streamlining operations to realize efficiencies and improve customer service and organizational development.
- b. Collect business requirements for new initiatives; develop detailed business requirements from business requirements previously defined by the Department; and develop gap analyses.

3. Quality Management

- a. Develop and manage the MMIS 2020 Platform quality management solution and the approach to verify that standards are met.
- b. Develop and conduct comprehensive UAT, including creating test plans for the MMIS 2020 Platform and each project associated with it and confirm all test results.
- c. Develop and maintain the MMIS 2020 Platform comprehensive user manual, including template standards for use by all module contractors.
- d. Review MMIS 2020 Platform artifacts prepared by other program contractors, including project plans, schedules, deliverables, status reporting, testing and training plans, and budget reporting.
- e. Cooperate with the IV&V Contractor and prepare evidence for the MMIS Certification Reviews to ensure approval by CMS.
- f. Provide a description of the training and tools that support the quality processes as defined in this RFP.
- g. Provide training for all users, stakeholders and contractors as defined by the Commonwealth

I-5. Type of Contract. It is proposed that if the DHS enters into a contract as a result of this RFP, it will be a Firm, Fixed Price Contract containing the Standard Contract Terms and Conditions as shown in **Part VI**. The Department, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of DHS, show them to be qualified, responsible and capable of performing the Project.

I-6. Incurring Costs. The Commonwealth is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

I-7. Rejection of Proposals. The Department, in its sole and complete discretion, may reject any proposal received as a result of this RFP.

I-8. Pre-Proposal Conference. DHS will hold a Pre-Proposal conference as specified in the Calendar of Events. The purpose of this conference is to provide opportunity for clarification of the RFP. Offerors should forward all questions to the Project Officer in accordance with **Part I, Section I-9** to ensure adequate time for analysis before DHS provides an answer. Offerors may also ask questions at the conference. In view of the limited facilities available for the conference, Offerors should limit their representation to two (2) participants. The Pre-Proposal conference is for information only. Any answers furnished during the conference will not be official until they have been verified, in writing, by DHS. The Department will post all questions and written answers on the Department of General Services (“DGS”) website as an addendum to, and as a part of this RFP. Attendance at the Pre-Proposal Conference is optional, but strongly encouraged.

I-9. Questions & Answers. If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (with the subject line “**RFP 13-17 Question**”) to the Project Officer named in **Part I, Section I-2** of the RFP. If the Offeror has questions, they must be submitted via email no later than the date indicated on the Calendar of Events. The Offeror must not attempt to contact the Project Officer by any other means. The Department shall post the answers to the questions on the DGS website by the date stated on the Calendar of Events. An Offeror who submits a question *after* the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its proposal will not be responsive or competitive because the Department is not able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a responsive or competitive proposal. When submitted after the deadline date for receipt of questions indicated on the Calendar of Events, the Project Officer *may* respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Department decides to respond to a non-administrative question *after* the deadline date for receipt of questions indicated on the Calendar of Events, the Department will provide the answer to all Offerors through an addendum.

All questions and responses as posted on the DGS website are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section I-10**. Each Offeror is responsible to monitor the DGS website for new or revised RFP information. The Department shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Department.

I-10. Addenda to the RFP. If the Department deems it necessary to revise any part of this RFP before the proposal response date, the Department will post an addendum to the DGS website at <http://www.emarketplace.state.pa.us/Search.aspx>. It is the Offeror’s responsibility to periodically check the website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to the website as an addendum to the RFP.

I-11. Response Date. To be considered for selection, hard copies of proposals must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Department will not accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time for the timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal

response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Department otherwise notifies Offerors. The hour for submission of proposals will remain the same. The Department will reject late proposals.

I-12. Proposal Requirements.

A. Proposal Submission: To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in **Part I, Section I-12.B**, providing nine (9) paper copies [one marked “ORIGINAL”] of the Technical Submittal and one (1) paper copy of the Cost Submittal and two (2) paper copies of the Small Diverse Business and Small Business (“SDB/SB”) Participation Submittal and related Letter(s) of Intent. In addition to the paper copies of the proposal, Offerors must submit two (2) complete and exact copies of the entire proposal (Technical, Cost and SDB/SB submittals, along with all requested documents) on CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. The electronic copies must be a mirror image of the paper copy and any spreadsheets must be in Microsoft Excel. Additionally, on the CD-ROM or Flash drive, include separate folders that contain a complete and exact copy of the entire Technical (excluding financial capability) Submittal in searchable PDF (portable document format). To the extent that an Offeror designates information as confidential or proprietary or trade secret protected in accordance with RFP **Part I, Section I-18**, the Offeror must also include one (1) redacted version of the Technical Submittal, excluding financial capability on a CD-ROM or Flash Drive in Microsoft Office or Microsoft Office-compatible format. The CD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD or Flash drive before it was submitted. The Offeror may not lock or protect any cells or tabs. The Offeror must make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the **Proposal Cover Sheet (Appendix F)** to this RFP and the Proposal Cover Sheet is attached to the Offeror’s proposal, the requirement will be met. For this RFP, the proposal must remain valid for one hundred and twenty (120) **calendar** days or until a contract is fully executed. If the Department selects the Offeror’s proposal for award, the contents of the selected Offeror’s proposal will become, except to the extent the contents are changed through Best and Final Offers (“BAFO”) or negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by written notice received at the Department’s address for proposal delivery prior to the exact hour and date specified for proposal receipt. An Offeror or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification that complies with the RFP requirements.

B. Proposal Format: Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all proposal requirements. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the proposal. All cost data relating to this proposal and all SDB and SB cost data should be kept separate from and not included in the Technical Submittal. Offerors should not reiterate technical information in the cost submittal. Each proposal will consist of the following **four (4)** separately sealed submittals:

1. Technical Submittal:
 - a. The Technical Submittal must include a Transmittal Letter and include Tabs 1 through 13. Offerors must format their responses as follows:
 - o Tab 1: Table of Contents

- Tab 2: Requirements
 - Tab 3: Statement of the Problem
 - Tab 4: Management Summary
 - Tab 5: Work Plan
 - Tab 6: Prior Experience
 - Tab 7: Personnel
 - Tab 8: Training
 - Tab 9: Financial Capability
 - Tab 10: Objections to Standard Terms and Conditions
 - Tab 11: Lobbying Certification (**Appendix G**)
 - Tab 12: Corporate Reference Questionnaire (**Appendix H**)
 - Tab 13: Personnel Reference Questionnaire (**Appendix I**)
- b.** Complete, sign and include **Appendix J – Domestic Workforce Utilization Certification;**
 - c.** Complete, sign and include **Appendix K – Iran Free Procurement Certification;**
- 2.** Potential Optional Future Services Technical Submittal, in response to RFP **Part III-11**
 - 3.** Cost Submittal, in response to RFP **Part IV;** and
 - 4.** SDB/SB Participation Submittal, in response to RFP **Part V:**
 - a.** Complete and include **Appendix L - SDB/SB Participation Submittal Form;** and
 - b.** Complete and include **Appendix M - SDB/SB Letter of Intent.** Offeror must provide a Letter of Intent for each SDB and SB listed on the SDB/SB Participation Submittal Form.

Proposals must adhere to the following format:

1. Pages must be 8.5 by 11 inches with right and left margins of one (1) inch; and be double-sided.
2. Must use Arial or Times New Roman font with a size of twelve (12).
3. Tab and Section headings, shown in RFP **Part I, Section I-12.B**, Proposal Requirements, **MUST** be used.
4. Each page of the proposal must include a page number and identification of the Offeror in the page footer.
5. Materials provided in any appendix must be specifically referenced by page numbers in the body of the proposal.
6. Exceptions for paper and font size are permissible for project schedule (Microsoft Project) or for graphical exhibits and material in appendices which may be printed on white paper with dimensions of 11 by 17 inches.

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

The Department may make investigations as deemed necessary to determine the ability of the Offeror to perform, and the Offeror must furnish to the Department all requested information and data. The Department may reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Department that such Offeror is properly qualified to carry out the obligations of the RFP and to complete the work as specified.

I-13. Economy of Preparation. Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.

I-14. Alternate Proposals. The Department has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Department will not accept alternate proposals.

I-15. Discussions for Clarification. Offerors may be required to make an oral or written clarification of their proposals to the Department to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Department will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

I-16. Oral Presentations. Offerors may be required to make an oral presentation of their proposals to the Department to demonstrate an Offeror's capabilities and ability to provide the services required in the RFP. The Department will initiate requests for oral presentations; which may include a request that key personnel be present. The oral presentation will be held in Harrisburg, Pennsylvania. Oral presentations may be requested at any stage of the evaluation and selection process prior to contract execution.

I-17. Prime Contractor Responsibilities. The selected Offeror must perform at least sixty (60) percent of the work as compared to its subcontractors and suppliers. Nevertheless, the contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. Further, the Department will consider the selected Offeror to be the sole point of contact with regard to all contractual matters.

I-18. Proposal Contents

- A. **Confidential Information.** The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in Subsection C below and must additionally provide a redacted version of its proposal in accordance with RFP **Part I, Section I-12**, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.
- B. **Commonwealth Use.** All material submitted with the proposal shall be considered the property of the Commonwealth and may be returned only at the Department's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. **Public Disclosure.** After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Refer to **Appendix N** of the RFP 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-7** of this RFP, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-19. Best and Final Offers

- A. While not required, the Department may conduct discussions with Offerors for the purpose of obtaining Best and Final Offers (“BAFOs”). To obtain BAFOs from Offerors, the Department may do one or more of the following, in any combination and order:
1. Schedule oral presentations;
 2. Request revised proposals;
 3. Conduct a reverse online auction; and
 4. Enter into pre-selection negotiations.
- B. The following Offerors will **not** be invited by the Department to submit a BAFO:
1. Those Offerors, which the Department has determined to be not responsible or whose proposals the Department has determined to be not responsive.
 2. Those Offerors, which the Department has determined in accordance with **Part II, Section II-5**, from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to ensure good faith performance of the contract.
 3. Those Offerors whose score for their technical submittal of the proposal 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 Offerors that the Department has, within its discretion, determined to be within the top competitive range of responsive proposals.
- C. The Evaluation Criteria found in **Part II, Section II-4**, shall also be used to evaluate the BAFO.
- D. Price reductions offered will have no effect upon the Offeror’s Technical Submittal.
- E. Any reduction to commitments to SDBs and SBs must be proportional to the reduction in the total price offered through any BAFO process or contract negotiations unless approved by Bureau of Diversity, Inclusion & Small Business Opportunities (“BDISBO”).

I-20. News Releases. Offerors must 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-21. Restriction of Contact. From the issue date of this RFP until the Department selects a proposal for award, the Project Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Department to reject the offending Offeror’s proposal. If the Department later discovers that the Offeror has engaged in any violations of this condition, the Department may reject the offending Offeror’s proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Department. An Offeror who shares information contained in its proposal with other Commonwealth personnel or competing Offeror personnel may be disqualified.

I-22. Department Participation. Offerors must provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-22**.

DHS will provide necessary business and technical subject matter experts (“SMEs”). DHS is the final decision-making and approval authority. The Department will assign a DHS Contract Administrator who will manage the administration and monitoring of the contract resulting from this RFP. DHS will provide the following items regardless of physical location:

- A. Commonwealth contractor email accounts
- B. LAN and WAN Connections
- C. Access to required Commonwealth site facilities
- D. Access to project facilities
- E. Access to project documentation
- F. Thirty (30) Personal Computers (“PC”) workstations for classroom training facility
- G. Access to the centralized CRM tool

DHS will not provide administrative or clerical support staff to support the Selected Offeror in its role on this project.

I-23. Term of Contract. The term of the contract will commence on the Effective Date and will end in four (4) years, with three (3) optional one (1) year extensions. The Department will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth and federal contracting procedures have been obtained. The selected Offeror must not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

I-24. Offeror’s Representations and Authorizations. By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A. All of the Offeror’s information and representations in the proposal are material and important, and DHS will rely upon the contents of the proposal in awarding the contract. The Commonwealth may treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror must not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E. The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F. To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.

- G. To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H. The Offeror is not currently under suspension, debarment or precluded from participation in any federally funded healthcare program by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it must submit along with its proposal a written explanation of why it cannot make such certification.
- I. The Offeror has not made, under separate contract with DHS, any recommendations to DHS concerning the need for MMIS 2020 Platform services or for services described in its proposal or the specifications for MMIS 2020 Platform services or the services described in the proposal.
- J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Offeror receives a fully executed and approved written contract from DHS, there is no legal and valid contract, in law or in equity, and the Offeror must not begin to perform.
- L. The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

I-25. Notification of Selection

- A. **Contract Negotiations.** The Department will notify all Offerors in writing of the Offeror selected for contract negotiations after the Department has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Department.
- B. **Contract Award.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Department has received the final negotiated contract signed by the selected Offeror.

I-26. Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Department will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See **Part I, Section I-27** of this RFP).

I-27. RFP Protest Procedure. Offerors and prospective Offerors who are aggrieved in connection with the solicitation or award of the contract under this RFP may file a protest with the Department. Any such protest must be in writing and must comply with the requirements set forth in the Commonwealth Procurement Code at 62 Pa. C.S. § 1711.1.

Any protest filed in relation to this RFP must be delivered to:

Department of Human Services
Office of Administration, Bureau of Financial Operations
Division of Procurement and Contract Management

Room 402 Health and Welfare Building
625 Forster Street
Harrisburg, Pennsylvania 17120
Attn: William Spiker
Email Address: RA-pwrfpquestions@pa.gov

Offerors and prospective Offerors must file a protest electronically via email to the resource account listed above, but also must simultaneously send an original and two hard copy versions of the protest to the address listed above. Protests will be deemed filed on the date received. The Issuing Office will notify OMAP (the contracting office) and any Offeror reasonably susceptible for award of the protest, and such notification shall start the timeline for any protest response.

I-28. Use of Electronic Version of RFP. This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Department's version shall govern.

I-29. Information Technology Policies. This RFP is subject to the Information Technology Policies ("ITPs") {formerly known as Information Technology Bulletins} issued by OA-OIT and DHS Business and Technical Standards 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 proposals must be submitted on the basis that all ITPs and DHS Business and Technical Standards are applicable to this procurement. It is the responsibility of the Offeror to read and be familiar with the ITPs and DHS Business and Technical Standard. Notwithstanding the foregoing, if the Offeror believes that any ITP or DHS Business and Technical Standard is not applicable to this procurement, it must list all such ITPs and DHS Business and Technical Standard in its technical response, and explain why it believes the ITP or DHS Business and Technical Standard is not applicable. DHS may, in its sole discretion, accept or reject any request that an ITP not be considered to be applicable to the procurement. The Offeror's failure to list an ITP or DHS Business and Technical Standard 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 DHS Business and Technical Standard.

I-30. Conflicts.

- A. The IV&V Contractor and its subcontractors for the MMIS 2020 Platform Project are prohibited from soliciting, proposing, or being awarded a contract for any project management, quality assurance, software design, development, or other manner of planning, design, development, or implementation phase activity for the MMIS 2020 Platform Project, including the services within the scope of the ITC/QA RFP.

This exclusion likewise extends to any other project within the Department that may interact with or otherwise provide services to the MMIS 2020 Platform Project or to the Department during the full term of the IV&V contract.

- B. The selected Offeror and its subcontractors are precluded from being selected for negotiations or contract award for the SI/DH and all MMIS 2020 Platform modules. If an Offeror has been selected for negotiations for the ITC/QA RFP and also has submitted a proposal in response to the SI/DH RFP or any of the MMIS 2020 Platform module RFPs, the Department will eliminate that Offeror's proposal(s) from consideration for SI/DH RFP and all MMIS 2020 Platform modules RFP. The Department will not consider that Offeror's proposal in the evaluation and scoring of the remaining proposals for SI/DH or MMIS 2020 Platform module RFPs. The selected Offeror is also precluded from being a subcontractor for the selected Offeror of the SI/DH and all MMIS 2020 Platform modules. If a subcontractor of the selected Offeror is a

subcontractor to an Offeror who has submitted a proposal in response to the SI/DH or a MMIS 2020 Platform modules RFPs, the subcontractor is precluded from providing SI/DH and MMIS 2020 Platform services unless the Offeror and the subcontractor request and receive the Department's prior written approval.

- C. Potential offerors that have participated as contractors or subcontractors in planning the MMIS 2020 Platform Project or preparing procurement documents for the MMIS 2020 Platform Project are precluded from being selected for negotiations or award for the ITC/QA contract. The Department will not consider proposals submitted by any such contractors or subcontractors in its evaluation of proposals and will not select such proposals for negotiations or contract award.

I-31. Optional Expansion of ITC/QA Services to Include Additional Agencies or Programs. The Department has the option to expand the scope of ITC/QA services provided under this RFP to include additional Department programs or programs administered by other state agencies if the Department expands services under a SI/DH or MMIS 2020 Platform module contract to include services for additional Department programs or for other agencies. In the event that ITC/QA services are expanded to include other Department programs or other state agencies, the selected Offeror and the Department or the Department and the state agency will meet to discuss the feasibility and impact of the expanded ITC/QA services on the pricing and requirements of the contract. If agreement is reached, the Department will amend the contract to include these additional services. **The Commonwealth, at its sole and complete discretion, may or may not proceed with an expansion of ITC/QA services and makes no representations that this expansion will occur.**

I-32. Definitions. When the Department uses "include" or "including", it means "including but not limited to" or "include but not limited to".

PART II - CRITERIA FOR SELECTION

II-1. Mandatory Responsiveness Requirements. To be eligible for selection, a proposal must:

- A. Be timely received from an Offeror (see **Part I, Section I-11**); and
- B. Be properly signed by the Offeror (see **Part I, Section I-12.A**).

II-2. Technical Nonconforming Proposals. The two (2) Mandatory Responsiveness Requirements set forth in **Part II, Section II-1** above (A-B) are the only RFP 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 Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.

II-3. Evaluation. The Department has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the SDB and SB Participation Submittals and provide the Department with a rating for this component of each proposal. The Department will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Department after taking into consideration all of the evaluation factors.

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

A. Technical. The Department has established the weight for the Technical criterion for this RFP as **50%** of the total points. Evaluation will be based upon the following criteria:

- 1. Soundness of Approach
- 2. Offeror Qualifications
- 3. Personnel Qualifications
- 4. Understanding the Problem

The final Technical scores are determined by giving the maximum number of technical points available to the proposal with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

B. Cost. The Department has established the weight for the Cost criterion for this RFP as **30%** of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth at the following webpage:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

C. SDB/SB Participation. BDISBO has established the evaluation weight for the SDB and SB Participation criterion for this RFP as **20%** of the total points.

- 1. The SDB and SB point allocation is based entirely on the percentage of the contract cost committed to SDBs and SBs.

2. A total combined SDB/SB commitment of less than one percent (1%) of the total contract cost is considered de minimis and will receive no SDB and SB points.
3. Two thirds (2/3) of the total points are allocated to SDB participation (SDB %).
4. One third (1/3) of the total points is allocated to SB participation (SB %).
5. Based on a maximum total of two hundred 200 available points for the SDB and SB Participation Submittal, the scoring mechanism is as follows:

<p>Small Diverse Business and Small Business Raw Score = 200 (SDB% + (1/3 * SB %))</p>

6. Each Offeror's raw score will be pro-rated against the Highest Offeror's raw score by applying the formula set forth on the following webpage:
http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx.
7. The Offeror's prior performance in meeting its contractual obligations to SDBs and SBs will be considered by BDISBO during the scoring process. To the extent the Offeror has failed to meet prior contractual commitments, BDISBO may recommend to the Department that the Offeror be determined non-responsible for the limited purpose of eligibility to receive SDB and SB points.

D. Domestic Workforce Utilization. Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum amount of bonus points available for this criterion is **3%** of the total points for this RFP.

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. See the following webpage for the Domestic Workforce Utilization Formula:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

E. Iran Free Procurement Certification and Disclosure. Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, an Offeror must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by DGS pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). All Offerors must complete and return the Iran Free Procurement Certification form, (**Appendix K, Iran Free Procurement Certification Form**), which is attached and made part of this RFP. The completed and signed Iran Free Procurement Certification form must be submitted as part of the Technical Submittal.

See the following web page for current Iran Free Procurement list:
<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

II-5. Offeror Responsibility. To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to ensure good faith performance of the contract. In order for an Offeror to be considered responsible for this RFP and, therefore, eligible for selection for BAFOs or selection for contract negotiations:

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **75%** of the **available raw technical points**; and
- B. The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to ensure good faith performance of the contract. The Commonwealth will review the Offeror's previous three financial statements, any additional information received from the Offeror, and any other publicly-available financial information concerning the Offeror, and assess each Offeror's financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.

An Offeror that fails to demonstrate sufficient financial capability to ensure good faith performance of the contract as specified may be considered by the Department, in its sole discretion, for BAFO or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Department. Based on the financial condition of the Offeror, 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 contract by the Offeror. The required performance security must be issued or executed by a bank or surety company authorized to do business in the Commonwealth. The cost of the required performance security will be the sole responsibility of the Offeror and cannot increase the Offeror's cost proposal or the contract cost to the Commonwealth.

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

II-6. Final Ranking and Award.

- A. After any BAFO process is conducted, the Department will combine the evaluation committee's final technical scores, BDISBO's final SDB and SB Participation Submittal scores, the final cost scores, and (when applicable) the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B. The Department will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C. Except as provided in **Part II-6.D**, the Department must select for contract negotiations the offeror with the highest overall score.
- D. The Department has the discretion to reject all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation will be made part of the contract file.

PART III - TECHNICAL SUBMITTAL

III-1. Requirements.

- A. Disaster Recovery (“DR”).** The selected Offeror must develop and document a DR plan for electronic records, equipment, and files relating to the MMIS 2020 Platform.

The DR plan must include at a minimum:

1. A procedure to return to limited (25%) operations within twenty-four (24) hours of the DR event.
2. The ability to return to full operation within three (3) business days of the DR event.
3. A plan to confirm that the post-disaster software version is the same as before the disaster.
4. A procedure to confirm that pre-disaster data is not lost or corrupted.
5. Upon the installation of any software (new or upgraded), a complete backup (copy) of the software must be made with the resultant backup stored to an external secure site.
6. The selected Offeror will store resultant backups at an external secure site. These backups must be cycled on a weekly basis. The selected Offeror must identify the backup sites.
7. Servers must be designed to employ a method of redundancy for operational integrity and production.
8. Servers must be connected to an Uninterrupted Power Supply system, which will condition incoming power to the server and provide sufficient processing time for the server to be correctly shutdown in the event of a power failure.
9. In the event of damage of a sufficient magnitude to the primary operational site, a second company location at least 50 miles away must be able to be modified to accommodate the system.
10. The DR plan must include a description of the chain of communication and command, by level, in the case of a systems or power failure.
11. The selected Offeror must have a Business Continuity Plan to maintain business operations via a semi-automated or manual mode to mitigate complete disruption of services until systems have been restored to normal operating capacities.

Deliverable:

DR Plan

The selected Offeror must deliver the DR Plan within sixty (60) calendar days after the Effective Date of the contract and must update the Plan annually. The DR Plan will be reviewed with the monthly report – see **Part III, Section III-9.B** of this RFP.

The Offeror must describe how, by whom, and how often its DR plan will be tested. The Offeror must describe how its DR test plans support compliance with the required system availability as described in **Part III, Section III-10 Performance Standards** of this RFP. The Offeror must also describe its approach to backing up the infrastructure to provide for continuity of operations.

Offeror Response

- B. Emergency Preparedness.** To support continuity of operations during an emergency, including a pandemic or an event that causes a major disruption in business or system operations, the Commonwealth needs a strategy for maintaining operations for an extended period. The strategy ensures that essential contractors 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 will impact your operations.

2. Describe your emergency response continuity of operations plan (“COOP”). 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 will be shared with employees).
 - b. Identification of essential business functions and key employees within your organization necessary to carry them out.
 - c. Contingency plans for:
 - i. How your organization will handle staffing issues when a portion of key employees are incapacitated.
 - ii. How employees in your organization will carry out the essential functions if circumstances prevent them from coming to the primary workplace.
 - d. How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts and chain of communications (including suppliers).
 - e. How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

Deliverable:
COOP

The selected Offeror must deliver the COOP within sixty (60) calendar days after the contract effective date and must update the Plan annually.

Offeror Response

C. Federal Standards. The selected Offeror must adhere to applicable federal mandates and standards, including any changes to the mandates and standards, for required hardware, software and development components. In addition, the selected Offeror must have a working knowledge of all federal mandates, regulations, standards, and requirements that apply to all Department contracts under the MMIS 2020 Platform Project, including operational compliance with any applicable legislation passed at the federal level throughout the term of the contract.

The selected Offeror must adhere to all federal mandates and standards, as may be amended, including:

1. [42 CFR § 433.112](#) - FFP for design, development, installation or enhancement of mechanized claims processing and information retrieval systems.
2. [42 CFR § 434.6](#) General requirements for all contracts and subcontracts.
3. [45 CFR Part 92](#) - Nondiscrimination On The Basis Of Race, Color, National Origin, Sex, Age, Or Disability In Health Programs Or Activities Receiving Federal Financial Assistance And Health Programs Or Activities Administered By The Department Of Health And Human Services Or Entities Established Under Title I Of The Patient Protection And Affordable Care Act.
4. State Medicaid Manual, [Chapter 11](#) – MMIS.
5. [Health Insurance Portability and Accountability Act of 1996](#) (“HIPAA”).
6. Accessibility standards established under [Section 508 of the Rehabilitation Act](#).
7. Compliance with **Guidance for Exchange and Medicaid Information Technology (IT) Systems**, Version 1.0 dated November 3, 2010, under [Sections 1104 and 1561 of the Affordable Care Act](#)
8. The [Federal Information Security Management Act of 2002](#).
9. The [Health Information Technology for Economic and Clinical Health Act](#) (“HITECH”).
10. [IRS Publication 1075](#) – Tax Information Security Guidelines for Federal, State and Local Agencies, to include any Service Level Agreement requirements.
11. Electronic Information Exchange Security Requirements, Guidelines, and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration.

The selected Offeror will report compliance in the monthly report. See **Part III, Section III-9.B** of this RFP.

Offeror Response

D. Remote Access. If any of the selected Offeror's or subcontractor's staff will perform work remotely under the contract, the selected Offeror and staff with remote access must comply with the access requirements for the networks and systems in the Commonwealth's Virtual Private Network ("VPN") access guidelines. The selected Offeror must have and require a secure email connection with the Commonwealth when utilizing the Department's mail system for the secure transmission of data to DHS. The selected Offeror must utilize the Commonwealth's VPN client software and meet the requirements for Contractor remote access.

Offeror Response

E. Security. The selected Offeror must comply with the Commonwealth ITPs and DHS Business and Technical Standards identified in **Part I, Section I-29** of this RFP. The ITPs comprise security standards, regulations, and mandates from federal, state, and industry that govern the design of health care technology and, more generally, information technology. The nature of the information being exchanged and stored in the MMIS 2020 Platform requires the utmost degree of diligence and compliance with security practices.

The Offeror must describe its approach for meeting and maintaining security standards as required by the Commonwealth.

Offeror Response

F. Records Management. The selected Offeror must comply with records management requirements as defined in Management Directive 210.5 available at:
[http://www.oa.pa.gov/Policies/md/Pages/Management_AdministrativeSupport\(205-260\).aspx](http://www.oa.pa.gov/Policies/md/Pages/Management_AdministrativeSupport(205-260).aspx)

The selected Offeror will retain records until a time that the Department determines they qualify for disposition.

Offeror Response

G. MMIS 2020 Platform Artifact Library. The SI/DH Contractor will host and provide the software solution the MMIS 2020 Platform Artifact Library. The selected Offeror will maintain the contents of MMIS 2020 Platform Artifact Library where the master MMIS 2020 Platform documents will be stored. The selected Offeror will retain artifacts indefinitely until a time that the Department determines they qualify for disposition.

Offeror Response

H. MMIS 2020 Platform Knowledge Base. The SI/DH Contractor will host and provide content management application for the MMIS 2020 Platform Knowledge Base ("KB"). The KB is a repository of common inquiries, issues and follow-up replies as a result of inquiries to Tier 1 MMIS 2020 Platform Support Center. The selected Offeror will develop and maintain a Problem Resolution component of the MMIS 2020 Platform KB comprised of all issues brought before the Tier 1 MMIS 2020 Platform Support Center. The Problem Resolution KB will be specific to the Department's MMIS 2020 Platform and will include resolutions to questions and issues reported. The KB must conform to industry standards such that it is indexed and is key word searchable.

The KB content will be the property of the Department and must be turned over to the Department as part of the Turnover Task at the end of the Contract or within thirty (30) calendar days of written request from the Department.

Offerors may recommend enhancements or alternatives and include a rationale for doing so.

Offeror Response

I. HIPAA Requirements and Security Breaches. The selected Offeror must operate in compliance with all applicable HIPAA requirements, including 45 C.F.R. Parts 160 and 164 (Security and Privacy). The selected Offeror must train all personnel in HIPAA requirements and require that they sign a confidentially agreement prior to access to Protected Health Information “PHI” and Personally Identifiable Information “PII”.

A security breach is an unauthorized access to data, which may include access to provider or beneficiary information, or a loss of media where provider or beneficiary information may be stored such as a workstation, server, laptop, mobile devices, Universal Serial Bus drives, files. As soon as a potential HIPAA violation or security breach is identified, the selected Offeror must complete and submit a Security Incident Report to the DHS MMIS 2020 Platform Project Manager and the Department’s Chief Security Officer. The selected Offeror must report the following:

1. Date and time of the incident.
2. Date and time the incident was discovered.
3. Name and position of person who discovered the incident.
4. How the incident was discovered.
5. Description of the incident and the data involved. Include specific data elements if known, including whether the information was encrypted or protected by another means.
6. Potential number of data records involved. If unknown, provide a range (if possible).
7. Location where the incident occurred.
8. Information technology involved e.g. desktop, laptop, email, server, mainframe etc.

The DHS Contract Administrator must make reports to state and federal authorities as applicable.

Offeror Response

J. Offeror Facility. The selected Offeror must maintain a project facility within a fifteen (15) mile radius of the DGS Annex, located at 2101 N. Cameron Street, Harrisburg PA, 17105. The selected Offeror must obtain approval for any functions located outside the immediate Harrisburg area. The selected Offeror must provide meeting space to accommodate up to 75 people and provide reasonable access for Commonwealth staff to the selected Offeror’s facilities and to parking. The selected Offeror must secure and protect facilities and all IT assets. The selected Offeror must maintain the project facility throughout the term of the contract.

The Commonwealth will provide network services, access services, and PC workstations as defined in **Section I, Part I-22** at the Offeror’s project facility.

The Offeror’s project facility must support the following activities for a project the size of the MMIS 2020 Platform:

1. Work Sessions.
2. JADs.

3. QA/Quality Control and UAT testing.
4. High speed Wi-Fi secure WLAN to accommodate a project of this size and scope.
5. Classroom Requirements.
 - a. Classroom training space must accommodate a minimum of thirty (30) users and thirty (30) PC workstations supplied by the Department.
 - b. Rooms must have meetings, teleconferencing and audio/visual presentation equipment.

Offeror Response

K. Other Support. In addition to providing a physical location, the selected Offeror must provide and use other technologies needed to support virtual online meetings, conference lines and collaboration tools, such as SharePoint, at no additional cost to the Commonwealth.

Offeror Response

L. Contract Security. Upon its execution of the contract and prior to the second contract year, the selected Offeror will provide, at no additional cost to the Commonwealth, a performance bond or other performance security acceptable to the Department in the amount of the first year contract costs for the initial bond and one half of the contract cost for the second year for the second bond. The performance security must be issued by a surety company or companies listed in the Federal Registry of Surety Companies and authorized to transact business in the Commonwealth and will be conditioned upon the faithful performance of the contract by the selected Offeror.

Offeror Response

III-2. Statement of the Problem. State in succinct terms your understanding of the problem presented or the service required by this RFP. The Offeror's response should demonstrate that the Offeror fully understands the scope of services to be provided, the Offeror's responsibilities, and how the Offeror will effectively manage the contract. The Offeror should demonstrate how it will develop and maintain relationships with the all of the contractors for the MMIS 2020 Platform Project. The statement of the problem should discuss specific issues and risks associated with the ITC/QA and should include proposed solutions for each. The Offeror should describe its approach to quality management.

Offeror Response

III-3. Management Summary. Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided. Include a description of the collaboration with other module contractors, the SI/DH Contractor, and the IV&V Contractor. The summary will condense and highlight the contents of the Technical Submittal in a manner that allows a broad understanding of the entire Technical Submittal.

Offeror Response

III-4. Qualifications.

A. Corporate Overview. The Offeror must describe the corporate history and relevant experience of the Offeror and any subcontractors. The Offeror 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 Offeror must provide a corporate organizational chart.

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

If an Offeror is proposing to use the services or products of a subsidiary or affiliated firm, the Offeror must 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 RFP, the Offeror must provide the same information as listed above for the subcontractor. This information must be presented separately within this section, clearly identifying the subcontractor experience and name of the subcontractor.

Offeror Response

B. Prior Experience. The Offeror should include experience or any similar experience with modular implementations similar in size and complexity as Pennsylvania’s MMIS 2020 Platform Project and providing ITC/QA services such as program management, business requirements gathering, developing program artifacts and other program related activities for similar implementations. Detail any prior experience in large-scale healthcare systems implementations including Medicaid, Medicare, and commercial experience. The Offeror should include experience with complete lifecycle support from implementation activities through post-implementation and Maintenance and Operations (“M&O”), training, testing, Medicaid Enterprise Certification, knowledge of MMIS, CMS’s Conditions and Standards and MITA and supporting the transition from a legacy MMIS or healthcare systems to modern modular systems.

Offeror Response

C. References. The Offeror must provide a list of at least three (3) relevant contacts within the past three (3) years to serve as corporate references. The references must be outside clients (non-DHS). This list must include the following for each reference:

- i) Name of customer
- ii) Type of contract
- iii) Contract description, including type of service provided
- iv) Total contract value
- v) Contracting officer’s name, email, and telephone number
- vi) Role of subcontractors (if any)
- vii) Time period in which service was provided.

The Offeror must submit **Appendix H, Corporate Reference Questionnaire**, directly to the contacts listed. The references should return the completed questionnaires in sealed envelopes to the Offeror. The Offeror must include these sealed references with its technical submittal under **Tab 12**.

The Offeror must disclose any contract or agreement cancellations, or terminations within five (5) years preceding the issuance of this RFP. If a contract or agreement was canceled or terminated for lack of performance, the Offeror must provide details on the customer’s allegations, the Offeror’s position relevant to the allegations, and the final resolution of the cancellation or the termination. The Offeror must also include each customer’s company or entity name, address, contact name, phone number, and email address.

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

III-5. Offeror Personnel. Include the number of executive and professional personnel, such as analysts, auditors, researchers, and consultants, who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the work. For key personnel, defined below; include the employee’s name and, through a resume or similar document, the key personnel’s education and experience. Indicate the responsibilities each individual will have and how long each has been with your company. Identify by name any subcontractors you intend to use and the services they will perform.

The Department has identified seven (7) key personnel:

- ITC/QA Executive Account Director
- ITC/QA Project Manager
- ITC/QA Requirements Manager
- ITC/QA QA/Quality Control Manager
- ITC/QA Functional Lead
- ITC/QA Testing Manager
- ITC/QA Training Manager

Table 2: Key Personnel Qualifications

ROLE NAME	RESPONSIBILITIES	QUALIFICATIONS	MINIMUM % ONSITE PRIOR TO M&O	MINIMUM % ONSITE DURING M&O
ITC/QA Executive Account Director	<ol style="list-style-type: none"> 1. Provide overall leadership, coordination, and implementation of the ITC/QA solution 2. Communicate with Commonwealth executives and other MMIS module contractors as needed 3. Function as the primary point of contact with the MMIS 2020 Platform Executive Review Board, MMIS 2020 Platform Steering Committee and the MMIS 2020 Platform Project Team (see Appendix E MMIS 2020 Platform Governance Plan) for activities related to contract administration, overall project management and scheduling, correspondence between the Department and the selected Offeror, dispute resolution, and status reporting to the Department 4. Responsible for approving the invoices submitted to the Department 	<ol style="list-style-type: none"> 1. Ability to commit selected Offeror’s resources as needed to successfully perform work 2. Ability to identify and resolve project-related issues and risks requiring escalation within the selected Offeror organization 3. Ability to resolve project-related issues and risks requiring action by subcontractor executives or organizations 4. Minimum of ten (10) years of experience working on or leading large, complex system implementation projects for similar clients 5. Knowledge of the Health and Human Services (“HHS”) industry 	25	25
ITC/QA Project Manager	<ol style="list-style-type: none"> 1. Provide day-to-day management of the project and be the principal liaison 	<ol style="list-style-type: none"> 1. Minimum of eight (8) years of experience managing large, complex system, and 	100	100

ROLE NAME	RESPONSIBILITIES	QUALIFICATIONS	MINIMUM % ONSITE PRIOR TO M&O	MINIMUM % ONSITE DURING M&O
	<p>for the ITC/QA Executive Account Director, DHS MMIS 2020 Platform Project Manager, Department staff, and other MMIS 2020 module contractors</p> <ol style="list-style-type: none"> 2. Guide the project by using project management processes, organizing the project, and managing team work activities consistent with the approved work plan 3. Schedule and report project activities 4. Coordinate use of personnel resources 5. Point of contact for issue identification and resolution 6. Oversee DR 7. Facilitate implementation of the MMIS 2020 Platform Project. 8. Responsible for all project deliverables 	<p>with the development, implementation and operation projects of a scale similar to the MMIS 2020 Platform (as a whole)</p> <ol style="list-style-type: none"> 2. Preferably at least five (5) years of experience managing design and development of healthcare information systems or MMIS 3. Experience leading teams of more than twenty (20) staff, including staff from diverse organizations to successfully implement and operate technology-based solutions 		
ITC/QA Requirements Manager	<ol style="list-style-type: none"> 1. Coordinate the gathering of MMIS 2020 Platform requirements 2. Track changes from original MMIS 2020 Platform Project requirements, changes made during JAD sessions and final system requirements for each module 3. Oversee the modification of requirements through the Change Management Board 4. Participate in testing of all requirements during UAT 5. Work in cooperation with all modules contractors to document requirements. 6. Load and maintain all module requirements into the MMIS 2020 Platform Artifact Library 7. Assist IV&V Contractor and module contractors in CMS certification 8. Participate in DR Testing. 	<ol style="list-style-type: none"> 1. Minimum of five (5) years of experience in managing requirements in a MMIS environment or other large scale IT implementation. 2. Experience with metrics development and implementation, documentation management, and developing and implementing requirement standards and processes 3. Experience maintaining a database of all system requirements 	25	10
ITC/QA Testing Manager	<ol style="list-style-type: none"> 1. Coordinate testing efforts for ITC/QA and other modules to support implementations, continuity of operations within PROMIS^eTM, and overall MMIS function 2. Develop the Test Plan for the ITC/QA and integration with PROMIS^eTM and modules 	<ol style="list-style-type: none"> 1. Minimum of six (6) years of experience with planning and executing all phases of system testing – unit testing, system testing, integration testing, user acceptance testing, regression testing, performance testing 2. Experience with and expertise in selection and 	25	25

ROLE NAME	RESPONSIBILITIES	QUALIFICATIONS	MINIMUM % ONSITE PRIOR TO M&O	MINIMUM % ONSITE DURING M&O
	<ol style="list-style-type: none"> 3. Oversee test case and test script development and approval for ITC/QA integration testing efforts 4. Facilitate test environment setup 5. Coordinate defect management efforts during ITC/QA and integration testing efforts 6. Works in cooperation with the SI/DH Contractor and other MMIS 2020 Platform module contractors. 7. Participate in DR testing 	<p>use of automated test tools and other testing-related tools</p> <ol style="list-style-type: none"> 3. Experience managing test teams comprising individuals from multiple organizations 		
Quality Assurance Quality Control Manager	<ol style="list-style-type: none"> 1. Use industry best practices and quality control principles to provide that the Department's requirements are appropriately met and the quality of the ITC/QA and its integration with PROMIS^e™ and modules is as required 2. Works in cooperation with the SI/DH Contractor and other MMIS 2020 Platform module contractors. 	<ol style="list-style-type: none"> 1. Minimum of five (5) years of experience in quality assurance and quality management 2. Experience with continuous quality improvement programs, metrics development and implementation, documentation management, developing and implementing project quality standards and processes 3. Experience applying QA/QM practices to large, complex system development, implementation and integration initiatives 	50	25
ITC/QA Functional Lead	<ol style="list-style-type: none"> 1. Serve as the ITC/QA SME to the Commonwealth and other MMIS module contractors. 	<ol style="list-style-type: none"> 1. Minimum of five (5) years of experience as a business or functional SME expert within an HHS, health system or IT environment 	50	25
ITC/QA Training Manager	<ol style="list-style-type: none"> 1. Provide internal training to participants in the MMIS 2020 Platform Project, such as Commonwealth staff and other module contractor staff, on the SI/DH components and functionality 2. Provide onboarding training to each MMIS module contractor as they are procured to communicate framework details, integration items, governance processes, and other project items 3. Create and maintain training materials related to the onboarding of MMIS module contractors and internal SI/DH training 	<ol style="list-style-type: none"> 1. Minimum of eight (8) years of experience leading a team responsible for creating training materials and directing training activities 2. Experience with planning and implementing training activities 3. Experience working with diverse stakeholders and staff in training efforts 4. Familiarity with technologies included in Offeror's proposed solution 	25	10

ROLE NAME	RESPONSIBILITIES	QUALIFICATIONS	MINIMUM % ONSITE PRIOR TO M&O	MINIMUM % ONSITE DURING M&O
	4. Develop and deliver training materials for the CRM tool, Common Portal, Worker Portal, Provider Portal, and Partner Portal 5. Coordinate internal SI/DH training activities with the SI-DH Contractor			

A. Staffing Requirements: The selected Offeror must supply staff who will provide Project Management, ITC, and QA services. The selected Offeror must be able to work cooperatively with Commonwealth staff and other individuals and entities during the MMIS 2020 Platform Project. The selected Offeror must coordinate and receive direction from designated Department staff.

The selected Offeror may acquire specialized expertise through the use of subcontracts and must identify any proposed subcontractors in response to **Part III, Section III-5.C Subcontractors**.

The selected Offeror may not assign Key Personnel to more than one role or to any other position under the ITQ/QA contract.

For all other personnel, describe job title, position descriptions, responsibilities, and qualifications.

The Offeror must include organizational charts outlining the staffing, reporting relationships and staff members in its response. Show the total number of staff proposed and indicate the Full Time Equivalency to account for any additional staff that are not assigned on a full-time basis. The selected Offeror must maintain a core team of qualified staff who are able to support all aspects of the DHS MMIS 2020 Platform as detailed in this RFP. In the case that it is necessary to identify a resource that will not be 100% dedicated and full time to the MMIS 2020 Platform contract, the Offeror must indicate the percentage of time that the resource will be assigned to the contract, the percent of time the resource will be assigned to concurrent projects as well as the reasoning to believe that project requirements can be completed timely. 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 the RFP, indicate the names or job title and number of personnel that will 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 indicate any functions that are subcontracted along with the name of the subcontracting entities and the services they will perform.

Offeror Response

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

Divert or diversion is defined as the transfer of personnel by the selected Offerors or its subcontractor to another assignment within the control of either the Offeror or subcontractor. Advance notification and approval does not include changes in Key Personnel due to resignations, death, disability, or dismissal for cause or dismissal

as a result of the termination of a subcontract or any other causes that are beyond the control of the selected Offeror or its subcontractor. DHS must approve the replacement personnel.

The DHS Contract Administrator may request that the selected Offeror remove a person from this project at any time. In the event that a person is removed, the selected Offeror will have ten (10) days to fill the vacancy with a person acceptable in terms of experience and skills, subject to the DHS Administrator's approval. DHS may require the removal of an assigned resource to the ITC/QA contract at any time.

Key personnel status will be reviewed monthly as part of the Monthly Status Report - see **Part III, Section III - 9.B** of this RFP.

Offeror Response

C. Subcontractors. Provide a subcontracting plan for all subcontractors, including SDB and SB subcontractors, who will be assigned to the ITC/QA contract. The selected Offeror is prohibited from subcontracting or outsourcing any part of the contract without the express written approval from the Commonwealth. For each subcontractor included in your subcontracting plan, provide:

1. Name of subcontractor;
2. Address of subcontractor;
3. Number of years worked with the subcontractor;
4. Number of employees by job category to work on this project;
5. Description of services to be performed;
6. What percentage of time the staff will be dedicated to this project;
7. Geographical location of staff; and
8. Resumes (if appropriate and available).

The Offeror's subcontractor information must include (through a resume or a similar document) the employees' names, education and experience in the services outlined in this RFP. Information provided will also indicate the responsibilities each individual will have and how long each has been with subcontractor's company.

Offeror Response

D. References. A minimum of three (3) client references for Key Personnel must be identified. All client references for Key Personnel must be outside clients (non-DHS) who can give information on the individual's experience and competence to perform tasks similar to those requested in this RFP. Key Personnel may be a member of the Offeror's organization, or any subcontractor included in the Offeror's proposal.

The Offeror must submit **Appendix I, Personnel Reference Questionnaire**, directly to the contacts listed. The references should return completed questionnaires in sealed envelopes to the Offeror. The Offeror must include these sealed references with its Technical Submittal under **Tab 13**.

Submitted resumes are not to include personal information that will, or will be likely to, require redaction prior to release of the proposal under the Right-to-Know Law, including home addresses and phone numbers, Social Security Numbers, Drivers' License numbers or numbers from state identification cards issued in lieu of a Drivers' License, and financial account numbers. If the Commonwealth requires any of this information for security verification or other purposes, the information will be requested separately and as necessary.

Offeror Response

III-6. Training. The selected Offeror must develop and deliver training for end users, and tailor the training to the perspective of the stakeholders, including SMEs and Tier 1 Support Center staff who will interact with MMIS 2020

Platform. The selected Offeror must provide training that will provide an understanding of the MMIS 2020 Platform system components, applications, portals, business processes, KB, and services. The selected Offeror must develop and provide training materials and user assessments to result in users that are proficient in using the new solutions and are effective in completing their normal business operations and service delivery activities. The selected Offeror must provide both initial and ongoing training on the use and operation of the MMIS 2020 Platform. The selected Offeror must develop, monitor, and execute a user training survey to evaluate the training provided and allow for user feedback. The survey must be approved by the Department.

The selected Offeror is responsible for the MMIS 2020 Platform training; however, the module contractors will provide the selected Offeror with system and technical documentation to support the creation and development of training materials for end users. Training will be a collaborative process; the selected Offeror is the lead trainer working with the module contractors and the SI/DH contractor. As new modules are added to the system, the selected Offeror must update training materials and convene new training sessions. The selected Offeror must acquire knowledge of each module's functionality, user interfaces, technical components, interfaces, reporting, etc.

Selected Offeror must make classroom training available at its facility described in **Part III-1.J Offeror Facility**. The selected Offeror must provide training materials and user guides. The selected Offeror must maintain the training schedules, agendas, and records of attendance and provide the information to DHS upon request.

The selected Offeror is also responsible for training the Tier 1 MMIS 2020 Platform Support Center staff in the functionality of the MMIS 2020 Platform. This training must be approved by the Department. The selected Offeror will make the training material available in the MMIS 2020 Platform Artifact Library and KB.

Offerors should refer to **Part I, Section I-22 Department Participation** for a list of items that DHS will provide to enable classroom training.

The selected Offeror also must make training available through off-site training seminars, and virtual technology such as WebEx, or other appropriate remote web conference applications and e-Training courses. Training must be flexible to account for the various MMIS 2020 Platform stakeholders. The selected Offeror will also include Train-the-Trainer methodology for the Tier One MMIS 2020 Platform Support Center and will make the training content on the KB available to Tier One MMIS 2020 Platform Support Center trainers and personnel.

Offerors must describe their ability to provide training for the potential maximum number of users during implementation of the MMIS 2020 Platform. The potential maximum number of users is 1,000 partners, 15,000 Commonwealth staff and 110,000 providers. The selected Offeror's training team will work with DHS to provide quality and support the planning, presentation, and delivery phases of user training.

Training Plan. Refer to **Part III, Section III-8.A.10 Training Plan**. The selected Offeror must include a Training Plan as part of its Integrated Master Plan. The Offeror must submit a draft copy of its proposed training plan(s) to include, at a minimum, all training methods, facilities, materials, and its approach to the MMIS 2020 Platform training. The selected Offeror must account for training during the implementation and M&O phases in its plan.

The Offeror must describe its Training solution, the Training Schedule and samples of training material in its Technical Submittal.

Offeror Response

III-7. Financial Capability. Describe your company's financial stability and economic capability to perform the contract requirements. The Commonwealth reserves the right to request additional information to evaluate an Offeror's financial capability.

Offeror Response

III-8. Work Plan. Describe in narrative form your technical plan for accomplishing the work using the task descriptions as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach. Where appropriate, the selected Offeror must use automation to facilitate completion of tasks.

Given the Department's responsibility to provide strategic leadership and regulatory oversight, describe how your approach will establish standards that maintain fidelity to the MMIS 2020 Platform objectives while minimizing disruptions. Indicate how you envision communication and work flow between your team and the MMIS 2020 Platform stakeholders.

Offeror Response

Tasks.

A. Program Management. The selected Offeror will act as the primary project management office for the performance of tasks and deliverables under the contract for the lifecycle of the MMIS 2020 Platform Project. The selected Offeror must employ management techniques so that a comprehensive program plan is developed, executed, monitored, reported on, and maintained. The selected Offeror must maintain an overall project Action Item Register and Decision Log. The selected Offeror will develop status reports and project plan updates as defined in **Part III, Section III-9 Reports and Program Control.**

The selected Offeror will design, develop, implement and maintain an Integrated Master Plan ("IMP") for the successful completion of the MMIS 2020 Platform Project within scope, using project resources, and on schedule. The plan must adhere to industry best practices for project management, such as PMBOK®. Offerors must describe the standard that it will use and its rationale for doing so.

The selected Offeror must include the transition from the legacy system to the MMIS 2020 Platform in the IMP. After the MMIS 2020 Platform moves into M&O, the selected Offeror will continue the development of the IMP for additional projects and modules as required by the Department. The Selected Offeror will maintain an experienced staff after the implementation of the MMIS 2020 Platform for supporting and planning of new initiatives that require system changes to the MMIS 2020 Platform.

The selected Offeror must include in the IMP components a description of the scope of work and how the scope will be managed. Each plan of the IMP will confirm project scope, MECL phases, implementation objectives, and be detailed enough so that the product is delivered on time, within projected estimates, and meets all requirements as specified in the RFP. Where applicable, plans must include:

1. Project Scope Statement
2. Scope Management Process
3. Major Milestones/Work Products
4. Work Breakdown Structure
5. Responsible, Accountable, Consulted, and Informed Matrix
6. Timeline
7. Tools and Techniques

The selected Offeror must develop the IMP that will include the following:

1. MMIS 2020 Platform Charter
2. Integrated Master Schedule
3. Master Communications Plan
4. Risk and Issues Management Plan
5. Requirements Management Plan
6. Defect Management Plan
7. Change Management Plan
8. MMIS 2020 Platform Release Management Plan
9. Documentation Management Plan
10. Training Plan
11. UAT Test Plan
12. Master Rollback Plan
13. Implementation Plans
14. DR Plan
15. COOP
16. Certification Plan
17. Closeout Plan
18. Maintenance and Operations Plan

Upon approval by the Department, the selected Offeror must execute and monitor the IMP. As changes are approved through the Change Management process, the selected Offeror will update the plan and provide the Department with an updated IMP for the Department's approval as part of its monthly reporting requirements. Offerors may recommend an alternative to this reporting requirement and provide a rationale for their recommendation. The selected Offeror must immediately alert the Department to any risk to the project identified as the result of the change.

Deliverable: Integrated Master Plan

The Offeror must describe its approach to developing and executing the IMP. Additionally, the Offeror must describe how it will coordinate and collaborate with MMIS 2020 stakeholders to execute and monitor the IMP.

Offeror Response

The IMP components involve multiple stakeholders in which the selected Offeror has a specific role.

1. **MMIS 2020 Platform Project Charter.** The selected Offeror must develop the MMIS 2020 Platform Project Charter. The selected Offeror must deliver the initial MMIS 2020 Platform Charter for the Department's approval within fifteen (15) calendar days after the contract effective date. The MMIS 2020 Platform Project Charter status will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP). The selected Offeror must submit to the Department changes as they are approved through the Change Management process to maintain version control. The selected Offeror will conduct a quarterly review with the Department at the Quarterly Executive Review Meeting (described in **Part III, Section III-9.D.8** of this RFP) so the project is on schedule and meets CMS Certification.

Deliverable: MMIS 2020 Platform Project Charter

The Offeror must describe its approach to the design, development, implementation and maintenance of the Project Charter.

Offeror Response

- 2. Integrated Master Schedule.** The selected Offeror must design, develop, implement and maintain the Integrated Master Schedule (“IMS”) that includes each module, in each phase of the Systems Development Life Cycle (“SDLC”) of the MMIS 2020 Platform. The IMS must include tasks needed to complete the MMIS 2020 Platform work in scope, on time, and within budget. The IMS will serve as the MMIS 2020 Platform baseline schedule, including the transition from the legacy system.

The selected Offeror must develop an approach that facilitates collaboration with the MMIS 2020 Platform stakeholders. The selected Offeror must distribute the plan to the applicable MMIS 2020 Platform Stakeholders for review.

Deliverable: Integrated Master Schedule

The selected Offeror must deliver the initial IMS within forty-five (45) calendar days after the contract effective date. The IMS will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP) and at the Quarterly Executive Review Meeting (described in **Part III, Section III-9.D.8** of this RFP) so that the project is on schedule, within budget and meets CMS Certification requirements. The selected Offeror will submit changes as they are approved through the Change Management process to maintain version control.

The Offeror must describe its approach to the design, development, implementation and maintenance of the IMS.

Offeror Response

- 3. Master Communications Plan.** Under the strategic guidance of the Department, the selected Offeror must design, develop, implement and maintain the Master Communications Plan for the MMIS 2020 Platform. The Plan must address communications to all stakeholders, MMIS 2020 Platform contractors, and the legacy system contractor. The selected Offeror will develop a standard template that each contractor must utilize when creating its individual communication plan. The other contractors will provide their plan to the selected Offeror.

The change from a monolithic to modular environment will impact many aspects of business with interdependencies throughout the Commonwealth. Accordingly, at a minimum, the selected Offeror must address in the Master Communications Plan variables, including the existing operational environment, organizational structures, staffing, skillsets, MMIS 2020 Platform stakeholders’ audience, the degree of users’ acceptance of the change, and stakeholder feedback.

The selected Offeror must communicate recommendations and strategies to the Department to improve the users’ acceptance of the change.

Where applicable, the selected Offeror will include as part of the Master Communications Plan a description of the reasons for the change, the expected impacts of the change on staff workloads and business processes, project statuses, and the ability of the module or functionality to accomplish Department business.

The selected Offeror must include in the Master Communications Plan, the planned approach and process for establishing and maintaining communication between all parties during the life cycle of the MMIS 2020 Platform.

Deliverable: Master Communication Plan

The selected Offeror must deliver the initial Master Communications Plan within forty-five (45) calendar days after the contract effective date. The Master Communication Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP), and at the Quarterly Executive Review Meeting (described in **Part III, Section III-9.D.8** of this RFP) so that the project is on schedule, within budget and meets CMS Certification requirements. The selected Offeror must submit changes as they are approved through the Change Management process to maintain version control.

The Offeror must describe its approach to the design, development, implementation and maintenance of the Master Communication Plan.

Offeror Response

- 4. Risk and Issue Management Plan.** The selected Offeror must design, develop, implement and maintain the Risk and Issue Management Plan for the MMIS 2020 Platform. The selected Offeror must apply an industry standard risk management methodology for the MMIS 2020 Platform. The selected Offeror must provide a Risk and Issue Management Plan that includes issue identification, tracking (risk register or exception plan), risk analysis, mitigation recommendations, reporting risk information to the Department and other MMIS 2020 Platform Stakeholders, and resolution. The selected Offeror must account for the transition from the legacy system to the MMIS 2020 Platform in the Risk and Issue Management Plan.

Deliverable: Risk and Issue Management Plan

The selected Offeror must deliver the initial Risk and Issue Management Plan within forty-five (45) calendar days after the contract effective date; and must update the Plan weekly. The Risk and Issue Management Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP), and at the Quarterly Executive Review Meeting (described in **Part III, Section III-9.D.8** of this RFP) so that the project is on schedule, within budget and meets CMS Certification requirements. The selected Offeror must submit changes as they are approved through the Change Management process to maintain version control.

The Offeror must describe its approach to the design, development, implementation and maintenance of the Risk and Issue Management Plan.

Offeror Response

- 5. Requirements Management Plan.** The selected Offeror must design, develop, implement and maintain the Requirements Management Plan for the MMIS 2020 Platform. The selected Offeror will at a minimum gather, organize, prioritize, and document business requirements for the lifecycle of the MMIS 2020 Platform, including enhancements made during the M&O phase. The process must also identify the requirements for the EDW. The selected Offeror must work with the Department to identify the appropriate MMIS 2020 Platform stakeholders for representation at the requirements sessions, and their involvement in requirements validation and verification.

The selected Offeror must design, develop, implement and maintain a detailed requirements collection process to document and verify all requirements have been captured for each MMIS 2020 Platform module.

The selected Offeror will develop and use a process that includes an analysis of business processes and needs, and translating these processes and needs into formal requirements. At a minimum, the selected Offeror will use methods to collect requirements that include work sessions, surveys, interviews, policy and regulatory analysis, business rule reviews, facilitated JAD sessions and any other means necessary to identify all requirements. Refer to **Part III, Section III-9.D** of this RFP for meeting requirements.

The selected Offeror will recommend requirements to be added, included, deferred or eliminated for the Department's approval. The selected Offeror will consolidate the final requirements approved by the Department into a Business Requirements Document ("BRD"), and will cross walk the requirements in the BRD to the CMS certification checklist and the module's RFP requirements. The selected Offeror must complete a Business Gap Analysis to determine if the business requirements meet or exceed what is required for CMS certification, federal and state regulations, and the Department's desired functionality.

The Department will use the Business Gap Analysis to determine if the BRD covers the scope of the desired functionality or module.

The selected Offeror must develop a standard to trace business requirements to the associated CMS checklist item. The standard must be used by SI/DH and module contractors while developing technical documents. The BRD and the Requirements Traceability Matrix ("RTM") become the initial baseline for the design phase and a reference point throughout the SDLC for determining whether the final product meets the approved requirements. The RTM must, for each identified requirement, contain the source of the requirement, the applicable CMS checklist items, the implementation point, and reference to the test case or script that validates the proper implementation of the requirement. The selected Offeror must use the Department's BRD template but may propose a substitute template: see **Appendix O, Business Requirements Document Template**.

Once the Department approves the BRD, the BRD becomes the blueprint for the module contractors to build the General System Design document ("GSD") and Systems Requirements Design ("SRD") document.

Once the GSDs are approved by the Department, the selected Offeror will conduct a Technical Gap Analysis to confirm that the technical solutions developed by the module contractors meet the business requirements.

At minimum, the Requirements Management Plan must address:

1. Performing requirements traceability to the CMS certification checklists and the module's RFP requirements
2. Managing changes to the requirements
3. Planning logistics related to the requirements gathering activities

Work Products:

1. Requirements Management Plan
2. BRD
3. Business Gap Analysis
4. RTM
5. Technical Gap Analysis

The selected Offeror must submit the initial Requirements Management Plan no later than fifteen (15) calendar days prior to the beginning of the first business requirements session for each module for Department's approval and will update the plan so that the project is on schedule, within budget,

meets the Department's approval and meets CMS Certification requirements. The Requirements Management Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The selected Offeror must submit a BRD within (15) fifteen calendar days after the business requirements have been gathered and reviewed for each module for the Department's approval. The selected Offeror will update the BRD when new business requirements are approved through the Change Management process so that the project is on schedule, within budget, meets the Department's approval and meets CMS Certification. The BRDs will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B.** of this RFP).

The selected Offeror must submit a final Business Gap Analysis within seven (7) calendar days after the BRD is developed for each module for the Department's approval. The Business Gap Analysis will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B.** of this RFP).

The selected Offeror must submit the RTM within (15) fifteen calendar days after the delivery of the BRD for each module for the Department's approval, and will update as requirements are approved through the Change Management process so that the project is on schedule, within budget, meets the Department's approval and meets CMS Certification requirements. The RTM will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III - 9.B.** of this RFP).

The selected Offeror will submit the Technical Gap Analysis within seven (7) calendar days after the Department approves the GSD for each module for the Department's approval. The responsible MMIS 2020 Platform contractor will address the issues found in the gap analysis. The selected Offeror will update the Technical Gap Analysis to determine if the issue is resolved so that the project is on schedule, meets the Department's approval and meets CMS Certification requirements. The Technical Gap Analysis will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B.** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the Requirements Management Plan in its proposal.

Offeror Response

- 6. Defect Management Plan.** The selected Offeror is responsible for defect management of the MMIS 2020 Platform. The selected Offeror must design, develop, implement and maintain the Defect Management Plan to identify, track, monitor, and report defects identified during testing or as identified by the Department or by other MMIS 2020 Platform Stakeholders. The Defect Management Plan must include defects that have dependencies on other modules or services.

The selected Offeror and MMIS 2020 Platform contractors will use the MMIS 2020 Platform CRM tool provided by the SI/DH contractor as the common tool to report and track issues and defects. As part of the Defect Management Plan, the selected Offeror will develop standards for defect identification, tracking, monitoring, and reporting for use by the MMIS 2020 Platform module contractors. MMIS 2020 Platform module contractors must report and record defects via the CRM.

The Change Control Board ("CCB") is the primary vehicle for managing resolution of defects through the lifecycle of the MMIS 2020 Platform. Refer to **Part III, Section III-9.D.3.** for CCB requirements.

The Department will determine the severity and priority of defects and will use the defect resolution protocol in the chart below. The Severity Level and Definition columns will be used pre-M&O and the remaining columns will be determined for UAT. During M&O all columns will be used.

Severity Level	Definition	Response Time	Corrective Action Plan	Workaround Time	Final Resolution	Reconciliation Plan
Critical	<p>MMIS 2020 Platform Portals or MMIS 2020 Platform module(s) are unavailable creating an inoperable state. Users unable to perform routine job functions that are mission critical.</p> <p>Qualifying condition examples include:</p> <ul style="list-style-type: none"> • Inability to adjudicate claims • Failure or Inability to process financial cycle(s) • Failure to provide complete eligibility responses greater than 80% of the time. • Any Commonwealth defined mission critical condition. 	15 Minutes	1.5 hours	2 hours	1 calendar day	3 calendar days
Significant	<p>MMIS 2020 Platform Portals or MMIS 2020 Platform module(s) are creating a serious system functionality loss that requires workarounds. Users are partially incapable of completing their normal functions.</p> <p>Qualifying condition examples include:</p> <ul style="list-style-type: none"> • Incorrect claims adjudication • Limited access to module(s) • Inability to meet established timeframes for production data imports, exports and loading. • Issue affects large group of users with complicated workaround. 	1.5 hours	3 hours	4 hours	2 calendar days	7 calendar days

Severity Level	Definition	Response Time	Corrective Action Plan	Workaround Time	Final Resolution	Reconciliation Plan
	<ul style="list-style-type: none"> Provider or state staff unable to access remittance advice reports or 835 files less than 3 months old. 					
Moderate	<p>MMIS 2020 Platform Portals or MMIS 2020 Platform module(s) are creating a limited loss of functionality. Moderate system issues where workarounds exist but on a whole do not affect production.</p> <p>Qualifying condition examples include:</p> <ul style="list-style-type: none"> Report is not available but can be generated manually Issue affects small subgroup of users with uncomplicated workaround Mouse hover feature not triggering text display 	1 calendar day	5 calendar days	10 calendar days	30 calendar days	40 calendar days
Minor	<p>Inconsequential loss of functionality. Impact to user is slight to unknown. Effect on MMIS 2020 Platform system functions negligible to no impact. Issue cosmetic in nature such as spelling error or branding issue.</p> <p>Qualifying condition examples include:</p> <ul style="list-style-type: none"> Report incorrectly named Minor page layout issue Help page missing or incomplete 	7 calendar days	30 calendar days	n/a	90 calendar days or as mutually agreed upon	As mutually agreed upon

Deliverables:

1. Defect Management Plan

2. Defect Management Reports

The selected Offeror must deliver the **Defect Management Plan** and the **Initial Defect Management Report** within fifteen (15) calendar days after the contract effective date; and must update weekly so that the project is on schedule and meets CMS Certification requirements. The Defect Management Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the Defect Management Plan and Defect Management Reports.

Offeror Response

- 7. Change Management Plan.** The selected Offeror is responsible for the MMIS 2020 Platform Change Management Process. For the purpose of this section, change is defined as any modification or enhancement to existing modules or functionalities of the MMIS, including changes to the legacy system. Change management applies to the entire lifecycle of the MMIS 2020 Platform.

The selected Offeror must design, develop, implement and maintain a comprehensive Change Management Plan that includes a CCB review of requested changes for each module or functional area. The Department has final approval on the priority and scheduling of all changes. Refer to **Part III, Section III-9.D** for information about the CCB meeting.

The selected Offeror will coordinate Change Management processes in a way that clearly defines the responsibilities of the SI/DH, module, and legacy system contractors to prevent duplication. The Change Management Plan must include roles and responsibilities, and the procedures for the initiation, submission, risk analysis (how the change will impact the system, other modules or services), review, approval, rejection, and escalation procedures for changes that cannot be resolved.

The Change Management Plan must also contain a methodology for determining and reporting the level of effort, hours, resources, and scheduling, and cost of the change.

Work Product: Change Management Plan

The selected Offeror will deliver the Change Management Plan within forty-five (45) calendar days after the contract effective date for the Department's approval; and will update weekly so that the project is on schedule and meets CMS Certification requirements. The Change Management Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the Change Management Plan.

Offeror Response

- 8. MMIS 2020 Platform Release Management Plan.** The selected Offeror is responsible for designing, developing, implementing and maintaining the MMIS 2020 Platform Release Management Plan. The selected Offeror must develop a standard template to capture information from each MMIS 2020 Platform module contractor when creating the MMIS 2020 Platform Release Management Plan. The selected Offeror will include in its development of the MMIS 2020 Platform Release Management Plan information from the MMIS 2020 Platform and legacy system contractors.

The selected Offeror must address in the MMIS 2020 Platform Release Management Plan the transition from the legacy system to MMIS 2020 Platform.

The Department anticipates that the MMIS 2020 Platform Release Management Plan is business oriented whereas the release management plans developed by the MMIS 2020 Platform module contractors will be both business and technically oriented with a focus on the technical aspects of the release. Accordingly, the Department will require that individual module release management plans use the MMIS 2020 Platform Release Management Plan as the starting point.

During the transition from the legacy system to MMIS 2020 Platform, the selected Offeror must interact with the legacy system contractor and the MMIS 2020 Platform contractors to maintain ongoing operations of the Department's programs and facilitate a seamless transition to MMIS 2020 Platform with the ultimate goal of achieving CMS certification.

The Department will set release timeframes in coordination with the MMIS 2020 Platform module and the legacy system contractors. After the full implementation of MMIS 2020 (during M&O), the Department will determine the release schedule by factors such as state and federal mandates and other factors. Accordingly, the selected Offeror will coordinate the MMIS 2020 Platform Release Management Plan with the Implementation Plan defined in **Part III, Section III-8.A.13**. Release planning will be conducted by the selected Offeror under the Department's strategic guidance via the release planning meeting – see **Part III, Section III-9.D Meetings**.

The Department must approve a release prior to implementation into production. MMIS 2020 Platform Release Management will continue throughout the M&O phase.

Deliverable: MMIS 2020 Platform Release Management Plan

The selected Offeror will deliver the initial MMIS 2020 Platform Release Management Plan within forty-five (45) calendar days after the contract effective date; and will update no later than thirty (30) calendar days prior to a module's or functionality's release; with additional updates as required so that the project is on schedule and meets CMS Certification requirements. The Release Management Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the MMIS 2020 Platform Release Management Plan.

Offeror Response

- 9. Documentation Management Plan.** The selected Offeror must design, develop, implement and maintain the MMIS 2020 Platform Documentation Management Plan. The selected Offeror will develop a standard template or style guide that the SI/DH and each module contractor must follow when creating common documents such as MECL, SDLC artifacts, decision papers for DHS review, lifecycle documents such as BRDs and GSDs, and manuals. The selected Offeror must establish and maintain revision control for all artifacts.

Refer to **Part III, Section III-8.B and C** for information about the MMIS 2020 Platform Artifact Library and Knowledge Base.

Deliverable: Documentation Management Plan

The selected Offeror will deliver the initial Documentation Management Plan within forty-five (45) calendar days after the contract effective date; and will update no later than thirty (30) calendar days prior to a module's or functionality's release, with additional updates as required so that the project is on schedule and meets CMS Certification requirements. The Documentation Management Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the Documentation Management Plan.

Offeror Response

- 10. Training Plan.** The selected Offeror must design, develop, implement and maintain the Training Plan. The Training Plan is a component of the Integrated Master Plan. Refer to **Part III, Section III-6** of this RFP for additional information about training requirements.

The selected Offeror will deliver the initial draft Training Plan within forty-five (45) calendar days after the contract effective date; and will update no later than thirty (30) calendar days prior to a module's or functionality's release, with additional updates as required so that the project is on schedule and meets CMS Certification requirements. The Training Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

Deliverable: Training Plan

The Offeror must describe its approach to the design, development, implementation and maintenance of the Training Plan.

Offeror Response

- 11. UAT Test Plan.** The selected Offeror must design, develop, implement and maintain the MMIS 2020 Platform UAT Test Plan. UAT is a function of the selected Offeror's QA role: Refer to **Part III, Section III-8.E** of this RFP for information about testing.

The selected Offeror must deliver the initial draft UAT Test Plan within forty-five (45) calendar days after the contract effective date; and will update no later than thirty (30) calendar days prior to a module's or functionality's release, with additional updates as required so that the project is on schedule and meets CMS Certification requirements. The UAT Test Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

Deliverable: UAT Test Plan

The Offeror must describe its approach to the design, development, implementation and maintenance of the UAT Test Plan.

Offeror Response

- 12. Master Rollback Plan.** The selected Offeror must design, develop, implement and maintain the Master Rollback Plan for the MMIS 2020 Platform.

Every module will have a rollback plan to halt or restore the system to its original, pre-conversion condition because of an issue, or a defect found during implementation or post-implementation. The

MMIS 2020 Platform module contractors will develop a Rollback Plan related to their module or functionality. The selected Offeror is responsible for the QA of individual rollback plans.

The selected Offeror will develop a standard template that the SI/DH and each module contractor must follow when creating their individual rollback plans. The contractors will provide their rollback plan to the selected Offeror.

The selected Offeror will compile the individual rollback plans into a Master Rollback Plan. In the Master Rollback Plan, the selected Offeror will include checkpoints for the Department to decide to execute or rollback the release as well as factors and risks to be considered in making the decision.

Deliverable: Master Rollback Plan

The selected Offeror will deliver the Master Rollback Plan no later than sixty (60) calendar days prior to implementation of each module or functionality, with additional updates as required so that the project is on schedule and meets CMS Certification requirements. The Master Rollback Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the Master Rollback Plan.

Offeror Response

13. Implementation Plans. The selected Offeror must design, develop, implement and maintain the MMIS 2020 Platform Implementation Plans to move MMIS 2020 modules and functionality from design, development, and implementation (“DDI”) and testing to operations. Given the phased release of the MMIS 2020 Platform, the selected Offeror will develop and execute multiple implementation plans, each limited to the module or functionality being implemented.

Where applicable, the selected Offeror must provide for the transition from the legacy system to the MMIS 2020 Platform when onboarding an MMIS 2020 module in an Implementation Plan. The Implementation Plan must also include the onboarding of new functionality into MMIS 2020.

The selected Offeror must coordinate the Implementation Plans with all MMIS 2020 stakeholders, and the **Part III, Section III-8.A.8** Release Management Plan

At a minimum, the selected Offeror must include in the Implementation Plans:

1. Description of intended functionalities and its impact to implemented MMIS 2020 Platform modules
2. Deployment strategies
3. Rollback Plan
4. Legacy system and installed modules impact
5. Transition Plan from Legacy functionality to the module being implemented
6. Functionality comparison template comparing Legacy functionality to the module being implemented
7. Test Result Review
8. “Go live” checklist
9. Logistics and meeting management
10. Issue reporting and resolution process
11. Defect reporting and resolution process

12. Tier 1 MMIS 2020 Platform Support Center triage plan (e.g. anticipated volume increase)
13. User support, including training
14. Updates to the MMIS 2020 comprehensive user manual

As required by the Implementation Plan, the selected Offeror must develop a “go live” checklist to document at a minimum, that the system can accept all transaction formats required under HIPAA, accept proprietary forms and formats designated by DHS, produce required EDW extracts, generate reports for users, and operate as designed to meet business needs. The selected Offeror will develop the checklist with input from DHS, and the MMIS 2020 Platform and legacy system contractors. The Department must approve the “go live” checklist.

Because the selected Offeror’s testing role is limited to UAT, the selected Offeror will address in the checklist confirmation from the MMIS 2020 Platform contractors that all interfaces are working, testing is satisfactory, and reporting is accessible prior to all implementations. The selected Offeror will conduct a review of the module contractor’s test results and rollback plan, and assess their operational readiness. The selected Offeror will deliver a completed checklist with its recommendation to the Department for a “go live” decision.

Deliverables:

1. Implementation Plans
2. Completed Implementation Checklists

The selected Offeror will deliver an Implementation Plan no later than ninety (90) calendar days prior to implementation of each module or functionality. The selected Offeror will deliver the Completed Implementation Checklist no later than seven (7) calendar days before each module is implemented so that the project is on schedule and meets CMS Certification requirements. The Department will make a “go live” decision. The Implementation Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the Implementation Plans and Implementation Checklists.

Offeror Response

14. **Disaster Recovery Plan.** Refer to **Part III, Section III-1.A** of this RFP for DR requirements.
15. **Continuity of Operations Plan.** Refer to **Part III, Section III-1.B** of this RFP for Emergency Preparedness requirements.
16. **Certification Plan.** The selected Offeror must design, develop, implement and maintain the Certification Plan. The selected Offeror’s Integrated Master Plan must include a Certification Plan for CMS certification of the MMIS 2020 Platform. Pennsylvania has chosen to use the MMIS module checklists found at <https://www.medicaid.gov/medicaid/data-and-systems/mect/index.html>.

The SI/DH contractor is the technical lead for MMIS 2020 Certification, whereas the selected Offeror will track certification from an administrative perspective verifying that certification activities align with the MMIS 2020 Platform implementation schedule. In the Certification Plan, the selected Offeror will identify and include the artifacts required by CMS and the Department for CMS Certification of each module. The selected Offeror will maintain the Certification Checklist during the six (6) months post implementation operational period, or longer as required, for presentation to CMS for final certification of each module.

Working with the MMIS 2020 Platform module contractors, the selected Offeror will complete the Project Initiation, Operational, and Final evidence columns of the MMIS Module Checklists set for review by CMS for each module, cohort of modules, or enhancements to the MMIS 2020 Platform. Specifically, the selected Offeror will identify what is needed to complete the evidence columns and compile it from the MMIS 2020 Platform module contractors. The selected Offeror must lead certification meetings as required and comply with **Part III, Section III-9.B** Meetings.

Deliverables:

1. Certification Plan
2. Completed certification checklists
3. Artifacts required by the Department or CMS

The selected Offeror will deliver the Certification Plan within forty-five (45) calendar days after the contract effective date with updates monthly during the life of the contract. The selected Offeror will complete the CMS Certification Checklists within seven (7) calendar days after implementation of each module. The Certification Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the Certification Plan and requirements for the checklists.

Offeror Response

- 17. Closeout Plan.** The selected Offeror must design, develop, implement and maintain the MMIS 2020 Platform Closeout Plan. For the purpose of this phase, closeout refers to the activities associated with a module, cohort of modules, or functionality transitioning from DDI to M&O.

Upon successful implementation and CMS certification of a module(s) or functionality, the selected Offeror will validate that all SDLC activities have been completed per the Implementation Plan and all risks, issues, and action items are closed.

The selected Offeror will compile the artifacts from the module contractors for inclusion in the MMIS 2020 Platform Artifact Library.

The MMIS 2020 Platform IV&V Contractor will prepare Post-Implementation Assessment and problem resolution reports (lessons learned). The report will include identification of all problems and corresponding resolutions found during the implementation; any operational items that could be impacted; and recommendations on improving the rollout process until the final report (after final certification of all modules).

The selected Offeror will review the Post-Implementation Assessment reports and develop Issue Resolution Plans as part of the Closeout Plan detailing strategies and recommendation actions to prevent recurrence.

Deliverables:

1. Closeout Plans
2. Issue Resolution Plans resulting from the Post-Implementation Assessment Report

The selected Offeror will deliver the Closeout Plan within thirty (30) calendar days after CMS certification after each module or functionality. Within fourteen (14) calendar days after the IV&V Contractor issues the Post Implementation Assessment after each implementation, the selected

Offeror will submit an Issue Resolution Plan identifying a resolution plan for any items that will not meet the IV&V Contractor's Post Implementation Assessment Report. The Closeout Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the Closeout Plans and the Issue Resolution Plans.

Offeror Response

- 18. Maintenance and Operations Plan.** The selected Offeror must design, develop, implement and maintain the MMIS 2020 Platform M&O Plan to assist DHS manage the MMIS during M&O.

During M&O, the selected Offeror will monitor the day-to-day business operations along with the MMIS 2020 Platform module contractors. As new regulations, requirements, and mandates are implemented, the selected Offeror will assist the Department to conceptualize any needed changes and make recommendations to the Department.

During M&O, the selected Offeror will provide Tier 1 MMIS 2020 Platform Support Center stakeholder training, maintain the content of the MMIS 2020 Platform Artifact Library, and maintain the content of the MMIS 2020 Platform Knowledge Base consistent with **Part III, Sections III- 8.B, and III-8.C** throughout the life-cycle of the MMIS 2020 Platform Project.

Deliverable: Maintenance and Operations Plan

The selected Offeror will prepare an M&O Plan for Department approval no later than forty-five (45) calendar days prior to the implementation of each module; with updates as required so that the project is on schedule, within budget and meets CMS Certification requirements. The M&O Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

The Offeror must describe its approach to the design, development, implementation and maintenance of the M&O Plan.

Offeror Response

B. MMIS 2020 Platform Artifact Library. The SI/DH Contractor will host and provide content management application for the MMIS 2020 Platform Artifact Library. The selected Offeror will maintain the contents of the artifact library where all MMIS 2020 Platform documents will be stored. The Department is requiring that artifact library management be one component of the Documentation Management Plan defined above; however, Offerors may recommend enhancements or alternatives and include a rationale for doing so.

The selected Offeror will manage and maintain all MMIS 2020 Platform contractor's documents in an organized manner, and will exercise version control. The selected Offeror must maintain documents so that they contain metadata information such as authors, when and by whom last modified, are easily queried and searched, and are accessible to authorized MMIS 2020 Platform stakeholders. Artifacts must be in industry standard format and easily exportable for further analysis and report creation such as to Microsoft Excel or Access.

The selected Offeror will place all program related documents in a central document repository, including the IMP, meeting agendas and minutes, status reports, plans, decisions and formal communications, and platform artifacts as defined by the Department.

Refer to **Part III, Sections III-1.F** Records Management, and **III-1.G** MMIS 2020 Platform Artifact Library for system requirements.

The Offeror must describe its approach to the design, development, implementation and maintenance of the contents of the MMIS 2020 Platform Artifact Library.

Offeror Response

C. MMIS 2020 Platform Knowledge Base. While the SI/DH Contractor is responsible for hosting and providing the content management application for the MMIS 2020 Platform KB, the selected Offeror will maintain the contents of the KB. The Department has included the Knowledge Base management as one component of the Documentation Management Plan defined above; however, Offerors may recommend enhancements or alternatives and include a rationale for doing so.

The Offeror must describe its approach to the design, development, implementation and maintenance of the contents of the MMIS 2020 Platform Knowledge Base.

Offeror Response

D. IT Consulting Services. The selected Offeror must provide Business Process Management (“BPM”) services to assist the Department in improving its MMIS organization. As the Department’s MMIS operations moves from a monolithic to modular system, the Department must adapt to the new environment. The selected Offeror will provide BPM services to assist the Department in adapting its organizational behavior to the MMIS 2020 Platform to better manage and resource the new MMIS and improve its overall business performance. The selected Offeror must provide BPM services in accordance with the Commonwealth’s BPM methodology and policies. Please refer to **Part I, Section I-29**, for the link to the Commonwealth’s Information Technology Policies.

As an ongoing responsibility, the selected Offeror will provide the Department with recommendations on streamlining MMIS operations to realize efficiencies and improve customer service and organizational development. Through BPM, the selected Offeror will identify gaps, business processes, and policy changes required to migrate from current to future state. The selected Offeror will:

1. Under the strategic leadership of the Department, and in cooperation with the MMIS 2020 Platform SI/DH and module contractors, plan, architect, and build Pennsylvania’s MMIS organization around the new business processes of MMIS 2020 Platform. The selected Offeror will create and update Business Process Analysis (“BPA”) reports as modules are implemented for the MMIS 2020 Platform Project.
2. Identify common MMIS business functions, services, and data components to recommend business solutions that deliver quality and cost effective services that comply with CMS’s Conditions and Standards and Department goals.
3. Monitor the national and state horizon for proposed and current legislation, and other innovative state MMIS programs and operational models that impact MMIS operations to reduce costs, and improve service. Include recommendations for executive review in the Monthly Status Reports in **Part III, Section III-9.B**, Monthly Status Reports.

Deliverables:

1. BPA Report
2. BPM Model

3. Review the BPA report with business areas and provide up to date information to the DHS MMIS 2020 Platform team lead within six (6) months after a module's implementation.

The Offeror must describe its approach to the development, implementation and maintenance of the BPM and provide a sample BPA report and model in its Technical Submittal.

Offeror Response

E. Quality Management Services. The selected Offeror must develop and execute the quality management plan for the lifecycle of the MMIS 2020 Platform Project. The selected Offeror will develop a quality management solution that includes quality assurance of MMIS 2020 Platform processes, and quality control ("QC") solutions that build standards into MMIS 2020 products. The Quality Management Plan must include a schedule of QA/QC audits.

The Department is requiring the QA and QC functions as described below; however, Offerors may recommend enhancements or alternatives and include a rationale for doing so.

1. **Quality Assurance.** The selected Offeror will review designated artifacts, create assessments that evaluate compliance with State and Federal regulations and requirements, and identify gaps and propose recommendations to the Department. As part of its QA, the selected Offeror will:
 - a. Conduct an analysis of the System Security Plan against State and Federal requirements and regulations. Produce an Information System Security Assessment to identify gaps with recommendations for improvements.
 - b. Produce a Privacy Impact Analysis to confirm compliance with State and Federal requirements and regulations.
 - c. Review MMIS 2020 Platform test plans and results and produce a Test Product and Validation report that includes mapping the test plans to the requirements. Refer to Testing below for a detailed description of the MMIS 2020 Platform testing requirements.
 - d. Evaluate MMIS 2020 Platform module contractors' continuity of operations and recovery plans for completeness, identify any gaps, and make recommendations to close gaps.
 - e. Evaluate MMIS 2020 Platform Data conversion plan, identify any gaps, and make recommendations to close gaps.
2. **Quality Control.** The selected Offeror will create standard templates for the MMIS 2020 Platform contractors. Those templates are identified throughout this RFP. While the MMIS Platform contractors will use the templates to create artifacts, the selected Offeror will review the artifacts for fidelity to the MMIS 2020 Platform templates developed by the selected Offeror. As part of its QC, the selected Offeror will:
 - a. Produce an analysis of the IMS against the MECL SDLC, and the Department's project runway to identify areas of conflict.
 - b. Evaluate MMIS 2020 Platform contractors' rollback plans for fidelity to the templates.
 - c. Evaluate MMIS 2020 Platform module documentation for fidelity to the templates prior to storage in the artifact library.

- d. Prepare evidence and artifacts for the MMIS Certification Reviews – see **Part III, Section III-8.A.16** for the Certification Plan requirements.

Deliverables:

1. Quality Management Plan
2. QA/QC report with recommendations for artifacts reviewed
3. Certification evidence and artifacts

The selected Offeror will deliver the Initial Quality Management Plan within ninety (90) calendar days after the contract effective date, and will update weekly so that the project is on schedule and meets CMS Certification requirements. The Quality Management Plan will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP), and at the Quarterly Executive Review Meeting (described in **Part III, Section III-9.D** of this RFP).

The Offeror must describe its approach to the development, implementation and maintenance of the Quality Management Plan and provide a sample QA/QC report and model in its proposal.

Offeror Response

3. **MMIS 2020 Platform User Manual.** The selected Offeror must develop, update, and maintain the MMIS 2020 Platform comprehensive user manual. Note: Module contractors will be responsible for providing user manuals specific to their modules; however, the selected Offeror will develop the overall MMIS 2020 Platform user manual.

The selected Offeror must have manuals available or updated for use by MMIS 2020 Platform stakeholders on the day of the module or functionality is moved into production.

Deliverable: MMIS 2020 User Manual

The selected Offeror will deliver the draft MMIS 2020 Platform User Manual no later than ninety (90) calendar days prior to implementation of each module or functionality. The selected Offeror will deliver the updated MMIS 2020 Platform User Manual within seven (7) calendar days after each module or functionality implementation. The MMIS 2020 Platform User Manual will be reviewed monthly as part of the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

Offeror Response

4. **Testing:** In the Testing Phase of the SDLC, the selected Offeror, SI/DH contractor, and module and legacy system contractors have varying roles dependent upon the level and objective of the test being conducted. While the Department will approve all test results, different entities will be leading tests, and test artifacts are subject to the selected Offeror and the IV&V Contractor's review. Accordingly, all MMIS 2020 Platform contractors will cooperate with the selected Offeror to develop a comprehensive testing plan to verify that each component meets or exceeds the functional, technical, security, and performance requirements prior to its implementation. Note: the scope of testing refers to testing of modules or functionality prior to its release during the lifecycle of the MMIS 2020 Platform.

During testing, the SI/DH contractor and module contractors will update the module or functionality being tested as well as the testing environment as the result of defects identified. The selected Offeror will communicate the testing status to the Department and appropriate stakeholders throughout this phase.

MMIS 2020 Platform testing will be conducted in accordance with industry best practices. For this RFP, the Department has chosen the Guide to the Software Engineering Body of Knowledge Version 3.0 (SWEBOK®) as the standard; however, Offerors may propose a different standard: Offerors must cite their reference and provide a rationale for the standard they choose.

The levels of MMIS 2020 Platform testing are defined below along with the test lead, participation and the selected Offeror's requirements. The levels below are the minimum to be conducted: Offerors may propose additional levels or strategies for the Department to consider.

- a. **Unit Testing:** Unit testing verifies the functioning in isolation of a single module or functionality that is separately testable. For the purpose of this discussion, the DH is a module.

Unit testing is self-led (module) and subject to the selected Offeror's QA review, where applicable; for example, COTS products are exempt; however, custom code is not.

- b. **Integration Testing:** Integration testing verifies the interactions between the MMIS 2020 Platform modules and the SI/DH. Integration testing is testing of the module or functionality being released to the DH.

The SI/DH contractor will lead this level of testing and the results are subject to the selected Offeror's QA review. The contractors for DH, the module or functionality being implemented, and any module that interfaces with the implementing module will participate in integration testing.

- c. **System Testing:** System testing tests downstream and end-to-end module-to-module functionality via the DH. System testing includes assessing nonfunctional system requirements such as security, speed, accuracy, and reliability; assessing functionality to external interfaces to other applications, utilities, hardware devices, or operating environments such as EDI service centers, providers, business partners, and other stakeholders.

The SI/DH contractor will lead this level of testing and the results are subject to the selected Offeror's QA review. Additionally, the test lead will submit the results of security vulnerability testing to the Department.

The SI/DH contractor, the module contractor or functionality being implemented and any downstream modules that interface with the implementing module will participate in system testing.

The levels of MMIS 2020 Platform testing contain various elements. The elements listed below are the minimum to be conducted. Offerors may propose additional elements or strategies for the Department to consider.

1. UAT
2. Installation Testing (a/k/a Operational Readiness)
3. Regression Testing
4. Performance Testing
5. Stress Testing
6. Back-to-Back Testing
7. Recovery Testing
8. Interface Testing
9. Usability and Human Computer Interaction Testing

While the Department approves all test results, the selected Offeror will develop and conduct UAT, including test cases and scripts. Test Cases and scripts must thoroughly test the module or

functionality. Test cases must include positive and negative scenarios, and the negative scenarios must include stressing the system with bad or invalid data to determine if it is rejected correctly. In its test scripts, the selected Offeror will provide step-by-step instructions for executing test cases, including the expected results.

Each MMIS 2020 Platform contractor will provide and maintain their own testing environment; however, the SI/DH contractor will provide and maintain a DH testing environment for the modules contractors to use for the appropriate level of test. The SI/DH contractor and module contractors will provide all various system environments needed to perform the required testing and training activities for the MMIS 2020 Platform, including UAT. These environments will include an integrated test environment to facilitate testing the successful implementations of modules and technical integration activities. This integrated test environment will allow for end-to-end testing and be a mirror of the production system.

- d. **User Acceptance Testing.** The selected Offeror is responsible for the development and execution of UAT Plans for the final tests prior to implementation of any module or functionality. The UAT Plan will measure and test the MMIS 2020 Platform's ability to function as designed and meet the Department's business needs.

The selected Offeror will work closely with the Commonwealth, MMIS 2020 Platform contractors, and the legacy system contractor (when applicable) to develop a UAT Plan for any module, interface, system modification, or enhancement to the MMIS 2020 Platform or the legacy system. The selected Offeror will design the UAT Plan to determine whether all functionality works properly prior to being placed in production. The selected Offeror's UAT Plan will require UAT be conducted in an environment that simulates the production environment in which it will be used. The selected Offeror will be responsible for executing and conducting UAT.

The selected Offeror will design, develop, implement and maintain UAT Plans and test summary reports in accordance with industry standards. The UAT Plan must outline various parameters, resources, methods, and criteria to fully test the system. The selected Offeror will track defects identified during UAT in the CRM tool provided by the SI/DH contractor. The selected Offeror must provide their own tools for UAT testing.

The SI/DH and module contractors will create and maintain the logical environments for development, training, and testing, which includes UAT. The selected Offeror must coordinate UAT activities with the MMIS 2020 Platform stakeholders. While the IV&V Contractor is responsible for evaluating all test results of all contractors, the selected Offeror will review the test results of all contractors prior to conducting UAT.

The selected Offeror will report the results of UAT to the MMIS 2020 Platform and legacy system contractors, and the Department. The report will identify successes, failures, defects and deviations of the expected results. The report will also identify risks, issues and dependencies that could prevent successful implementation. The selected Offeror must provide recommendations for corrective action. The Department must approve the UAT work products and UAT results.

Work Products:

1. UAT Test Plan
2. UAT Test Results Report

The Offeror must describe its approach to the design, development, implementation and maintenance of UAT and its QA function for MMIS 2020 Platform.

Offeror Response

III-9. Reports and Program Control.

- A. MMIS 2020 Platform Dashboard.** The selected Offeror must develop the MMIS 2020 Platform dashboard to be used by the MMIS 2020 Platform contractors to report on the overall status of the system. Note: the SI/DH contractor will monitor system health, which will include monitoring of the document library, call center, and ancillary hardware and software.

With feedback from the MMIS 2020 Platform contractors, the selected Offeror will develop reporting standards for reporting Green, Yellow, and Red status indicators. MMIS 2020 Platform contractors may recommend enhancements to the dashboard. The Department will approve the dashboard and standards.

Offerors may propose additional strategies for the Department to consider.

Project status will be reviewed with the Monthly Status Report (see **Part III, Section III-9.B** of this RFP).

Offeror Response

- B. Monthly Status Reports.** The selected Offeror will submit an electronic Monthly Status Report aligned to the IMP Plan in a format approved by the Department. The selected Offeror will submit monthly reports to the Department no later than noon on the fifth business day of the month. The reports will cover the previous month's reporting period (1st day through last day of the month).

At a minimum, selected Offeror will include in the Monthly Status Reports:

1. Updates to the MMIS 2020 Platform Charter
2. Updates to the IMS
3. Updates to the Master Communications Plan
4. Updates to the Risk and Issue Management Plan
5. Updates to the Requirements Management Plan
6. Updates to the BRD
7. Updates to the Business Gap Analysis
8. Updates to the RTM
9. Updates to the Technical Gap Analysis
10. Updates to the Defect Management Plan
11. Updates to the Defect Management Report
12. Updates to the Change Management Plan
13. Updates to the MMIS 2020 Platform Release Management Plan
14. Updates to the Documentation Management Plan
15. Updates to the Training Plan
16. Updates to the UAT Test Plan
17. Updates to the Master Rollback Plan
18. Updates to the Implementation Plans
19. Updates to the Certification Plan
20. Updates to the Closeout Plan
21. Updates to the M&O Plan
22. Updates to the Quality Management Plan
23. Updates to the MMIS 2020 Platform User Manual
24. A description of the project completion status in terms of the approved IMS.
25. A dashboard that shows the overall status of the project.

26. The plans for activities scheduled for the next month.
27. The status of Deliverables and Work Products as defined in **Part III, Section III-8**, Tasks.
28. Time ahead or behind schedule for applicable tasks.
29. Updated issue management report, including issues from the IV&V Contractor's Post-Implementation Assessment Review (lessons learned).
30. A risk analysis of actual and perceived problems along with suggested mitigations.
31. Strategic changes to the IMS, if any.
32. State, Federal rule or regulation compliance review.
33. Any organizational changes that may have occurred or are scheduled.
34. Key personnel changes.
35. Key activities completed during reporting period.
36. Review of items requiring updating of the DR Plan.

The Offeror must describe its approach to Monthly Status Reports. The Offeror may propose additional or more frequent reports and report items based on their experience with IT projects of this size and scope. The Offeror must provide a sample monthly status report with its technical submittal. After the implementation of the CRM functionality and sixty (60) calendar days before implementation of each module, the selected Offeror will develop standardized reports.

Offeror Response

- C. Immediate Status Reporting.** The selected Offeror's ITC/QA Project Manager or a designee must immediately report to the Department any change to the project plan or schedule that jeopardizes the success of the MMIS 2020 Platform, including changes to scope, staffing, budget or risk profiles.

Offeror Response

- D. Meetings.** The selected Offeror will attend or facilitate meetings as requested by the Department. At DHS's discretion, these meetings will take place in the Harrisburg, Pennsylvania area or be conducted via conference calls. The selected Offeror will also participate in status meetings and other appropriate meetings in support of the MMIS 2020 Platform Project.

The selected Offeror must attend MMIS 2020 Platform meetings as directed by the Department and support these meetings by providing reports, participating in brainstorming and planning activities, providing consultation and technical assistance, and helping to resolve issues. Examples of meetings the selected Offeror may be requested to attend include Executive Steering Committee, Program Governance, Stress Test Results Review, Infrastructure, Cross Project Logistics, and IT Strategy meetings.

For meetings facilitated by the selected Offeror, the selected Offeror will schedule meetings and produce meeting materials that include schedules, written status reports, draft and final minutes, action item and decision registers, agendas, recaps and other meeting materials. The selected Offeror will:

1. Schedule meetings and locations.
2. Distribute agendas at least two (2) business days prior to meetings.
3. Report on the health of the project via a dashboard to be developed see **Part III, Section III-9.A** of this RFP.
4. Submit meeting minutes to the Department for approval within two (2) business days after meeting being held.
5. Review available project artifacts prior to any meeting.
6. Load meeting materials in the MMIS 2020 Platform Artifact Library

The Department will lead MMIS 2020 Platform Steering Team meetings. The selected Offeror will assist the Department by providing logistical support for the tasks listed in items one through six above.

At a minimum, the selected Offeror will schedule the meeting and location and facilitate the following meetings:

1. ITC/QA Kick-off Meeting. The selected Offeror must schedule and conduct an ITC/QA kick-off meeting for the sponsors and key stakeholders confirming project scope and objectives, summary of the program, methodology, the roles, responsibilities and expectation of the team, and milestones of the MMIS 2020 Platform.

The meeting will occur within thirty (30) calendar days after the contract Effective Date.

2. Module Kick-Off. The selected Offeror will schedule and conduct kickoff meetings upon the initiation of each new module, cohort of modules, or new initiatives. The scope will be limited to the module or initiative being released. The meeting will confirm the scope, objectives, project schedule, methodology, staff roles, coordination with new module personnel, responsibilities and expectation of the team, and milestones of the module implementation. The meeting will include the key stakeholders. Prior to the module kick-off meeting, the selected Offeror will review available artifacts.

The meeting will occur within thirty (30) calendar days after the Effective Date of the contracts for the individual modules.

3. Change Control Board Meeting. The selected Offeror will schedule and conduct the CCB meetings that include the Department, and the legacy system and MMIS 2020 Platform contractors.

The CCB reviews defects, and requested changes for each module or functional area and ensures that DHS and the contractors have a mutual understanding of what is to be delivered, when it is to be delivered, and the cost impact in effort hours, if applicable. The CCB serves as a clearinghouse for all defects and changes, including changes to scope and cost. The CCB reports to the MMIS 2020 Platform Steering Team. If a change control item must be elevated above the CCB for resolution, it will be sent by the CCB to the Steering Team for decision. The CCB will meet on a frequency and at a time mutually acceptable to all stakeholders.

The CCB is comprised of DHS resources from multiple program offices and the contractors who have the authority to make decisions related to the defect or status of a change order, its financial impact, and its importance. The Department will direct the selected Offeror to invite SMEs and stakeholders to CCB meetings as needed. During the transition from legacy system to the MMIS 2020 Platform, the legacy MMIS contractor may also be invited to attend.

The Department will establish the CCB and the selected Offeror will convene a CCB meeting forty-five (45) calendar days after the Effective Date of the contract. The CCB will meet on a weekly basis with the selected Offeror conducting the meeting.

4. Release Planning Meeting. Release Planning is the logical output of the CCB. Release Planning involves the scheduling of Change Orders (“CO”) agreed upon by the CCB and assessing the impact to Department and MMIS Business Operations. During the transition from the legacy system to the MMIS 2020 Platform, release planning must include changes to existing modules or functionalities. Release planning must also continue during the M&O phase of the MMIS 2020 Platform Project.

The selected Offeror will schedule and conduct the Release Planning Meetings that includes the Department, the legacy system contractor and MMIS 2020 Platform contractors. The selected Offeror will produce a proposed system CO release schedule and documentation of the CO impact to MMIS Business

Operations and the EDW at least forty-eight (48) hours in advance of the meeting. The Department will determine the frequency and times of the Release Planning Meetings.

Release Planning is comprised of DHS resources from multiple program offices and the contractors who have the authority to make decisions related to the release. The DHS resources may invite SMEs and stakeholders to the meetings as needed. During the transition from the legacy system to MMIS 2020, the legacy system contractor may also be invited to attend as necessary.

The selected Offeror may be invited to attend the existing PROMIS^e™ Release Planning meeting that occurs bi-weekly prior to transitioning to the MMIS 2020 Platform Release Planning process.

5. QA/QC Meetings. The selected Offeror will schedule, conduct, and document all project meetings as part of the QA/QC scope of work.

The initial meeting must occur ninety (90) calendar days after the contract Effective Date and quarterly thereafter.

6. Requirements Gathering related meetings. The selected Offeror will schedule, conduct, and document requirements gathering and JAD sessions as defined in **Part III, Section III-8.A.5** Requirements Management Plan.

Once the IMS is approved by the Department, JADs must be completed by the selected Offeror within the prescribed timelines.

7. Status Meetings. The selected Offeror will schedule and conduct weekly and ad-hoc status meetings with the Department. Under the strategic guidance of the Department, the meeting will follow an agreed upon agenda and the selected Offeror will report to the Department on the projects' risks, issues, newly found defects, and updates on proposed changes, release timeline, training plan, UAT, implementation plan and budget considerations as applicable to the current project status.

8. Quarterly Executive Review. The selected Offeror will schedule and conduct a Quarterly Executive Review meeting. Under the strategic guidance of the Department, the meeting will review, at a minimum, the MMIS 2020 Platform Charter, IMS, Master Communications Plan, the Risk Management Plan, and the Quality Management Plan.

The Offeror must describe their approach to conducting the meetings. The Offeror may propose additional meetings based on its experience with IT projects of this size and scope. The Department may require the selected Offeror to attend and facilitate other meetings.

Offeror Response

E. Turnover Task. Turnover is defined as those activities that the selected Offeror must perform at the end of the contract term, to turnover service delivery to a successor Offeror or to Commonwealth resources. During the turnover period, the selected Offeror will work cooperatively with any successor and the Department. The Offeror must submit a draft outgoing transition plan with its technical submittal.

Additionally, the selected Offeror must develop an outgoing transition plan when requested by the DHS Contract Administrator or designee. The outgoing transition plan must be reviewed and approved by the DHS Contract Administrator and DHS identified stakeholders. Once approved by the DHS Contract Administrator, all activities included in the outgoing transition plan must be completed within six (6) months.

The selected Offeror will provide the DHS Contract Administrator and a successor contractor, if any, with all data, content, files, instructions, processes, and all other items deemed appropriate by DHS to successfully transition services and work effort. The selected Offeror must provide data and documents in a format that is industry-standard and approved by the DHS Contract Administrator or designee.

The Offeror must acknowledge their responsibility to the Outgoing Transition Plan and a draft outgoing transition plan.

Offeror Response

III-10. Performance Standards. The Commonwealth has developed a set of minimum Performance Standards defined below, which the selected Offeror must meet or exceed in order to remain in good standing. The Department may, at its discretion, assess liquidated damages indicated below. The selected Offeror’s performance will be reviewed and assessed on a monthly basis and on an as needed basis. The DHS Contract Administrator will give written notice of each failure to meet a performance standard to the selected Offeror. If DHS does not assess liquidated damages in a particular instance, DHS is not precluded from pursuing other or future assessments relating to those performance metrics and their associated damages.

PERFORMANCE STANDARD	MINIMUM ACCEPTABLE	NONCOMPLIANT REMEDIAL ACTION
ITC/QA-1 Key Personnel Replacement	Key Personnel listed below: ITC/QA Executive Account Director ITC/QA Project Manager ITC/QA Requirements Manager ITC/QA Quality Assurance/Quality Control Manager ITC/QA Functional Lead ITC/QA Testing Manager ITC/QA Training Manager	Failure to notify DHS Contract Manager of diversion at least thirty (30) calendar day prior to diversion may result in the Department assessing liquidated damages of up to \$2,500. Failure to Interim fill a Key Personnel vacancy within thirty (30) calendar days or permanently fill a vacancy within ninety (90) calendar days may result in a penalty of up to \$2,000 per day for each day vacancy.
ITC/QA-2 Disaster Recovery	On the occurrence of a disaster, the selected Offeror must meet the following minimum acceptable standards when executing the DR plan. •Return to 25% or more operational recovery within twenty-four (24) hours after an event. • Return to full operations within three (3) business days after an event.	Failure to meet a minimum acceptable standard may result in liquidated damages of up to 10% of the monthly fixed fee cost.
ITC/QA-3 UAT Testing	Comprehensive test plans to thoroughly test each system requirement and all system modifications associated with module release. All test cases and test results will demonstrate production code deployment will not result in a Critical or Significant defect.	Failure to develop test cases and complete systems testing allowing one or more Critical or Significant Defects after a module production release may result in the Department assessing liquidated damages in an amount of up to 2% of the monthly fixed fee cost.
ITC/QA-4 Compliance	Comply with applicable State and Federal laws, rules, regulations, guidelines, policies, and procedures relating to information systems, information systems security and privacy, physical security, PHI confidentiality and privacy, Americans with Disabilities Act and Section 508 of the Rehabilitation Act.	The Department may assess liquidated damages of up to \$2,500 plus any incurred costs to remediate for each non-compliance condition identified during the course of normal day to day operations, as the result of a finding in an audit, or as reported in a monthly report.

ITC/QA-5 Platform Project Charter	Delivery of an acceptable MMIS 2020 Platform Initial Project Charter within fifteen (15) calendar days after the contract effective date.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-6 IMS	Delivery of an acceptable IMS within forty-five (45) calendar days after the contract effective date.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-7 Master Communication Plan	Delivery of an acceptable Master Communications Plan within forty-five (45) calendar days after the contract effective date.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-8 Risk and Issue Management Plan	Delivery of an acceptable Risk and Issue Management Plan within forty-five (45) calendar days after the contract effective date.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-9 Requirements Management Plan	Delivery of an acceptable Requirements Management Plan is due no later than fifteen (15) calendar days prior to the beginning of the first Business Requirements session for each module.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-10 BRDs	Delivery of an acceptable BRD is due fifteen (15) calendar days after completion of the gathering and review of the business requirements for each module.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-11 Business Gap Analysis	Delivery of an acceptable Business Gap Analysis is due seven (7) calendar days after the BRD is developed for each module.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-12 RTM	Delivery of an acceptable Requirements Traceability Matrix is due fifteen (15) calendar days after the delivery of the BRD for each module.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-13 Technical Gap Analysis	Delivery of an acceptable Technical Gap Analysis is due no later than seven (7) calendar days after DHS approves the GSD for each module.	A late deliverable may result in the Department assessing liquidated damages in an amount of \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-14 Defect Management Plan & Report	Delivery of an acceptable Initial Defect Management Report within fifteen (15) calendar days after the contract effective date.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-15 Change Management Plan	Delivery of an acceptable Change Management Plan within forty-five (45) calendar days after the contract effective date.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.

ITC/QA-16 Release Management Plan	Delivery of an acceptable initial Release Management Plan within forty-five (45) calendar days after the contract effective date and an acceptable updated Release Management Plan no later than thirty (30) calendar days prior to a module's or functionality's release.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-17 Documentation Management Plan	Delivery of an acceptable initial Documentation Management Plan within forty-five (45) calendar days after the contract effective date. Acceptable updates delivered no later than thirty (30) calendar days prior to a module's or functionality's release.	A late deliverable may result in the Department assessing liquidated damages in the amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-18 Training Plan	Delivery of an acceptable initial Training Plan within forty-five (45) calendar days after the contract effective date. Acceptable updates delivered no later than thirty (30) calendar days prior to a module's or functionality's release.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-19 UAT Test Plan	Delivery of an acceptable initial UAT Test Plan within forty five (45) calendar days after the contract effective date. Acceptable updates delivered no later than thirty (30) calendar days prior to a module's or functionality's release.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-20 Master Rollback Plan	Delivery of an acceptable Master Rollback Plan no later than sixty (60) calendar days prior to implementation of each module or functionality.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-21 Implementation Plan	Delivery of an acceptable Implementation Plan no later than ninety (90) calendar days prior to implementation of each module or functionality.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee.
ITC/QA-22 Implementation Checklist	Delivery of an acceptable Completed Implementation Checklist no later than seven (7) calendar days before each module is implemented.	A late deliverable may result in the Department assessing liquidated damages in the amount of up to \$500 per calendar day up to 3% of the monthly fixed fee.
ITC/QA-23 Certification Plan	Delivery of an acceptable CMS Certification Plan within forty-five (45) calendar days after the contract effective date.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-24 CMS Certification Checklist	Delivery of an acceptable completed CMS Certification Checklist within seven (7) calendar days after implementation of each module.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-25 Closeout Plan	Delivery an acceptable Closeout Plan within thirty (30) calendar days after each module's CMS Certification.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.

ITC/QA-26 Issue Resolution Plan	Delivery of a an acceptable Issue Resolution Plan within fourteen (14) calendar days after receiving the Post Implementation Assessment Report from the IV&V Contractor for each module.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-27 M&O Plan	Delivery of an acceptable M&O Plan no later than forty-five (45) calendar days prior to the implementation of each module.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-28 Quality Management Plan	Delivery of an acceptable Initial Quality Management Plan within ninety (90) calendar days after the contract effective date.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee invoice.
ITC/QA-29 MMIS 2020 User Manual	Delivery of an acceptable Initial MMIS 2020 User Manual no later than ninety (90) calendar days prior to implementation of each module or functionality. Delivery of the updated MMIS 2020 User Manual no later than seven (7) calendar days after each module is implemented.	A late deliverable may result in the Department assessing liquidated damages in an amount of up to \$500 per calendar day up to 3% of the monthly fixed fee.

The Department will monitor the selected Offeror's performance on an ongoing basis using various methods.

Failure to meet the performance standards may result in damages to internal MMIS 2020 Platform users (Commonwealth) as well as the external MMIS 2020 Platform users (providers and business partners) that may cause negative impacts to consumers of Department programs and may result in the Department assessing liquidated damages.

For any performance deficiency, including those related to performance standards and in addition to any other remedy the Department may have, the selected Offeror will prepare and submit a corrective action plan for all findings contained in a notice of deficiency. The selected Offeror must submit the corrective action plan to the Department within ten (10) business days of notification of the deficiency or such longer time as permitted by the Department.

The selected Offeror will include in the corrective action plan:

1. A brief description of the findings;
2. Specific steps the selected Offeror will take to correct the situation or reasons why it believes corrective action is not necessary;
3. Name and title of responsible staff person for creating the plan;
4. Timetable for performance of the corrective action steps;
5. Monitoring that will be performed to ensure that corrective action steps were implemented; and
6. Signature of the selected Offeror's Project Manager or a senior executive.

The selected Offeror must implement the corrective action plan within the timeframe agreed to by the Department. The Department may take further action based on selected Offeror's failure to implement the agreed upon corrective action plan.

The Offeror must acknowledge their responsibility to the Performance Standards and provide its approach to meeting the performance standards.

Offeror Response

III-11. Potential Optional Future Services. The Department is not including and does not intend to include Tier 1 MMIS 2020 Platform Support Center services within the scope of the ITC/QA contract; however, the Department may consider adding these services in the future if a need would arise. The Department is asking Offerors to propose a response for the provision of these services. The Department will not include this response in the scoring of the Offeror's proposal. If the Department chooses to implement the services through the ITC/QA contractor, the selected Offeror will be required to establish and manage a Tier 1 MMIS 2020 Platform Support Center and provide Tier 1 Support, and in coordination and cooperation with the module and SI/DH contractors, develop a plan to escalate service calls to Tier 2 Support as appropriate. The Department does not anticipate including these services in the ITC/QA contract and Offerors should not anticipate their inclusion.

A. Tier 1 MMIS 2020 Platform Support Center. If the Department elects the option, the selected Offeror will operate and manage Pennsylvania's Tier 1 MMIS 2020 Platform Support Center as part of its ITC services. The Tier 1 MMIS 2020 Platform Support Center will provide primary support center services to external providers and business partners of the MMIS 2020 Platform and primary system support to internal Commonwealth MMIS 2020 Platform users. Trouble tickets determined to be "out of scope" will be escalated Tier 2 SMEs with the SI/DH and other program module contractors.

Pennsylvania's legacy MMIS system contractor provides two (2) help desks with separate functions to address two (2) different audiences and their related support needs. The Provider Assistance Center ("PAC") offers external customers (providers and business partners) toll free access to help with the Provider Electronic Solutions software, electronic billing submission questions and EFT requests. The MMIS Technical Help Desk ("THD") responds to inquiries from internal customers (Commonwealth staff) regarding the legacy MMIS system.

During State Fiscal Year ("SFY") 2015-2016, the PAC responded to 24,702 calls. Additionally, there were 3,185 EFT requests (3,074 on-line, 111 paper requests). The following were the top four (4) reasons why a call was placed to the PAC help desk:

1. 9,534 calls related to the legacy PROMIS^e™ Provider Portal.
2. 5,579 calls related to billing/policy issues (which were subsequently referred to the FFS Provider Service Center).
3. 825 calls related to Provider Screening and Enrollment (began in January 2016).
4. 758 calls related to eligibility questions.

During SFY 2015-2016, the THD received 3,459 e-mails and 620 phone calls resulting in 575 trouble tickets being opened and escalated to Tier 2 for additional research.

The Department is seeking a solution to be hosted and staffed at the selected Offeror's location. The Tier 1 MMIS 2020 Platform Support Center will be the first point of contact for both external and internal users having MMIS 2020 Platform problems or questions. The areas of support include but are not limited to user access, MMIS 2020 Platform application issues (data, user interfaces, batch jobs, etc.), reporting, and system performance and downtime issues.

The Tier 1 MMIS 2020 Platform Support Center responsibilities would include:

1. Providing Tier 1 Support Center support for internal and external users of the MMIS 2020 Platform via phone, email, and web.
2. Developing and maintaining a support knowledge base for the MMIS 2020 Platform.
3. Acquiring accurate information and data concerning reported issues.
4. Documenting, researching, reporting, and tracking questions and issues identified by users through to resolution using the MMIS 2020 Platform CRM tool; and taking or verifying appropriate follow-up actions.
5. Answering user questions regarding MMIS 2020 Platform functions and capabilities.

6. Redirecting problems or queries not supported by the Tier 1 MMIS 2020 Platform Support Center, as appropriate.
7. Escalating trouble tickets to the appropriate area for resolution, when necessary.
8. Maintaining knowledge of the impact of MMIS 2020 Platform modifications released into production.
9. Notifying designated internal MMIS 2020 Platform users of issues and outages within the defined timeframes and assuring that accurate updates are communicated as defined.
10. Generating Tier 1 MMIS 2020 Platform Support Center trouble ticket reports as defined by the Department.

The following list includes the types of issues the selected Offeror may expect from internal (Commonwealth) users:

1. System issues
2. Reports not generated/incorrect data
3. Images (claims, PA, etc.) not available
4. Claims processing questions –why did or didn’t an edit post, why did a claim process a particular way?
5. Recipient eligibility questions
6. Portal access questions
7. User access (internet, intranet, system reports, documentation, and role questions)
8. Firewall issues
9. End-date EFT enrollment
10. Update provider address (referred to Department’s Fee-for-Service Program)
11. 835 enrollment questions/concerns
12. Repost 835 files
13. EDI questions
14. EDI certification
15. System navigation
16. Rate issues
17. Other issues and activities related to system failures or extraordinary events

The following list includes the types of issues the selected Offeror may expect from external (Providers and business partners) users:

1. Reporting system or subsystem outages
2. Portal registration
3. Portal navigation
4. EFT failure questions
5. Lost paper check reissue
6. EFT and 835 setup questions
7. EDI Certification
8. EDI response file questions
9. Electronic claims submission issues/questions
10. Electronic Verification System (“EVS”) submission issues/questions
11. Missing 835 files reposting
12. 1099 questions
13. Remittance/835 advice not available
14. LIHEAP system questions
15. MAPIR portal access

Regardless of the source of the issue or question, the Tier 1 MMIS 2020 Platform Support Center will either resolve the issue or forward to the appropriate resource via CRM.

If the Department exercises its option, the selected Offeror will provide Tier 1 MMIS 2020 Platform Support Center services to address the needs of both audiences. The Tier 1 MMIS 2020 Platform Support Center must coordinate and cooperate with the MMIS 2020 Platform SI/DH and module contractors to escalate support center trouble tickets to identified Tier 2 SMEs.

B. General Requirements. The selected Offeror must comply with the following Tier 1 MMIS 2020 Platform Support Center requirements:

- 1. Phone Numbers.** The selected Offeror must provide two (2) phone numbers: one (1) toll free phone number that is a direct number into the Tier 1 MMIS 2020 Platform Support Center for use by internal users; and one (1) toll free phone number to receive calls redirected from DHS Connect’s phone tree (the Department’s single access number for program office helpdesks) into the Tier 1 MMIS 2020 Platform Support Center. Redirected calls are from external users. The Department will not be responsible for any long-distance connections to the selected Offeror’s location.
- 2. Automated Call Distribution (“ACD”).** The selected Offeror must provide an ACD phone system to handle the anticipated call volumes listed in **Part III, Section III-11.A**. Phone system message and scripts are subject to Department approval, and callers must be notified that they have reached the Tier 1 MMIS 2020 Platform Support Center. At a minimum, the ACD must be capable of the following:
 - a. Handling normal and high call volumes that can occur due to outages or other events that may increase call volume.
 - b. Monitoring and reporting on real-time and historical call center activity performance data, including:
 - i. Number of calls
 - ii. Average wait time
 - iii. Average length of call
 - iv. Calls that receive a busy signal
 - v. Abandoned calls
 - vi. Any other statistics required by the Department.
 - c. Recording all incoming and outgoing calls for quality assurance.
 - i. Retain records for 30 days, and make available for review by the Department upon request.
 - ii. Inform all callers that they are being recorded at beginning of the call.
 - d. Providing capability to record and play custom messages. The selected Offeror must post status messages when significant network, system outages, or maintenance is occurring, giving the caller the option to terminate the call or wait for a Tier 1 MMIS 2020 Platform Support Center Agent.
 - i. The selected Offeror must notify the Department when a message is added, changed or deleted. Notification must include the date and time of the addition, change or deletion. The Department must approve all system messages added, changed or deleted from the phone system. Department approved emergency messaging may be posted when the MMIS 2020 Platform is experiencing a critical defect as defined in **Section III-8.A.6** Defect Management Plan.
 - ii. During the Department’s normal business hours (Monday through Friday, 7 am to 6 pm EST), the Department must receive the notification via email within one (1) hour before the message is added, changed or removed.

iii. The selected Offeror must place an approved message on the ACD phone system that callers will hear when the Service Desk is closed.

e. Providing a voicemail option for callers to leave a message.

3. Communications Requirements. The selected Offeror is responsible for all phone lines or other infrastructure required to perform services required.

4. Hours of Operation. The Tier 1 MMIS 2020 Platform Support Center must be operational during normal business hours Monday through Friday from 7:00 am to 6:00 pm Eastern Time. Commonwealth observed holidays are not considered part of normal business days/hours.

The Tier 1 MMIS 2020 Platform Support Center must be capable of operation for extended days and hours upon request for circumstances such as anticipated increases in call volumes resulting from scheduled releases, or emergent initiatives.

5. Methods of Support. The selected Offeror must provide Tier 1 MMIS 2020 Platform Support Center services via telephone, email (secure email support for personal health information and personally identifiable information related material), online chat, and web forms. The selected Offeror must use foreign language assistance lines or staff, with the ability to translate for callers with limited English proficiency.

6. Support Levels. The Tier 1 MMIS 2020 Platform Support Center is the primary contact point for MMIS 2020 Platform related system issues or questions. Selected Offeror must resolve all Tier 1 level issues or questions.

Selected Offeror must escalate or refer trouble tickets that cannot be resolved at Tier I to Tier 2 or the appropriate Department service desk.

Tier 2 Support is staffed by a module contractor's staff. These staff will access trouble tickets routed via the CRM tool when Tier 1 is unable to resolve the ticket and has entered the ticket to the appropriate module to be resolved. Trouble tickets that cannot be resolved by Tier 2 are referred to Tier 3 staffed by the SI/DH contractor.

Some common reasons for ticket escalations or referrals include:

- a. Issue is outside the scope of the Tier 1 MMIS 2020 Platform Support Center or the agents do not possess the required access or security roles.
- b. Incident requires modular contractors, or the SI/DH contractor to resolve.
- c. Questions regarding Remittance Advice interpretation, invoice completion, program policy or billing theory questions are referred to the FFS Provider Service Center.

7. Resolution. The selected Offeror will be responsible for monitoring, tracking, and follow-up on every issue, including escalated issues including those escalated to the Department, until there has been a resolution. Follow-up is defined as following the trouble tickets from escalation through resolution and close. Resolutions must be confirmed "resolved" by contacting the user who reported the issue.

The selected Offeror must implement a methodology to inform callers of those issues that are repeatedly escalated to Tier 2. The goal is to avoid repeated escalation of issues without finding the root cause of the issue.

The selected Offeror must implement a QA program that monitors the recurrence of calls incorrectly referred or escalated.

- 8. Notifications.** The selected Offeror must execute a notification process to notify the Department when call trends or system monitoring indicate an immediate issue that needs attention outside of normal reporting processes – both during and after normal business hours.

The selected Offeror must notify the Department within fifteen (15) minutes from when the Tier 1 MMIS 2020 Platform Support Center cannot not accept incoming calls, emails or text.

The selected Offeror must notify the Department if after thirty (30) minutes or immediately if the Tier 1 MMIS 2020 Platform Support Center is able to duplicate or confirm the problem, that the call trending indicates an unplanned system or network outage that is affecting normal operation of the MMIS 2020 Platform.

The selected Offeror must make a phone call and follow-up email to the designated Department and affected MMIS 2020 Platform contractor staff, as well as send an email to a resource account. In the event the Department staff are unreachable, a voicemail must be left.

The Offeror should describe how it will meet the Support Center requirements.

- 9. Start-up Task.** The Department will use a phased start-up for the Tier 1 MMIS 2020 Platform Support Center with three (3) phases: implementation, transition, and M&O.

- a. Tier 1 MMIS 2020 Platform Support Center Implementation Plan.** The selected Offeror will implement the Tier 1 MMIS 2020 Platform Support Center, which includes:

- i. Acquiring all resources to conduct Tier 1 MMIS 2020 Platform Support Center business such as phone lines, phone numbers, office space, etc.
- ii. Hiring and training staff to conduct Tier 1 MMIS 2020 Platform Support Center operations.
- iii. Developing operational procedures for Tier 1 MMIS 2020 Platform Support Center staff.

The selected Offeror must complete the Implementation Plan within four (4) weeks after being notified that the Department has elected to use the optional Support Center services.

Deliverable: Tier 1 MMIS 2020 Platform Support Center Implementation Plan

Offeror Response

- b. Tier 1 MMIS 2020 Platform Support Center Transition Plan.** Transition is defined as the period from when a MMIS 2020 Platform module is onboarded until the last module is onboarded. As the MMIS 2020 Platform is implemented, the legacy helpdesk will decrease while the Tier 1 MMIS 2020 Platform Support Center services will increase.

The selected Offeror must:

- i. Update Support Center operational procedures as developed during the implementation phase for Support Center staff.
- ii. Develop, execute, and monitor the Support Center Management Plan and transition activities.

- iii. Provide reports.
- iv. Provide operational Support Center services for modules already on board.
- v. Cooperate with the Department's IV&V contractor as requested.

Deliverable: Tier 1 MMIS 2020 Platform Support Center Transition Plan

Offeror Response

- c. **Tier 1 MMIS 2020 Platform Support Center Maintenance and Operations.** M&O is defined as the period after which all modules are on boarded. The selected Offeror must:
- i. Update operational procedures as developed during the implementation and transition phases (above) for Tier 1 MMIS 2020 Platform Support Center staff.
 - ii. Provide reports.
 - iii. Build upon the knowledge base established for the MMIS 2020 Platform.
 - iv. Continue training call center staff on MMIS 2020 Platform operations.
 - v. Continue to maintain quality standards with Tier 1 MMIS 2020 Platform Support Center operations and customer service.
 - vi. Cooperate with the Department's IV&V contractor as requested.
 - vii. Provide operational Support Center services for the MMIS 2020 Platform.

During M&O, the selected Offeror will provide Tier 1 MMIS 2020 Platform Support Center support and stakeholder training.

Deliverable: Tier 1 MMIS 2020 Platform Support Center Maintenance and Operations Plan

The Offeror must describe its approach to developing and maintaining the Tier 1 MMIS 2020 Platform Support Center; and include a description of the hardware and software required to operate the Tier 1 MMIS 2020 Platform Support Center in its proposal.

Offeror Response

- d. **Tier 1 MMIS 2020 Platform Support Center Training Plan.** The selected Offeror must develop and deliver training for end users, and training for MMIS 2020 Platform SMEs and Tier 1 MMIS 2020 Platform Support Center staff who interact with the MMIS 2020 Platform. The training will provide an understanding of the MMIS 2020 Platform system components, applications, portals, business processes, and services. The selected Offeror must develop and provide training materials and user assessments so that users are proficient in using the new solution and are effective in completing their normal business operations and service delivery activities. The selected Offeror must provide both initial and ongoing training on the use and operation of the MMIS 2020 Platform. The selected Offeror must develop, monitor, and execute a user training survey to evaluate the training provided and allow for user feedback. The survey must be approved by the Department.

The selected Offeror is responsible for the MMIS 2020 Platform training; however, the modular contractors will provide the selected Offeror with system and technical documentation to support the creation and development of training materials for end users. Training will be a collaborative process; the selected Offeror is the lead trainer working with the modular contractors and the SI/DH contractor. As new modules are added to the system, training materials must be updated and new training sessions will be required. The selected Offeror will require knowledge transfer of each module's functionality, user interfaces, technical components, interfaces, reporting, etc.

The selected Offeror is also responsible to train its Tier 1 MMIS 2020 Platform Support Center staff in the functionality of the MMIS 2020 Platform, general support center responsibilities and tasks such as script use procedures, customer service, conflict resolution, etc. This training must be approved by the Department.

Deliverable: Tier 1 MMIS 2020 Platform Support Center Training Plan

Offeror Response

- e. **Tier 1 MMIS 2020 Platform Support Center Management Plan.** The selected Offeror must operate and manage Pennsylvania’s Tier 1 MMIS 2020 Platform Support Center.

During the transition from the legacy system to MMIS 2020 Platform, the legacy system will retain its PAC as long as its components are still functional. While the PAC will be responsible for legacy system functionality, the selected Offeror will be responsible for the MMIS 2020 Platform.

As part of the Tier 1 MMIS 2020 Platform Support Center Management Plan, the selected Offeror must develop and execute a transition plan to move the legacy system call center responsibilities to the Tier 1 MMIS 2020 Platform Support Center. This plan will accommodate up to a fifteen (15)-month (approximately) time period to onboard the first module through the onboarding of the last module.

The selected Offeror must deliver the initial Support Center Management Plan sixty (60) calendar days prior to the go-live date of the SI/DH or other date as specified by the Department, with additional updates as required so that the project is on schedule and meets CMS Certification.

Deliverable: Tier 1 MMIS 2020 Platform Support Center Management Plan

The Offeror must describe its approach to the development and execution of the Tier 1 MMIS 2020 Platform Support Center Management Plan.

Offeror Response

- f. **Tier 1 MMIS 2020 Platform Support Center Implementation Plan.** The selected Offeror must develop and execute the MMIS 2020 Platform Implementation Plan to move MMIS 2020 Platform modules or functionality from DDI and testing to operations. Given the phased release of the MMIS 2020 Platform, there can be multiple implementation plans each limited to the module or functionality being implemented.

Where applicable, the Implementation Plan must provide for the transition from the legacy system to the MMIS 2020 Platform when onboarding an MMIS 2020 Platform module. The Implementation Plan must also include the onboarding of new functionality into the MMIS 2020 Platform.

The Tier 1 MMIS 2020 Platform Support Center Implementation Plan must be coordinated with all MMIS 2020 Platform stakeholders.

The Tier 1 MMIS 2020 Platform Support Center Implementation Plan must include:

- i. Description of intended functionalities

- ii. Deployment strategies
- iii. Rollback Plan
- iv. Legacy system and installed modules impact
- v. Test Result Review
- vi. “Go live” checklist
- vii. Logistics and meeting management
- viii. Issue reporting and resolution process
- ix. Defect reporting and resolution process
- x. Tier 1 Service Center triage plan e.g. anticipated volume increase
- xi. User support including training
- xii. Updates to the MMIS 2020 Platform comprehensive user manual

Deliverable: Tier 1 MMIS 2020 Platform Support Center Implementation Plan

Offeror Response

- g. **Tier 1 MMIS 2020 Platform Support Center Quality Assurance Plan.** The selected Offeror will review designated artifacts, create assessments that evaluate compliance with State and Federal regulations and requirements, and identify gaps and propose recommendations to the Department.

The selected Offeror will evaluate the Tier 1 MMIS 2020 Platform Support Center to improve Support Center operations and customer service.

The selected Offeror will develop, monitor, and execute a customer service survey to evaluate Tier 1 MMIS 2020 Platform Support Center agent interactions. The survey must use industry best practices for frequency, be a statistically valid methodology, and must be approved by the Department.

Deliverable: Tier 1 MMIS 2020 Platform Support Center Quality Assurance Plan

Offeror Response

C. Reports and Program Control.

- 1. **Tier 1 Support Center Weekly Status Reports.** The selected Offeror will submit Support Center weekly reports by noon the first business day of the week to the Department. The reports will cover the prior week’s reporting period (Sunday through Saturday of the previous week). During the transition period from the PROMISe™ help desk to MMIS 2020 Platform Support Center, the report must have a section designated for tasks and activities performed related to the transition. The Weekly Status Report will include Support Center Availability, which is the amount of time the Tier 1 Support Center was not available or not fully capable to support required business operations needs during the previous week. The selected Contractor will also provide the Department the following Trouble Ticket reports:

- a. Number of trouble tickets closed and average lifespan of the trouble ticket organized by the MMIS 2020 Platform CRM tool category, type, and item (“CTI”).
- b. Number of open trouble tickets as of the date of the report, and the average time the trouble ticket has been open organized by the MMIS 2020 Platform CRM tool category CTI.
- c. Number of trouble tickets referred to the Department’s FFS Provider Service Center.

- 2. Monthly Reporting.** The selected Offeror will provide specific monthly reporting related to the Tier 1 MMIS 2020 Platform Support Center. The reports will cover the previous month's reporting period (1st day through last day of the month). During the transition period from the PROMISE™ help desk to the Tier 1 MMIS 2020 Platform Support Center, the report must have a section designated for tasks and activities performed related to the transition.

a. Call Statistics: The following monthly statistics will be required at a minimum:

- i. Total number of calls
- ii. The service level of the percentage of calls answered within a fixed period of time:
 - a) calls received answered within 20 seconds
 - b) calls received answered within 60 seconds
 - c) calls received answered within 300 seconds
- iii. Total number of calls by category
 - a) Incoming calls
 - b) Abandoned calls
 - c) Outgoing calls
 - d) Calls that receive a busy signal
 - e) Calls sent to voicemail
 - f) Calls sent to queue
- iv. Average speed to answer
 - a) Average talk time
 - b) Average time before calls are abandoned
 - c) Average wait or queue time
 - d) Average time on hold
 - e) Average time to respond to voicemail
 - f) Number and Percentage of first call resolutions
 - g) Call statistics by hour, day and week
- v. Other Contact Methods Report: The following monthly statistics will be required at a minimum:
 - a) Number of other methods of inquiry
 - (i) Total
 - (ii) By type (example: email, web form, etc.)
 - b) Average time to respond
 - (i) Total
 - (ii) By type (example: email, web form, etc.)
 - c) Average time to resolution
 - (i) Total
 - (ii) By type (example: email, web form, etc.)

b. Trouble Ticket Reports:

- i. Number of trouble tickets closed and average lifespan of the trouble ticket organized by the MMIS 2020 Platform CRM tool CTI.
- ii. Number of open trouble tickets as of the date of the report, and the average time the trouble ticket has been open organized by the MMIS 2020 Platform CRM tool CTI.
- iii. Number of trouble tickets referred to the Department's FFS Provider Service Center.
- iv. Comparison of documented monthly Support Center reporting and SI CRM dashboard reports to DHS.

- a) Customer service user survey statistics (number of surveys sent, number of survey results received, etc.) and results.
- b) Number of trouble tickets escalated to Tier 2.
- c) Number of trouble tickets escalated to Tier 2 incorrectly (escalated trouble tickets that were later found to be within the scope of Tier 1).
- d) Trend Report. Provide a trend report that identifies trouble ticket patterns. The report must be used for QA analysis.
- e) Support Center Availability is the amount of time the Tier 1 Support Center was not available or not fully capable to support required business operations needs during the previous month.

D. Tier 1 MMIS 2020 Platform Support Center Performance Standards.

PERFORMANCE STANDARD	MINIMUM ACCEPTABLE	NONCOMPLIANT REMEDIAL ACTION
SC-1 Support Center Availability	Availability must be a minimum 99.5% and is measured monthly. Availability is required Monday through Friday from 7:00 am to 6:00 pm Eastern Time, excluding Commonwealth observed holidays. Availability is defined as Tier 1 MMIS 2020 Platform Support Center is available and fully capable to support business operations. Availability includes all contractor supplied/supported hardware and software associated with Tier 1 MMIS 2020 Platform Support Center operations.	The Department may assess liquidated damages in an amount of up to 1.5% of the Monthly Operational Costs for Tier 1 MMIS 2020 Platform Support Center services for failure to meet the minimum acceptable performance standard. Tier 1 MMIS 2020 Platform Support Center availability performance standard measurement begins upon operational implementation of the Tier 1 MMIS 2020 Platform Support Center.
SC-2 Support Center Trouble Ticket Resolution Rate	Resolution rate monthly minimum is: <ul style="list-style-type: none"> • 85 percent of all trouble tickets are resolved by a Tier 1 MMIS 2020 Platform Support Center agent accurately and address the user’s needs or resolves the problem the first time the user contacts the Tier 1 MMIS 2020 Platform Support Center. • Not more than 5% of all trouble tickets are escalated to Tier 2 SMEs if within scope of Tier 1. 	The Department may assess liquidated damages in an amount of up to 1% of the Monthly Operational Costs for Tier 1 MMIS 2020 Platform Support Center services for failure to meet the minimum acceptable performance standard. 2020 Platform Support Center trouble ticket resolution rate performance standard measurement begins one month after the operational implementation of the Tier 1 MMIS 2020 Platform Support Center.
SC-3 Support Center Recurring Problems	Tier 1 MMIS 2020 Platform Support Center Recurring Problems minimum is less than 5 percent of trouble tickets and is a measurement of the accuracy with which reported trouble tickets are resolved. Recurring problems are those that have been reported and have occurred again within 7 business days from the close of the initial Tier 1 MMIS 2020 Platform Support Center trouble ticket for the same problem.	The Department may assess liquidated damages in an amount of up to 1% of the Monthly Operational Costs for Tier 1 MMIS 2020 Platform Support Center services for failure to meet the minimum acceptable performance standard. Tier 1 MMIS 2020 Platform Support Center recurring problems performance standard measurement begins one month after the operational implementation of the Tier 1 MMIS 2020 Platform Support Center.

SC-4 Support Center Service Level of Calls Offered.	The following thresholds represent the minimally acceptable service levels by the Tier 1 MMIS 2020 Platform Support Center to respond to calls and is defined as the percentage of calls of all calls received that are answered within a specified target time threshold.	The Department may assess liquidated damages in an amount of up to 1% of the Monthly Operational Costs for Tier 1 MMIS 2020 Platform Support Center services for failure to meet each of the minimum acceptable performance standard. Tier 1 MMIS 2020 Platform Support Center service level performance standard measurement begins one month after the operational implementation of the Tier 1 MMIS 2020 Platform Support Center.
	80% of calls received answered within 20 seconds	
	95% of calls received answered within 60 seconds	
	100% of calls received answered within 300 seconds	
SC-5 Support Center Call Abandon Rate	Minimum performance standard is less than 5% of all incoming calls to the Tier 1 MMIS 2020 Platform Support Center are disconnected by the caller before an agent answers the call where the caller is connected more than 5 seconds.	The Department may assess liquidated damages in an amount of up to 1% of the Monthly Operational Costs for Tier 1 MMIS 2020 Platform Support Center services for failure to meet minimum acceptable performance standard. Tier 1 MMIS 2020 Platform Support Center abandon call rate performance standard measurement begins one month after the operational implementation of the Tier 1 MMIS 2020 Platform Support Center.
SC-6 Support Center Average Speed to Answer	Performance level for the average speed to answer is 60 seconds for all incoming calls.	The Department may assess liquidated damages in an amount of up to 1% of the Monthly Operational Costs for Tier 1 MMIS 2020 Platform Support Center services for failure to meet the minimum acceptable performance standard. Tier 1 MMIS 2020 Platform Support Center service level performance standard measurement begins one month after the operational implementation of the Tier 1 MMIS 2020 Platform Support Center.
SC-7 Support Center Return Contact Response	The minimum acceptable performance level for Tier 1 inquiries for the Tier 1 MMIS 2020 Platform Support Center to return a response for incoming user contact other than calls (such as voice mail, email, web form) within 1 business day is 95 percent.	The Department may assess liquidated damages in an amount of 1% of the Monthly Operational Costs for Tier 1 MMIS 2020 Platform Support Center services for failure to meet the minimum performance standard. Tier 1 MMIS 2020 Platform Support Center return contact response performance standard measurement begins one month after the operational implementation of the Tier 1 MMIS 2020 Platform Support Center.
SC-8 Support Center User Survey Satisfaction	The minimum threshold of user satisfaction of the Tier 1 MMIS 2020 Platform Support Center customer service is 70%.	The Department may assess liquidated damages in an amount of 1% of the Monthly Operational Costs for Tier 1 MMIS 2020 Platform Support Center services for failure to meet the minimum acceptable performance standard. Tier 1 MMIS 2020 Platform Support Center user survey satisfaction performance standard measurement

		begins six month after the operational implementation of the Tier 1 MMIS 2020 Platform Support Center.
SC- 9 Support Center Deliverable weekly reports	Delivery of the weekly report to the Department must be no later than noon first business day of the following week.	A late deliverable may result in the Department assessing liquidated damages up to an amount of \$250 per calendar day up to 3% of the Monthly Operational Costs for Tier 1 MMIS 2020 Platform Support Center services. Tier 1 MMIS 2020 Platform Support Center performance standard measurement begins upon operational implementation of the Tier 1 MMIS 2020 Platform Support Center.
SC-10. Support Center Deliverable Monthly reports	Delivery of the monthly report must be no later than noon of the fifth business day of the following month.	A late deliverable may result in the Department assessing liquidated damages up to the amount of \$500 per calendar day up to a maximum \$3,500. Tier 1 MMIS 2020 Platform Support Center performance standard measurement begins upon the operational implementation of the Tier 1 MMIS 2020 Platform Support Center.

Offeror Response

III-12. Objections and Additions to Standard Contract Terms and Conditions. The Offeror will identify which, if any, of the terms and conditions (contained in Part VI) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror’s failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Department may consider late objections and requests for additions if to do so, in the Department’s sole discretion, would be in the best interest of the Commonwealth. The Department may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror cannot request changes to the other provisions of the RFP, nor can the Offeror request to completely substitute its own terms and conditions for Part VI. All terms and conditions must appear in one integrated contract. The Department will not accept references to the Offeror’s, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, based on the terms and conditions set out in **Part VI**. The Department will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in **Part VI** or to other provisions of the RFP as specifically identified above.

PART IV - COST SUBMITTAL

IV-1. Cost Submittal. The information requested in this Part IV constitutes the Cost Submittal. The Cost Submittal must be placed in a separate sealed envelope within the sealed proposal, separated from the technical submittal. The total proposed cost should be broken down into the components set forth in **Appendix P – Cost Submittal Worksheet**. The percentage of commitment to SDB and SB should not be stated in the Cost Submittal. Offerors should not include any assumptions in their cost submittals. If the Offeror includes assumptions in its cost submittal, the Department may reject the proposal. Offerors should direct in writing to the Project Officer pursuant to **Part I, Section I-9** of this RFP any questions about whether a cost or another component is included or applies. All Offerors will then have the benefit of the Department’s written answer so that all proposals are submitted on the same basis.

The Department will reimburse the selected Offeror for work satisfactorily performed after execution of a written contract and the start of the contract term, in accordance with contract requirements, and only after the Department has issued a notice to proceed.

PART V - SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL

V-1. Small Diverse Business and Small Business General Information. The Department encourages participation by SDBs and SBs as prime contractors, and encourages all prime contractors to make significant commitments to use SDBs and SBs as subcontractors and suppliers.

A SB must meet each of the following requirements:

- The business must be a for-profit, United States business;
- The business must be independently owned;
- The business may not be dominant in its field of operation;
- The business may not employ more than one hundred (100) full-time or full-time equivalent employees;
- The business, by type, may not exceed the following three-year average gross sales:
 - Procurement Goods and Services: \$20 million
 - Construction: \$20 million
 - Building Design Services: \$7 million
 - Information Technology Goods and Services: \$25 million

For credit in the RFP scoring process, a SB must complete the DGS/BDISBO self-certification process. Additional information on this process can be found at:

<http://www.dgs.pa.gov/Businesses/Small%20Business%20Contracting%20Program/Pages/default.aspx>.

A SDB is a DGS-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, Disability-owned small business, or other small businesses as approved by DGS, that are owned and controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

For credit in the RFP scoring process, a SDB must complete the DGS verification process. Additional information on this process can be found at:

<http://www.dgs.pa.gov/Businesses/Small%20Diverse%20Business%20Program/Small-Diverse-Business-Verification/Pages/default.aspx>.

An Offeror that qualifies as a SDB or a SB and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

A SDB or SB may be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

The Department's directory of self-certified SBs and DGS/BDISBO-verified SDBs can be accessed from:

<http://www.dgs.pa.gov/Businesses/Small%20Diverse%20Business%20Program/Small-Diverse-Business-Verification/Pages/Finding-Small-Diverse-Businesses.aspx>.

Questions regarding the SDB and SB Programs, including questions about the self-certification and verification processes can be directed to:

Department of General Services
Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)
Room 601, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: GS-BDISBO@pa.gov
Website: www.dgs.pa.gov

V-2. Small Diverse Business and Small Business (SDB/SB) Participation Submittal. All Offerors are required to submit **two (2)** copies of the SDB and SB Participation Submittal Form contained in (**Appendix L**) and related Letter(s) of Intent (**Appendix M**). The submittal must be sealed in its own envelope, separate from the remainder of the proposal, and must be provided on the SDB and SB Participation Submittal form, with information as follows:

- A.** Offerors must indicate their status as a SDB and as a SB through selection of the appropriate checkboxes.
- B.** Offerors must include a numerical percentage, which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to SDBs and SBs as subcontractors.
- C.** Offerors must include a listing of and required information for each of the SDB and/or SB with whom they will subcontract to achieve the participation percentages outlined on the SDB and SB Participation Submittal.
- D.** Offerors must include a Letter of Intent (attached as **Appendix M** is a Letter of Intent template which may be used to satisfy these requirements) signed by both the Offeror and the SDB or SB for each of the SDBs and SBs identified in the SDB and SB Participation Submittal form. At minimum, the Letter of Intent must include the following:
 - 1.** The fixed numerical percentage commitment and associated estimated dollar value of the commitment made to the SDB or SB; and
 - 2.** A description of the services or supplies the SDB or SB will provide; and
 - 3.** The timeframe during the initial contract term and any extensions, options and renewals when the SDB or SB will perform or provide the services and/or supplies; and
 - 4.** The name and telephone number of the Offeror's point of contact for SDB and SB participation; and
 - 5.** The name, address, and telephone number of the primary contact person for the SDB or SB.
- E.** Each SDB and Small B commitment that is credited by BDISBO along with the overall percentage of SDB and SB commitments will become contractual obligations of the selected Offeror.

NOTE: Offerors will not receive credit for any commitments for which information as above is not included in the SDB and SB Participation Submittal. Offerors will not receive credit for stating that after the contract is awarded they will find a SD or SB.

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 and/or SB Status or entitle an Offeror to receive credit for SDB or SB participation.

V-3. Contract Requirements--SDB and SB Participation. All contracts containing SDB and SB Participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

- A.** Each SDB and SB commitment that was credited by BDISBO and the total percentage of such SDB and SB commitments made at the time of proposal submittal, BAFO or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.
- B.** All SDB and SB subcontractors credited by BDISBO must perform at least 50% of the work subcontracted to them.
- C.** The individual percentage commitments made to SDBs and SBs cannot be altered without written approval from BDISBO.
- D.** SDB and SB commitments must be maintained in the event the contract is assigned to another prime contractor.
- E.** The selected Offeror and each SDB and SB for which a commitment was credited by BDISBO must submit a final, definitive subcontract agreement signed by the selected Offeror and the SDB and/or SB to BDISBO within 30 days of the final execution date of the Commonwealth contract. A Model Subcontract Agreement which may be used to satisfy this requirement is provided in **Appendix Q – Model Form of Small Diverse and Small Business Subcontract Agreement**. The subcontract must contain:
 - 1.** The specific work, supplies or services the SDB and/or SB will perform; location for work performed; how the work, supplies or services relate to the project; and the specific timeframe during the initial term and any extensions, options and renewals of the prime contract when the work, supplies or services will be provided or performed.
 - 2.** The fixed percentage commitment and associated estimated dollar value that each SDB and/or SB will receive based on the final negotiated cost for the initial term of the prime contract.
 - 3.** Payment terms indicating that the SDB and/or SB will be paid for work satisfactorily completed within 14 days of the selected Offeror’s receipt of payment from the Commonwealth for such work.
 - 4.** Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected Offeror’s contract with the Commonwealth and that do not place disproportionate risk on the SDB and/or SB relative to the nature and level of the SDBs’ and/or SBs’ participation in the project.
- F.** If the selected Offeror and a SDB or SB credited by BDISBO cannot agree upon a definitive subcontract within 30 days of the final execution date of the Commonwealth contract, the selected Offeror must notify BDISBO.
- G.** The Selected Offeror shall complete the Prime Contractor’s Quarterly Utilization Report and submit it to the contracting officer of the Issuing Office and BDISBO within ten (10) business days at the end of each quarter of the contract term and any subsequent options or renewals. This information will be used to track and confirm the actual dollar amount paid to SDB and SB subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment. If there was no activity during the quarter,

the form must be completed by stating “No activity in this quarter.” A late fee of \$100.00 per day may be assessed against the Selected Offeror if the Utilization Report is not submitted in accordance with the schedule above.

- H.** The Selected Offeror shall notify the Contracting Officer of the Issuing Office and BDISBO when circumstances arise that may negatively impact the selected Offeror’s ability to comply with SDB and/or SB commitments and to provide a corrective action plan. Disputes will be decided by the Issuing Office and DGS.

- I.** If the Selected Offeror fails to satisfy its SDB and/or SB commitment(s), it may be subject to a range of sanctions BDISBO deems appropriate. Such sanctions include, but are not limited to, one or more of the following: a determination that the selected Offeror is not responsible under the Contractor Responsibility Program; withholding of payments; suspension or termination of the contract together with consequential damages; revocation of the selected Offeror’s SDB status and/or SB status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.

PART VI - IT CONTRACT TERMS AND CONDITIONS

If an award is made to an Offeror, the Offeror shall receive a Contract that obligates the Offeror to furnish the awarded services in accordance with these IT Contract Terms and Conditions:

VI-1. TERM AND SCOPE OF CONTRACT

- (a) 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. The Effective Date shall be:
 - a) the date the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth and federal contracting procedures have been obtained or
 - b) the date referenced in the Contract, whichever is later. The Contract shall not be a legally binding contract until after the fully-executed Contract has been sent to the Contractor.
- (b) The Commonwealth reserves the right to execute the Contract, Purchase Orders or any follow-up Contract documents in ink or electronically. The Contractor understands and agrees that the receipt of an electronically-printed Contract with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent on the Contract represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Contract. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- (c) The Contractor shall not start performance until all of the following have occurred: (1) the Effective Date has arrived; (2) the Contractor has received a copy of the fully executed Contract; and (3) the Contractor has received a Purchase Order or other written notice to proceed signed by the Contracting Officer. The Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred before the Effective Date or before the Contractor receives a copy of the fully executed Contract or before the Contractor has received a Purchase Order. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date.
- (d) The Contractor agrees to furnish the requested services to the Commonwealth as such services are defined in this Contract, the RFP and the Contractor's Proposal.

VI-2. PURCHASE ORDERS

- (a) The Commonwealth may issue Purchase Orders against the Contract. These orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Contractors are not permitted to accept Purchase Orders that require performance in excess of those performance time periods specified in the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.
- (b) Purchase Orders will not include an ink signature by the Commonwealth. The electronically-printed name of the purchaser represents the signature of the individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.
- (c) Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor.
- (d) Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order.

- (e) Purchase Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.
- (f) The Commonwealth and the Contractor specifically agree as follows:
 - (i) No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
 - (ii) Upon receipt of a Purchase Order, the Contractor shall promptly and properly transmit an acknowledgement in return. Any order that is issued electronically shall not give rise to any obligation to deliver on the part of the Contractor, or any obligation to receive and pay for delivered products on the part of the Commonwealth, unless and until the Commonwealth agency transmitting the order has properly received an acknowledgement.
 - (iii) The parties agree that no writing shall be required in order to make the order legally binding. The parties hereby agree not to contest the validity or enforceability of the Contract or a genuine Purchase Order or acknowledgement that have been issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements shall be in writing and signed by the party bound thereby. The Contract and any genuine Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of the Contract or any genuine Purchase Order or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
 - (iv) 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.
- (g) Purchase Orders under five thousand dollars (\$5,000) in total amount may also be made in person or by telephone using a Commonwealth Procurement Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. The Contractor agrees to accept payment through the use of a Commonwealth Procurement card.

VI-3 DEFINITIONS

- (a) Contracting Officer. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract. This person is also referred to as the DHS Contract Administrator.
- (b) Days. Unless specifically indicated otherwise, days mean calendar days.
- (c) Developed Works or Developed Materials. Except for Contractor's internal communications relating to Services of this Contract that are not delivered to the Commonwealth, all documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other literary works, works of authorship, or tangible material

authored or prepared by Contractor in carrying out the obligations and services under this Contract, without limitation. The terms are used herein interchangeably.

- (d) Documentation. A term used to refer to all materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
- (e) Proposal. Contractor's response to the RFP issued by the Department.
- (f) Services. All Contractor activity necessary to satisfy the Contract.

VI-4. CONTRACT SCOPE

- (a) 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 for access to the facility and equipment. No additional payment will be made on the basis of lack of access, unless the Commonwealth fails to provide access as set out in the RFP.
- (b) Except as set out in this Contract, the Contractor shall not offer for sale or provide Commonwealth agencies with any hardware or software (i.e., personal computers, file servers, laptops, personal computer packaged software, etc.). Contractor may recommend the use of tools such as hardware and software, without requiring agencies to purchase those tools. Software tools that are NOT on statewide contract will be acquired through separately procured purchase agreements, and the Contractor shall not be considered for award of such agreements if it has recommended their use.
- (c) Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (OA/OIT) (located at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Bulletin ACC001, IT Accessibility Policy. The Contractor shall ensure that Services procured under this Contract comply with the applicable standards. In the event such standards change during Contractor's performance, and the Commonwealth requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

VI-5. IDENTIFICATION NUMBER

The Contractor must have a SAP vendor number.

VI-6. 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) This Contract; then
- (b) The RFP; and then
- (c) The proposal, as accepted by the Commonwealth.

VI-7. CONTRACT INTEGRATION

- (a) This Contract, including the Contract signature pages, together with the proposal and Best and Final Offer, if any, and the RFP and addenda thereto, if any, that are incorporated herein by reference, constitutes the final, complete, and exclusive Contract between the parties containing all the terms and conditions agreed to by the parties.
- (b) 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) There are no conditions precedent to the performance of this Contract except as expressly set forth herein.
- (d) No contract terms or conditions are applicable to this Contract except as they are expressly set forth herein.

VI-8. PERIOD OF PERFORMANCE

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

VI-9. OPTION TO EXTEND

The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

VI-10. SPECIAL REQUIREMENTS

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

VI-11. SUBCONTRACTS

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

VI-12. OTHER CONTRACTORS

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

equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

VI-13. PRIME CONTRACTOR RESPONSIBILITIES

The Contractor will be responsible for all services in this Contract whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

VI-14. COMPENSATION

- (a) 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 performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.
- (b) Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an invoice itemized by Purchase Order line item to the address referenced on the Purchase Order promptly after items are satisfactorily delivered. The invoice should include only amounts due under the Contract/Purchase Order. The Purchase Order number must be included on all invoices. In addition, the Commonwealth shall have the right to require the Contractor to prepare and submit a "Work In Progress" sheet that contains, at a minimum, the tasks performed, number of hours, hourly rates, and the purchase order or task order to which it refers.

VI-15. PAYMENT

- (a) 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; or
 - (ii) forty-five (45) calendar 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).

The payment date shall be the date specified on the invoice if later than the dates established by (1) and (2).

- (b) Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications.
- (c) Electronic Payments
 - (i) 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).

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

VI-16. 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.

VI-17. INSPECTION AND ACCEPTANCE

- (g) Acceptance of Developed Materials will occur in accordance with the Deliverable Approval Plan submitted by the Contractor and approved by the Commonwealth. Upon approval of the plan by the Commonwealth, the Deliverable Approval Plan becomes part of this Contract. For contracts where the development of software, the configuration of software, or the modification of software is the deliverable, the Deliverable Approval Plan must include an Acceptance Test Plan. The Acceptance Test Plan will provide for a Final Acceptance Test, and may provide for Interim Milestone Acceptance Tests. Each Acceptance Test will be designed to demonstrate that the Developed Materials conform with the functional specification for the Developed Materials, if any, and/or the requirements of this Contract. Contractor shall notify the Commonwealth when the deliverable is completed and ready for acceptance testing. The Commonwealth will not unreasonably delay commencement of acceptance testing.

- (1) For Projects that require software integration at the end of the Project, as set out in the RFP, the Commonwealth's acceptance of a deliverable or milestone shall be final unless at the time of Final Acceptance, the Developed Materials do not meet the acceptance criteria set forth in the Contract.
 - (2) For Projects that do not require software integration at the end of the Project as set out in the RFP, the Commonwealth's acceptance of a deliverable or milestone shall be complete and final.
- (h) Contractor shall certify, in writing, to the Commonwealth when a particular Deliverable milestone, interim or final, is completed and ready for acceptance (hereinafter Acceptance). Unless otherwise agreed to by the Commonwealth, the Acceptance period shall be ten (10) business days for interim milestones and thirty (30) days for final milestones. On or before the 10th business day for interim milestones or 30th business day for the final milestone, following receipt by the Commonwealth of Contractor's certification of completion of a particular milestone, the Commonwealth shall, subject to Section 17(a) either: (1) provide the Contractor with Commonwealth's written acceptance of the Developed Materials in the completed milestone, or (2) identify to Contractor, in writing, the failure of the Developed Materials to comply with the specifications, listing all such errors and omissions with reasonable detail.
- (i) If the Commonwealth fails to notify the Contractor in writing of any failures in the Developed Materials within the applicable Acceptance period, the Developed Materials shall be deemed accepted.
- (j) If the Developed Materials do not meet an accessibility standard, the Contractor must provide written justification for its failure to meet the standard. The justification must provide specific details as to why the standard has not been met. The Commonwealth may either waive the requirement as not applicable to the Commonwealth's business requirements or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.
- (k) Upon the Contractor's receipt of the Commonwealth's written notice of rejection, which must identify the reasons for the failure of the Developed Materials in a completed milestone to comply with the specifications, the Contractor shall have fifteen (15) business days, or such other time as the Commonwealth and Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected Developed Materials, certifying to the Commonwealth, in writing, that the failures have been corrected, and that the Developed Materials have been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted Developed Materials and certification, the Commonwealth shall have thirty (30) business days to test the corrected Developed Materials to confirm that they are in compliance with the specifications. If the corrected Developed Materials are in compliance with the specifications, then the Commonwealth shall provide the Contractor with its acceptance of the Developed Materials in the completed milestone.
- (l) If, in the opinion of the Commonwealth, the corrected Developed Materials still contain material failures, the Commonwealth may either:
 - (i) Repeat the procedure set forth above; or
 - (ii) Proceed with its rights under Section 22 (TERMINATION).

VI-18. DEFAULT

- (a) The Commonwealth may, subject to the provisions of Section 19 (NOTICE OF DELAYS) and Section 51 (FORCE MAJEURE), and in addition to its other rights under the Contract, declare the Contractor in default by written notice to the Contractor, and terminate (as provided in Section 22 (TERMINATION)) the whole or any part of this Contract for any of the following reasons:

- (i) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (ii) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - (iii) Unsatisfactory performance of the work;
 - (iv) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (v) Improper delivery;
 - (vi) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - (vii) Delivery of a defective item;
 - (viii) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - (ix) Discontinuance of work without approval;
 - (x) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - (xi) Insolvency or bankruptcy;
 - (xii) Assignment made for the benefit of creditors;
 - (xiii) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - (xiv) Failure to protect, to repair, or to make good any damage or injury to property;
 - (xv) Breach of any provision of the Contract;
 - (xvi) Failure to comply with representations made in the Contractor's bid/proposal; or
 - (xvii) Failure to comply with applicable industry standards, customs, and practice.
- (b) In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, Supplies and/or Services similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.
- (c) If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other Documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been

terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

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

VI-19. 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 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 21 (CHANGES).

VI-20. CONDUCT OF SERVICES

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.

In determining whether or not the Contractor has performed with due diligence hereunder, it is agreed and understood that the Commonwealth may measure the amount and quality of the Contractor's effort against the representations made in the Contractor Proposal. 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 24 (CONTRACT CONTROVERSIES) of this Contract.

VI-21. 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 if there will be any charges for the Contractor's services in 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 amendments to the Contract, the parties must complete and execute a change notice to modify the Contract and implement the change. The change request will be

evidenced by a Purchase Order issued by the Commonwealth. No work may begin on the change request until the Contractor has received the Purchase Order. If the parties cannot agree upon the results of the investigation or the necessary amendments to the Contract, the change request will not be implemented and, if the Contractor initiated the change request it may elect to handle the matter in accordance with Section 24 (CONTRACT CONTROVERSIES) of this Contract.

- (b) Changes outside the scope of this Contract shall be accomplished through the Commonwealth's normal 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, prior to the provision of the services.

VI-22. TERMINATION

- (a) For Convenience

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

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

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

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 24 (CONTRACT CONTROVERSIES) of this Contract.

- (2) 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 thirty (30) calendar 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.
- (3) 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 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 in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract. The Contractor shall be reimbursed in the same manner

as that described in this section related to Termination for Convenience 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 thirty (30) days or, if a cure within such period is not practical, commence a good faith effort to cure such failure within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and Contractor shall diligently and continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

- (4) Subject to Section 30 (LIMITATION OF LIABILITY) of this Contract, in the event the Commonwealth terminates this Contract in whole or in part as provided in this Subsection 22(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.
 - (5) 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.
 - (6) Nothing in this Subsection 22 (c) shall abridge the Commonwealth's right to suspend, debar, or take other administrative action against the Contractor.
 - (7) 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).
 - (8) If this Contract is terminated as provided by this Subsection 22(c), the Commonwealth may, in addition to any other rights provided in this Subsection, and subject to Section 36 (OWNERSHIP RIGHTS) of this Contract, require the Contractor to deliver to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such reports and other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Payment for such reports and documentation will be made consistent with the Contract.
- (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 24 (CONTRACT CONTROVERSIES), the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

VI-23. BACKGROUND CHECKS

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

VI-24. CONTRACT CONTROVERSIES

- (a) In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- (b) The Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- (c) Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the Contracting Officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

VI-25. CONFIDENTIALITY

- (a) The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In

order for information to be deemed confidential, the party claiming confidentiality must designate the information as “confidential” in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party’s confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party’s possession, other than one copy, which may be maintained for archival purposes only, and which will remain subject to this Contract’s security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration of this Contract). Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to Section 22.c (TERMINATION), in addition to other remedies available to the non-breaching party.

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

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

- (c) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
- (6) Prepare an un-redacted version of the appropriate document, and
 - (7) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
 - (8) Prepare a signed written statement that states:
 - (i) the attached document contains confidential or proprietary information or trade secrets;
 - (ii) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and

- (iii) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
- (9) Submit the two documents along with the signed written statement to the Commonwealth.

VI-26. INSURANCE

- (a) The Contractor shall procure and maintain at its expense and require its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:
 - (1) Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act* (77 P.S. § 101, *et seq.*).
 - (2) Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all Subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, 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 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 the Commonwealth.
- (b) Prior to commencing Services under the Contract, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance. 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 Paragraph until at least thirty (30) days prior written notice has been given to the Commonwealth.
- (c) The Contractor agrees to maintain such insurance for the life of the Contract.
- (d) Upon request to and approval by the Commonwealth, contractor's self-insurance of the types and amounts of insurance set for above shall satisfy the requirements of this Section 26 (INSURANCE), provided the Commonwealth may request from Contractor evidence each year during the term of the contract that Contractor has sufficient assets to cover such losses.

VI-27. CONTRACTOR RESPONSIBILITY PROGRAM

- (a) The Contractor certifies, for itself and all its subcontractors, 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, a written explanation of why such certification cannot be made.
- (b) The Contractor must also certify, in writing, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.

- (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 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, which 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 either searching the internet at <http://www.dgs.state.pa.us> or contacting the:

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

VI-28. 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.

VI-29. TAXES-FEDERAL, STATE, AND LOCAL

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this Section 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.

VI-30. LIMITATION OF LIABILITY

- (a) 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 damages for:
- i. bodily injury;
 - ii. death;
 - iii. intentional injury;
 - iv. damage to real property or tangible personal property for which the Contractor is legally liable; or
 - v. the Contractor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection.
- (b) In no event will the Contractor be liable for consequential or incidental damages unless otherwise specified in the RFP. Except as set out in Section 32 (VIRUS; MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING), the Contractor will not be liable for damages due to lost records or data, unless otherwise specified in the RFP. Notwithstanding the foregoing, the Contractor shall provide reasonable assistance to the Commonwealth in restoring such lost records or data to their most recent backup copy.

VI-31. COMMONWEALTH HELD HARMLESS

- (a) The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. § 732-101, *et seq.*), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- (b) Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

VI-32. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING

- (a) Notwithstanding any other provision in this Contract to the contrary, if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Commonwealth's software or computer networks and has failed to comply with the Commonwealth software security standards, and provided further that the Commonwealth can demonstrate that the virus or malicious, mischievous or destructive programming was introduced by the Contractor or any of its employees, subcontractors or consultants, the Contractor shall be liable for any damage to any data and/or software owned or licensed by the Commonwealth. The Contractor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the

expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that result from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor, its servants, agents or employees through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.). In the event of destruction or modification of software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages. The Contractor shall be responsible for reviewing Commonwealth software security standards in effect at the commencement of the Contract and complying with those standards. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.

- (b) The Contractor shall perform a security scan on any software or computer program developed by the Contractor or its subcontractors in a country other than the United States of America that may come in contact with the Commonwealth's software or computer networks. Contractor shall perform such security scan prior to introducing any such software or computer program into a Commonwealth development environment, test environment or production environment. The results of these security scans will be provided to the Commonwealth prior to installing into any Commonwealth development environment, test environment or production environment. The Commonwealth may perform, at its discretion, additional security scans on any software or computer program prior to installing in a Commonwealth environment as listed above.
- (c) The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the Contractor to provide services to the Commonwealth that will be connected to a Commonwealth network for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made. The Commonwealth shall not install any software or monitoring tools on the Contractor's equipment without the Contractor's written consent to do so.
- (d) The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing services to the Commonwealth. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contract.
- (e) Neither the Commonwealth nor the Issuing Agency will be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

VI-33. PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET PROTECTION

- (a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding that 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, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns.

Pursuant to the Commonwealth Attorneys Act 71 P.S. § 732-101, *et seq.*, the Office of Attorney General (“OAG”) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement that prevents the Commonwealth from continuing to use the Developed Materials as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth to provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor will, at its expense, provide whatever cooperation OAG requests in the defense of the suit.

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

- (3) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (g) The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.
- (h) Notwithstanding the above, the Contractor shall have no obligation for:
 - (1) modification of any product, service, or deliverable provided by the Commonwealth;
 - (2) any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
 - (3) use of the product, service, or deliverable in other than its specified operating environment;
 - (4) 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;
 - (5) infringement of a non-Contractor product alone;
 - (6) the Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or
 - (7) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.
- (i) The obligation to indemnify the Commonwealth, under the terms of this Section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

VI-34. SENSITIVE INFORMATION

- (a) The Contractor shall not publish or otherwise disclose, except to the Commonwealth or the Contractor's subcontractors and except matters of public record (which is to be determined entirely in the discretion of the Commonwealth), any information or data obtained hereunder from private individuals, organizations, or public agencies.
- (b) The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Contract for any purpose not connected with the parties' Contract responsibilities except with consent pursuant to applicable state and federal law and regulations. All documents associated with direct disclosures of this kind must be announced to and open for inspection by the Commonwealth.
- (c) Contractor will comply with all federal or state laws related to the use and disclosure of information, including information that constitutes PHI as defined by the HIPAA. Further, by signing this Contract, the Contractor agrees to the terms of the Business Associate Addendum, which is incorporated into this Contract as Exhibit A. .

- (d) Rights and obligations of the parties under this Section 34 survive the termination of this Contract

VI-35. CONTRACT CONSTRUCTION

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

VI-36. OWNERSHIP RIGHTS

(a) Ownership of Properties

- (1) All “Developed Works” shall be owned according to the provisions set forth in this Section 36.
- (2) All software owned by the Commonwealth or its licensors (“Commonwealth Software”) as of the Effective Date, shall be and shall remain the exclusive property of the Commonwealth or its licensors, and Contractor shall acquire no rights or interests in the Commonwealth Software or Tools or that of its licensors by virtue of this Contract except as described in this Section or in another provision set forth in this Contract. The Contractor shall not use any Commonwealth Software, Commonwealth Tools or software or tools of its licensors for any purpose other than for completion of work to be performed under this Contract. In the use of Commonwealth Software, Commonwealth Tools or software or tools of its licensors, Contractor will be bound by the confidentiality provisions of this Contract.

(b) Definitions

- (1) **Software**—For the purposes of this Contract, the term “software” means 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).
- (2) **Data**—For the purposes of this Contract, the term “data” means any recorded information, regardless of form, the media on which it may be recorded, or the method of recording.
- (3) **Technical Data**—For purposes of this Contract, the term “technical data” means any specific information necessary for the development, production or use of the Commonwealth Software.

(c) Commonwealth Property—Non-Exclusive, License Grant and Restrictions

During the term of this Contract, Commonwealth grants to Contractor 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 do the following:

- (1) Obtain access to and use of the Commonwealth Software in accordance with the terms of this Contract.
- (2) Reproduce the Commonwealth Software for archival purposes or for other purposes expressly provided for under this Contract.
- (3) Modify the Commonwealth Software consistent with the terms and conditions of this Contract provided that Contractor agrees to assign to the Commonwealth, its rights, if any, in any

derivative works resulting from Contractor's modification of the Commonwealth Software. 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.

- (4) Allow the Contractor's subcontractors approved by the Commonwealth to obtain access to the Commonwealth Software for the purposes of complying with the terms and conditions of this Contract; provided, however, that neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Software. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this Section.
- (5) To the extent that Contractor uses Commonwealth Software, Commonwealth Tools or software or tools of its licensor, Contractor agrees to protect the confidentiality of these works and maintain these proprietary works with the strictest confidence.

(d) Impact of Third Party Agreements

Subject to the terms of any third party agreement to which the Commonwealth is a party, (i) the Commonwealth shall, at no cost to Contractor, provide Contractor with access to the Commonwealth Software in the form in use by Commonwealth as of the Effective Date of this Contract and, (ii) Contractor, as part of the Services to be rendered under this Contract, shall compile and, as changes are made, update a list of all of the Commonwealth Software then in use by Contractor or any of its subcontractors in connection with Contractor's performance of the Services required by this Contract.

(e) Reservation of Rights

All rights, not expressly granted here to Contractor on a nonexclusive basis, including the right to grant non-exclusive licenses and other rights are reserved by the Commonwealth.

(f) Termination of Commonwealth License Grant

Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, all rights granted to Contractor in this Section 36 (OWNERSHIP RIGHTS) shall immediately cease. Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Software and Tools (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. Within fifteen (15) calendar days after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Software 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 and Tools, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.

(g) Effect of License Grant Termination

Consistent with the provisions of this Section, Contractor shall refrain from manufacturing, copying, marketing, distributing, or use of any Commonwealth Software or any other work which incorporates the Commonwealth Software. The obligations of this Section 36 (OWNERSHIP RIGHTS) shall survive any termination of this Contract.

(h) Use of Contractor-Owned Software

All software owned by Contractor (Contractor Software) and tools owned by Contractor (Contractor Tools, as defined in paragraph (i) below) prior to the Effective Date of this Contract shall be and shall remain the exclusive property of Contractor. The Commonwealth shall acquire no rights or interests in the Contractor Software or the Contractor Tools by virtue of this Contract except as set forth in this Section.

(i) Definition of Contractor Tools

Contractor Tools is defined as any tools, both in object code and source code form, which Contractor has previously developed, or which Contractor independently develops or licenses from a third party, excluding any tools that Contractor creates pursuant to this Contract. Contractor Tools include methodologies, information, concepts, and toolbars for maneuvering between pages, search engines, JAVA applets, and ActiveX controls.

(j) Required Reports, Records and Inventory of Contractor Tools and Contractor Software

(1) Contractor must provide a list of all Contractor Tools and Contractor Software to be delivered in connection with the deliverables or Developed Materials prior to commencing any work under the Contract. Contractor must also provide a list of all other Contractor Tools and Contractor Software intended to be used by Contractor to provide the services under this Contract but will not become part of or necessary for the use of the Developed Materials. All Contractor Tools and Contractor Software necessary to use deliverables or Developed Materials shall be delivered to the Commonwealth along with the license set forth in Section 36(k). Contractor may amend these lists from time to time while the Contract is being carried out or upon its completion. In the event that the Contractor fails to list a Contractor Tool, but can demonstrate that such tool was independently developed by Contractor prior to the Contract on which it was used, Contractor shall nevertheless retain complete ownership of such Contractor Tool that is necessary to use the deliverables or Developed Materials, provided that notice is given to the Commonwealth prior to its use on the Contract. Any Contractor Tools or Contractor Software not included on the lists will be deemed to have been created under this Contract.

(2) As part of its response to a RFP, the Contractor will provide a list of all software and tools that are commercially available and which are required to support the deliverables or Developed Materials.

(3) During the term of this Contract, Contractor shall maintain at its principal office books of account and records showing its actions under this Contract. Upon reasonable notice by Commonwealth, Contractor shall allow Commonwealth to inspect these records and accounts for purposes of verifying the accuracy of such accounts and records.

(4) In the event that Contractor fails to list a Contractor Tool or Contractor Software, but is able to demonstrate that such tool or software was independently developed by Contractor prior to the Effective Date of this Contract, Contractor shall retain complete ownership of such Contractor Tool or Contractor Software that is necessary to use the deliverables or Developed Works, provided that notice is given to the Commonwealth prior to use on the Contract.

(k) **Expiration or Termination Non-Exclusive License Grant—Non-Commercial Contractor Tools and Software**

Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, and at the request of Commonwealth, Contractor shall (i) grant to Commonwealth a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works and unless Commonwealth terminates this Contract without cause, grant to third parties engaged by Commonwealth the right to use, modify, and prepare derivative works based upon all or any portion of

the non-commercially available Contractor Software and the non-commercially available Contractor Tools owned by Contractor and used by Contractor in connection with the Services, the foregoing rights being granted to the extent reasonably necessary to facilitate Commonwealth's or such third party's completion of and maintenance of the Services to be provided by Contractor under this Contract immediately prior to such expiration or termination and (ii) deliver to Commonwealth the object code version of such non-commercially available Contractor Software and such non-commercially available Contractor Tools in the form used by Contractor in connection with the Services immediately prior to such expiration or termination to allow the Commonwealth to complete and maintain such work. If Commonwealth enters into a contract that allows for the use of the Contractor Software or Contractor Tools for which a license is granted under this Section 36 (OWNERSHIP RIGHTS), the Commonwealth will include a provision in that contract that limits the use of the Contractor Software or Contractor Tools as delineated in this Section.

(1) Rules of Usage for Developed Works

- (1) If Developed Works modify, improve, 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, of such Developed Works. 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. 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.
- (2) If 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. To the extent Commonwealth owns the software or other materials, it hereby grants to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform, prepare derivative works from, and distribute copies of such Developed Works. To the extent Commonwealth has a license to the software or other materials, and to the extent that it, in its sole discretion determines it is able to do so the Commonwealth will grant to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform and distribute copies of such Developed Works.
- (3) If Developed Works have been funded by Commonwealth, to any extent, with either Commonwealth or federal funds, and the Developed Works do not include pre-existing materials generally licensed by the Contractor, then the Commonwealth shall have all right, title, and interest (including ownership of copyright and trademark) to such Developed Works and the Commonwealth hereby grants to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform, prepare derivative works from, and distribute copies of such Developed Works. The Commonwealth shall exclusively own all software products first developed under the terms of this contract by the Contractor, its subcontractors or other third party vendors that are specifically developed for, engineered and integrated into the Developed Works.

- (4) When the Developed Work is a report provided by a research company that was provided under this Contract, but which was not developed specifically for the Commonwealth under this Contract, the ownership of the Developed Work will remain with the Contractor, provided, however, that the Commonwealth has the right to copy and distribute the Developed Work within the Commonwealth.
- (m) Copyright Ownership—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 United States Copyright Act of 1976, as amended, 17 United States Code. 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 assign all copyright interest, proprietary rights, trade secrets, and other right, title, and interest in and to the Developed Works to the 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. The Contractor further agrees that it will include this requirement in any subcontractor or other agreement with third parties who in any way participate in the creation or development of Developed Works. Upon completion or termination of this Contract, Developed Works shall immediately be delivered by Contractor to the Commonwealth. Contractor 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 of the United States.
- (n) Patent Ownership
- (1) 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.
- (2) Contractor shall not use any computer program, code, or any works developed by or for Contractor independently of this Contract (“Pre-Existing Materials”) in the performance of the Services under this Contract, without the express written consent of the Commonwealth. Any Pre-Existing Materials used by Contractor for performance of Services under this Contract without Commonwealth consent shall be deemed to be Developed Works as that term is used in this Section. In the event that Commonwealth provides such consent, Contractor shall retain any and all rights in such Pre-Existing Materials.
- (o) Federal Government Interests

Funding under this Contract will be provided by the federal government. Accordingly, the rights to Developed Works or Patentable Items of Contractors or subcontractors are subject to government rights as set forth in 37 C.F.R. § 401 and 42 C.F.R. § 433.112, 45 C.F.R. § 95.617 and other applicable statutes, regulations and federal requirements.

(p) Usage Rights for Know-How and Technical Information

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 not otherwise covered by this Section relating to the Services which Contractor or Commonwealth (alone or jointly with the Commonwealth) develops or learns in connection with Contractor's provision of Services to Commonwealth under this Contract.

(q) Commonwealth Intellectual Property Protection

Contractor acknowledges Commonwealth's exclusive right, title and interest, including without limitation copyright and trademark rights, in and to Commonwealth Software, Commonwealth Tools and the Developed Works developed under the provisions of this Section, shall not in any way, at any time, 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 Software, Commonwealth Tools, or the Developed Works without Commonwealth's written consent, which consent may be withheld by the Commonwealth for any reason. Further, Contractor shall not in any manner represent that Contractor has any ownership interest in the Commonwealth Software, Commonwealth Tools, or the Developed Works. This provision is a material part of this Section.

(r) Contractor Intellectual Property Protection

Commonwealth acknowledges that it has no ownership rights in the Contractor Software or Contractor Tools other than those set forth in this Contract, or as may be otherwise granted in writing.

(s) Source Code and Escrow Items Obligations

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. To the extent that the Developed Works include application software or other materials generally licensed by the Contractor, then the source code shall be placed in escrow, subject to the terms and conditions of an Escrow Agreement to be executed by the Parties and an Escrow Agent that is acceptable to the Commonwealth.

(t) 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 tangible 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.

(u) Commercial Software

If a product or deliverable under this Contract is commercially available software or requires commercially available software for use and the Contractor is the licensor of the software, Contractor shall enter into a license agreement with the Commonwealth that incorporates Exhibit C (Software License Requirements) as a material part of the software license agreement. If a product or deliverable under this Contract is commercially available software or requires commercially available software for use and the Contractor is not the licensor of the software, the Contractor hereby agrees that, before it incorporates such software into a deliverable, Contractor will inform the licensor of the software that it will be required to enter into a software license agreement with the Commonwealth that incorporates Exhibit C (Software License Requirements) as a material part of the licensor's software license agreement.

VI-37. PUBLICATION RIGHTS AND/OR COPYRIGHTS

- (a) Except as otherwise provided in Section 36 (OWNERSHIP RIGHTS), 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 Section 36 (OWNERSHIP RIGHTS) and the confidentiality provisions of Section 25 (CONFIDENTIALITY), 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.
- (c) Rights and obligations of the parties under this Section 37 survive the termination of this Contract.

VI-38. CHANGE OF OWNERSHIP OR INSOLVENCY

In the event that the Contractor should change ownership for any reason whatsoever, the Commonwealth shall have the exclusive option of continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract, or continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs, or immediately terminating this Contract. Nothing in this section limits the Commonwealth's exercise of any rights that the Commonwealth may have under Section 22 (TERMINATION).

VI-39. 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.

VI-40. INDEPENDENT CAPACITY OF CONTRACTOR

- (a) The parties to this Contract agree that the services performed by the Contractor under the terms of this Contract are performed as an independent Contractor. The Services performed by the Contractor are

performed neither as an employee of the Commonwealth of Pennsylvania nor as a partnership or joint venture between the Commonwealth and the Contractor.

- (b) Except as otherwise provided by the terms of this Contract, the Commonwealth shall have no control over the manner in which the contractual Services are performed by the Contractor, or any subcontractor. Any job specifications or standards of work attached to or incorporated into this Contract or any subcontracting restrictions contained in this Contract shall not be construed as the Commonwealth's direction or control over the manner of the performance of services provided by the Contractor.

VI-41. COMPLIANCE WITH LAWS

The Contractor shall comply with all federal, state, and local laws applicable to its Services, 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.

VI-42. 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) above.

VI-43. 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 Section 43(c) below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by law, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in Section 25 (CONFIDENTIALITY).

- (c) The Contractor shall preserve and make available its records for a period of five (5) years from the expiration date of this Contract:
 - (1) 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 five (5) years from the date of any resulting final settlement.
 - (2) 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 Section 43(c)(2) above, the Contractor may in fulfillment of its obligation to retain its records as required by this Section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two (2) years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth with the concurrence of its auditors.
- (e) The provisions of this Section shall be applicable to and included in each subcontract hereunder. The term “subcontract” as used in this contract only, excludes purchase orders not exceeding \$1,000 and subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

VI-44. SINGLE AUDIT ACT OF 1984

In compliance with the *Single Audit Act of 1984*, 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 *Government Auditing Standards*, 1994 Revisions (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*, 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*.

VI-45. 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, as amended; the *Pennsylvania Solid Waste Management Act*, Act of July 7, 1980 (P.L. 380, No. 97), as amended; and the *Dam Safety and Encroachment Act*, Act of November 26, 1978 (P.L. 1375, No. 325), as amended.

VI-46. NONDISCRIMINATION CLAUSE/SEXUAL HARASSMENT CLAUSE [Contracts]

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) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.

- (h) 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.

VI-47. CONTRACTOR INTEGRITY PROVISIONS

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

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

- (a) “Affiliate” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- (b) “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
- (c) “Contractor” means the individual or entity that has entered into this contract with the Commonwealth.
- (d) “Contractor Related Parties” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- (e) “Financial Interest” means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- (f) “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18*, the *4 Pa. Code §7.153(b)*, shall apply.
- (g) “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

- (a) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- (b) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor

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

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

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

- (f) Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- (g) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

- (h) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- (i) Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- (j) For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

VI-48. 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.

VI-49. WARRANTIES

The Contractor warrants that the Services and Developed Works will conform in all material respects to the functional specifications for the Developed Works and the requirements of the Contract. The warranty period for the Services and Developed Works shall be ninety (90) days from final acceptance. The Contractor shall correct any non-conformity within the warranty period specified herein.

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

- (b) 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 ten (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 functional specifications of the Developed Works set forth in this Contract. The Contractor shall have no obligation with respect to nonconformities arising out of: (a) modifications to Developed Materials made by the Commonwealth, (b) use of the Developed Materials not in accordance with the documentation or specifications applicable thereto, (c) failure by the Commonwealth to implement any corrections or enhancements made available by the Contractor, (d) combination of the Developed Materials with any items not supplied or approved by the Contractor, or (e) the failure of any software licensed under a separate license agreement to conform to its specifications or documentation.
- (c) Contractor warrants that it has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Developed Materials under this Contract.
- (d) THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (e) All warranties shall survive final acceptance.
- (f) In the event of an action or complaint by Commonwealth against Contractor pertaining to these warranties, Contractor may raise any defenses that it may have.

VI-50. LIQUIDATED DAMAGES

- (a) By accepting this Contract, the Contractor agrees to the delivery and acceptance requirements of this Contract. If a Contract schedule 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 50 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 Commonwealth and Contractor agree that the Deliverables identified in the Payment Schedule set forth in this Contract as "Major Deliverables" (the "Major Deliverables") shall be those for which liquidated damages shall be applicable in the event of delay of their completion beyond the delivery date specified in the Contract. If Major Deliverables are not identified in the Contract, liquidated damages shall apply to the total value of the Contract.
- (c) The amount of liquidated damages for any such Major Deliverable not completed by the deliverable schedule set out in the Contract shall be three-tenths of a percent (.3%) of the price of the specifically identified Major Deliverable for each calendar day following the scheduled completion date of such Major Deliverable. Liquidated damages shall be assessed each calendar day until the date on which the Contractor completes such Major Deliverable, up to a maximum of thirty (30) calendar days. Contractor may recoup the total amount of liquidated damages assessed against previous Major Deliverables if the Contractor accelerates progress towards future Major Deliverables and meets the final project completion date set out in the Contract.
- (d) If, at the end of the thirty (30) day period specified in Section 50(c) above, the Contractor has not met the schedule for completion of the Major Deliverable, then the Commonwealth, at no additional expense and at its option, may either:

- (1) immediately terminate the Contract and all software, documentation, reports, Developed Materials and any other materials provided for or created for the Commonwealth as a result of this Contract shall be given to the Commonwealth, and the Commonwealth shall be entitled to its remedies under Section 22(c); or
 - (2) 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.
- (e) At the end of the Contract term, 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 deducting them from the invoices submitted under this Contract or any other contract Contractor has with the Commonwealth, by collecting them through the performance security, if any, or by billing the Contractor as a separate item.
- (f) To the extent that the delay is caused by the Commonwealth, no liquidated damages will be applied.
- (g) If the delays are caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without their fault or negligence, the Contractor shall not be liable for liquidated damages for delays, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

VI-51. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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

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

VI-52. 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.

VI-53. RIGHT-TO-KNOW LAW

- (a) The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of this provision, 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 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 ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - (ii) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.
- (f) If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.
- (g) The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- (h) The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the

Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

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

VI-54. 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 24 (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.

VI-55. ENHANCED MINIMUM WAGE PROVISIONS

a. Contractor will pay no less than \$10.15 per hour 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 when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.

b. Adjustment. Beginning January 1, 2017, and annually thereafter, Contractor shall pay its employees described in Paragraph 1 an amount that is no less than the amount previously in effect; increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication as determined by the United States Bureau of Labor Statistics; and rounded to the nearest multiple of \$0.05. 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:

1. exempt from the minimum wage under the Minimum Wage Act of 1968;
2. covered by a collective bargaining agreement;
3. 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
4. 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 period 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 termination of the contract, 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.

VI-56. ARRA ADDENDUM

Contractor agrees that in consideration of receipt of Federal American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) Funds, it shall comply with all of the terms, conditions, requirements and limitations set forth in Exhibit B (ARRA Addendum), which is incorporated herein as a material part of the Contract; provided, however, the requirements of Exhibit B shall only apply to those products and/or services purchased in whole or in part with ARRA funds.

VI-57. RECYCLED MATERIALS

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 below.

**PAPER PRODUCTS
RECYCLED CONTENT**

(A) REQUIREMENT

All paper offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer content as shown below for the applicable products:

Item	Notes	Post-Consumer Content (%)
Printing and Writing Papers		
Reprographic	Business papers such as bond, electrostatic, copy, mimeo, duplicator and reproduction	30
Offset	Used for book publishing, commercial printing, direct mail, technical documents, and manuals	30
Tablet	Office paper such as note pads and notebooks	30
Forms bond	Bond type papers used for business forms such as continuous, cash register, sales book, unit sets, and computer printout, excluding carbonless	30
Envelope	Wove	30
	Kraft, white and colored (including manila)	10
	Kraft, unbleached	10
Cotton fiber	Excludes custom envelopes High-quality papers used for stationery, invitations, currency, ledgers, maps, and other specialty items	30
Text and cover	Premium papers used for cover stock, books, and stationery and matching envelopes	30
Supercalendered	Groundwood paper used for advertising and mail order inserts, catalogs, and some magazines	10

Machine finished groundwood	Ground-wood paper used in magazines and catalogs	10
Papeteries	Used for invitations and greeting cards	30
Check safety	Used in the manufacture of commercial and government checks	10
Coated	Used for annual reports, posters, brochures, and magazines. Have gloss, dull, or matte finishes	10
Carbonless	Used for multiple-impact copy forms	30
File folders	Manila or colored	30
Dyed filing products	Used for multicolored hanging folders and wallet files	20
Index and card stock	Used for index cards and postcards	20
Pressboard	High-strength paperboard used in binders and report covers	20
Tags and tickets	Used for toll and lottery tickets, licenses, and identification and tabulating cards	20
Newsprint		
Newsprint	Groundwood paper used in newspapers	20
Commercial Sanitary Tissue Products		
Bathroom tissue	Used in rolls or sheets	20
Paper towels	Used in rolls or sheets	40
Paper napkins	Used in food service applications	30
Facial tissue	Used for personal care	10
General-purpose	Used in cleaning and wiping applications	40
Industrial wipers		
Paperboard and Packaging Products		
Corrugated containers	Used for packaging and shipping a variety of goods (<300 psi)	25
	(300 psi)	25
Solid fiber boxes	Used for specialized packaging needs such as dynamite packaging and army ration boxes	40
Folding cartons	Used to package a wide variety of foods, household products, cosmetics, pharmaceuticals, detergent, and hardware	40
Industrial paperboard	Used to create tubes, cores, cans and drums	45
Miscellaneous	Includes “chipboard” pad backings, book covers, covered binders, mailing tubes, game boards, and puzzles	75
Padded mailers	Made from kraft paper that is usually brown but can be bleached white	5
Carrierboard	A type of folding carton designed for multipack beverage cartons	10
Brown papers	Used for bags and wrapping paper	5

Miscellaneous Paper Products

Tray liners	Used to line food service trays. Often contain printed information.	50
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“Post-consumer” content is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer content is part of the broader category of recovered material.”

The Commonwealth of Pennsylvania recognizes that paper products are universally made with scrap material recovered from the manufacturing process; use of such materials is a standard practice, both efficient and economical for the paper maker; therefore, bidders of paper products need not certify that their products are made with “pre-consumer,” “recovered,” or “secondary” paper fiber.

(B) BIDDER’S CERTIFICATION

Bidder certifies that the paper product(s) that the bidder is offering contains the required minimum percentage of post-consumer content as shown above for the product.

(C) MANUFACTURER/MILL CERTIFICATION

In addition to the Bidders Certification in Subsection (B), a mill certification must be completed and signed by the mill before payment will be made to the successful bidder for the delivered items. The enclosed *Manufacturer/Mill* Certification form must be used. Bidders are not required to submit the completed and signed *Manufacturer/Mill* Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) ENFORCEMENT

Awarded bidders may be required, after delivery of the paper product(s), to provide the Commonwealth with documentary evidence that the paper product(s) were in fact produced with the required minimum percentage of post-consumer content.

EXHIBIT A**COMMONWEALTH OF PENNSYLVANIA
BUSINESS ASSOCIATE ADDEDNUM**

WHEREAS, the Pennsylvania Department of Human Services (Covered Entity) and Contractor (Business Associate) intend to protect the privacy and security of certain PHI to which Business Associate may have access in order to provide services to or on behalf of Covered Entity, in accordance with the HIPAA, the Health Information Technology for Economic and Clinical Health (HITECH) Act, 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) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, , as amended, 42 C.F.R. §§ 431.301-431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), 35 P.S. § 7607, 50 Pa.C.S. § 7111, 71 P.S. § 1690.108(c), 62 P.S. § 404, 55 Pa. Code Chapter 105, 55 Pa. Code Chapter 5100, the Pennsylvania Breach of Personal Information Notification Act, 73 P.S. § 2301 *et seq.*, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance.

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

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI must be handled in accordance with this Addendum 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, applicable regulations and agency guidance.
- b. "Covered Entity" shall have the meaning given to such term under HIPAA, the HITECH Act and applicable regulations and agency guidance.
- c. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- d. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).
- e. "Privacy Rule" shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164, as amended, and related agency guidance.
- f. "Protected Health Information" or "PHI" shall mean any information, transmitted or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations and agency guidance. PHI also includes any and all information that can be used to identify a current or former applicant or recipient of benefits or services of Covered Entity (or Covered Entity's contractors/business associates).
- g. "Security Rule" shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- h. "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology as specified in HITECH regulations and agency guidance or as otherwise defined in the HITECH Act.

2. **Stated Purposes For Which Business Associate May Use Or Disclose PHI.** The Business Associate shall be permitted to use and disclose PHI provided by or obtained on behalf of Covered Entity for the purposes of providing services under its ITC/QA Contract with Covered Entity, except as otherwise stated in this Addendum.

NO OTHER DISCLOSURES OF PHI OR OTHER INFORMATION ARE PERMITTED.

3. **BUSINESS ASSOCIATE OBLIGATIONS:**

- a) **Limits On Use And Further Disclosure.** Business Associate shall not further use or disclose PHI provided by, or created or obtained on behalf of Covered Entity other than as permitted or required by this Addendum or as required by law and agency guidance.
- b) **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Addendum. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary requirements as set forth in applicable federal and state statutory and regulatory requirements and agency guidance.
- c) **Reports Of Improper Use Or Disclosure.** Business Associate hereby agrees that it shall report to DPW Chief Information Security Officer at (717) 772-6469, within two (2) days of discovery any use or disclosure of PHI not provided for or allowed by this Agreement.
- d) **Reports Of Security Incidents.** In addition to the breach notification requirements in section 13402 of the HITECH Act and related regulations, agency guidance and other applicable federal and state laws, Business Associate shall report to DPW Chief Information Security Officer at (717) 772-6469, within two (2) days of discovery any security incident of which it becomes aware. At the sole expense of Business Associate, Business Associate shall comply with all federal and state breach notification requirements, including those applicable to Business Associate and those applicable to Covered Entity. Business Associate shall indemnify the Covered Entity for costs associated with any incident involving the acquisition, access, use or disclosure of Unsecured PHI in a manner not permitted under federal or state law and agency guidance.
- (e) **Subcontractors And Agents.** At any time PHI is provided or made available to Business Associate subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and shall first enter into a subcontract or contract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Addendum.
- (f) **Right Of Access To PHI.** Business Associate shall 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 five (5) business days of receiving a written request from the Covered Entity. Business Associate shall provide PHI in the format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by Business Associate and the individual. If the request is for information maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, Business Associate must provide the individual with access to the PHI in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the Business Associate and the individual. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity within five (5) business days. Business associate shall further conform with all of the requirements of 45 C.F.R. §164.524 and other applicable laws, including the HITECH Act and related regulations, and agency guidance.

- (g) **Amendment And Incorporation Of Amendments.** Within five (5) business days of receiving a request from Covered Entity for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available and incorporate the amendment to enable Covered Entity to comply with 45 C.F.R. §164.526, applicable federal and state law, including the HITECH Act and related regulations, and agency guidance. If an individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity within five (5) business days.
- (h) **Provide Accounting Of Disclosures.** Business Associate shall maintain a record of all disclosures of PHI in accordance with 45 C.F.R. §164.528 and other applicable laws and agency guidance, including the HITECH Act and related regulations. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, and the purpose of the disclosure. Business Associate shall make such record available to the individual or the Covered Entity within five (5) business days of a request for an accounting of disclosures.
- (i) **Requests for Restriction.** Business Associate shall comply with requests for restrictions on disclosures of PHI about an individual if the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for treatment purposes), and the PHI pertains solely to a health care item or service for which the service involved was paid in full out-of-pocket. For other requests for restriction, Business Associate shall otherwise comply with the Privacy Rules, as amended, and other applicable statutory and regulatory requirements and agency guidance.
- (j) **Access To Books And Records.** Business Associate shall make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary of Health and Human Services or designee for purposes of determining compliance with applicable laws and agency guidance.
- (k) **Return Or Destruction Of PHI.** At termination or expiration of the contract, Business Associate shall return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate may not retain any copies of the PHI after termination or expiration of its contract. If return or destruction of the PHI is not feasible, Business Associate shall extend the protections of this Addendum to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.
- (l) **Maintenance of PHI.** Notwithstanding Section 3(k) of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the its contract and this Addendum and shall continue to maintain the information required under the various documentation requirements of its contract and this Addendum (such as those in §3(h)) for a period of six (6) years after termination or expiration of its contract, unless Covered Entity and Business Associate agree otherwise.
- (m) **Mitigation Procedures.** Business Associate shall establish and 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 Addendum or the Privacy Rules, as amended. Business Associate shall mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Addendum or applicable laws and agency guidance.
- (n) **Sanction Procedures.** Business Associate shall develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Addendum, applicable laws or agency guidance.
- (o) **Grounds For Breach.** Non-compliance by Business Associate with this Addendum or the Privacy or Security Rules, as amended, is a breach of the contract, for which the Commonwealth may elect to terminate Business Associate's contract.

- (p) **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion that Business Associate has violated a material term of this Addendum.
- (q) **Failure to Perform Obligations.** In the event Business Associate fails to perform its obligations under this Addendum, 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 Addendum and applicable laws and agency guidance.
- (r) **Privacy Practices.** Covered Entity will provide and Business Associate shall immediately begin using 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 designated by the Program or Covered Entity. Covered Entity may change 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. Business Associate shall otherwise comply with all applicable laws and agency guidance pertaining to notices of privacy practices, including the requirements set forth in 45 C.F.R. § 164.520.

4. OBLIGATIONS OF COVERED ENTITY:

- a) **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with applicable law and agency guidance, as well as changes to such notice. Covered Entity will post on its website any material changes to its notice of privacy practices by the effective date of the material change
- b) **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware, if such changes affect Business Associate's permitted or required uses and disclosures.
- c) **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. §164.522 and other applicable laws and applicable agency guidance, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

EXHIBIT B

ARRA ADDENDUM

Implementation of the American Recovery and Reinvestment Act of 2009

Preamble

ARRA funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of ARRA and related guidance. For a project funded by other sources in addition to ARRA funds, Contractor must keep separate records for ARRA funds and must ensure those records comply with the requirements of the ARRA.

Contractor agrees that in consideration of receipt of federal ARRA Funds, it will comply with all of the terms, conditions, requirements and limitations set forth below:

Definitions

“ARRA funds” mean funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

ARRA Terms & Conditions

1. Revisions to Requirements. Contractor acknowledges that this Addendum may be revised to comply with ongoing guidance from the relevant federal or Commonwealth agencies regarding requirements for ARRA funds. Contractor will abide by any such revisions upon receipt of written notification from the Commonwealth of the revision, which will automatically become a material part of this Addendum, without the necessity of either party executing any further instrument.
2. Reporting Requirements. Not later than 5 days after the end of each calendar quarter, or more frequently as directed by the Commonwealth, the Contractor shall submit a report to the Commonwealth that contains:
 - (a) The total amount of ARRA funds received;
 - (b) The amount of ARRA funds received that were expended or obligated to projects or activities;
 - (c) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
 - i) the name of the project or activity;
 - ii) a description of the project or activity;
 - iii) an evaluation of the completion status of the project or activity;
 - iv) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - v) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment;
 - (d) Detailed information on any subcontracts or subgrants awarded by the Contractor must include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget;

(e) If required by the Commonwealth, Contractor will separately identify the expenditures for each award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the Contractor reports required by ARRA; and

(f) If required by the Commonwealth, Contractor shall submit backup documentation for expenditures of ARRA funds including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Commonwealth.

3. Registrations and Identification Information

(a) Contractor must maintain current registration in the Center Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(b) If applicable, the Contractor will separately identify to each sub-contractor and document at the time of award of contract or approval of application and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds.

4. Flow Down Requirement. Contractor must include these ARRA Terms and Conditions in any subcontract where applicable.

5. Prohibition on Use of Funds. No ARRA funds may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or any other items prohibited by ARRA.

6. Required Job Posting. To ensure Pennsylvanians have the utmost opportunity to be hired for jobs created through the receipt of ARRA funding, all Contractors shall post jobs they create or seek to fill as a result of receiving ARRA funding to the PA CareerLink® system at www.pacareerlink.state.pa.us . Contractors can locate their local PA CareerLink® office through the same website or by calling 1-866-858-2753. Staff at local PA CareerLink® can assist Contractors with posting positions and explain how to retrieve resumes or applications within the system.

7. Wage Rate Requirements. Section 1606 of ARRA requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

8. Whistleblower Provision.

(a) An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
- (2) a gross waste of covered funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (4) an abuse of authority related to the implementation or use of covered funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate U.S. Office of the Inspector General.

(c) Any employer receiving covered funds under ARRA, shall post notice of the rights and remedies as required by Section 1553 of ARRA. See www.recovery.gov.

9. Duty to Report Fraud. Contractor and its subcontractors shall promptly refer to the U.S. Office of Inspector General and Commonwealth Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person will or has: 1) submitted a false claim under the False Claims Act; 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, ethics or similar misconduct involving ARRA funds; or 3) engaged in misuse, gross waste, gross mismanagement or abuse of authority related to the use or award of ARRA funds.

10. Environmental and Preservation Requirements. The Contractor shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by the awarding Federal agency to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, the Clean Air Act, the Federal Water Pollution and Control Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Contractor to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. The Contractor shall not undertake any project having the potential to impact EHP resources without the prior approval of the awarding Federal agency, including but not limited to communication towers, physical security enhancements, new construction, and modification to buildings that are 50 years old or greater. The Contractor must comply with all conditions placed on the project as a result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Contractor must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Contractor will immediately cease construction in that area and notify the awarding Federal agency and the Pennsylvania Historical and Museum Commission. Any construction activities that have been initiated prior to the full environmental and historic preservation review will result in a non-compliance finding.

11. Nondiscrimination Provisions. The Contractor covenants and agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this Agreement. Accordingly, and to the extent applicable, the Contractor covenants and agrees to comply with the following:

(a) On the basis of race, color or national origin, in Title V I of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by applicable regulations.

(b) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 (3 CFR, 1964-1965 Comp. pg. 339), as implemented by applicable regulations.

(c) On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by applicable regulations.

(d) On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by applicable regulations.

(e) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by applicable regulations.

12. Access to Records. Contractor agrees that with respect to each agreement using, in whole or in part, ARRA funds, any representative of an appropriate U.S. Inspector General appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the U.S. Comptroller General is authorized:

(a) to examine any records of the Contractor, any of its subcontractors, or any state or local agency administering such contract that pertain to, and involve transactions relating to the contract; and

(b) to interview any officer or employee of the contractor, subcontractor or agency regarding such transactions.

13. Compliance. The Contractor shall comply with all applicable laws, regulations and program guidance. A **non-exclusive** list of statutes, regulations and/or guidance commonly applicable to Federal funds follows:

General

- Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.; 32 CFR part 26, Subpart B
- Copeland “Anti-Kickback Act”, 18 U.S.C. Section 874; 29 CFR Part 3
- Contract Work Hours and Safety Standards Act, 40 U.S.C. §§327-330; 29 CFR Part 5
- Americans with Disabilities Act of 1990, as amended; 42 U.S.C. Chapter 126; 28 C.F.R. §35.101 et seq.
- Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200

EXHIBIT C

SOFTWARE LICENSE REQUIREMENTS

This Exhibit shall be attached to and made a material part of Software Publisher's Software License Agreement (collectively the "Agreement") between Licensor and the Commonwealth of Pennsylvania ("Commonwealth"). The terms and conditions of this Exhibit shall supplement, and to the extent a conflict exists, shall supersede and take precedence over the terms and conditions of Software Publisher's Software License Agreement.

1. **Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to principles of conflict of laws.
2. **Indemnification:** The Commonwealth does not have the authority to and shall not indemnify any entity. The Commonwealth agrees to pay for any loss, liability or expense, which arises out of or relates to the Commonwealth's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Commonwealth is established by a court of law or where settlement has been agreed to by the Commonwealth. This provision shall not be construed to limit the Commonwealth's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the Commonwealth.
3. **Patent, Copyright, Trademark, and Trade Secret Protection:**
 - a) The Licensor shall, at its expense, defend, indemnify and hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the Commonwealth for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The Commonwealth agrees to give Licensor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act 71 P.S. § 732-101, et seq., the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion, delegate to Licensor its right of defense of a Claim and the authority to control any potential settlements thereof. Licensor shall not without the Commonwealth's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the Commonwealth has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the Commonwealth to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the Commonwealth to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the Commonwealth. If OAG delegates such rights to the Licensor, the Commonwealth will cooperate with all reasonable requests of Licensor made in the defense and or settlement of a Claim. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at its own expense and without derogation of Licensor's authority to control the defense and settlement of a Claim. It is expressly agreed by the Licensor that, in the event it requests that the Commonwealth to provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the Commonwealth for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the Commonwealth for such support. If OAG does not delegate to Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this section ceases. If OAG does not delegate the right of defense to Licensor, upon written request from the OAG, the Licensor will, in its sole reasonable discretion, cooperate with OAG in its defense of the suit.

- b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties.
- c) If the right of defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the Commonwealth or agreed to by Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.
- d) If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the Commonwealth to continue the use of such licensed products.
- e) If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.
- f) If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the Commonwealth the license fee paid for the infringing licensed products, pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.
- g) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.
- h) Notwithstanding the above, the Licensor shall have no obligation under this Section 3 for:
 - i. modification of any licensed products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;
 - ii. any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare the product;
 - iii. use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;
 - iv. use of the licensed products in other than its specified operating environment;
 - v. the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - vi. infringement of a non-Licensor product alone;

- vii. the Commonwealth's use of the licensed product beyond the scope contemplated by the Agreement;
or
 - viii. the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Licensor at no charge.
 - i) The obligation to indemnify the Commonwealth, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.
4. **Virus, Malicious, Mischievous or Destructive Programming:** Licensor warrants that the licensed product as delivered by Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a "Virus").

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

- the licensed products have been installed and used by the Commonwealth in accordance with the Documentation;
- the licensed products has not been modified by any party other than Licensor;
- the Commonwealth has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

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

5. **Limitation of Liability:** The Licensor's liability to the Commonwealth under this Agreement shall be limited to the greater of (a) the value of any purchase order issued; or (b) \$250,000. This limitation does not apply to damages for:
- (1) bodily injury;
 - (2) death;
 - (3) intentional injury;
 - (4) damage to real property or tangible personal property for which the Licensor is legally liable; or
 - (5) Licensor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection.
6. In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement. Licensor will not be liable for damages due to lost records or data.
7. **Termination:**
- a) Licensor may not terminate this Agreement for non-payment.
 - b) The Commonwealth may terminate this Agreement without cause by giving Licensor thirty (30) calendar days prior written notice whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth.
8. **Background Checks:** Upon prior written request by the Commonwealth, Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have on site access to the Commonwealth's IT facilities. Background checks are to be conducted via the Request for

Criminal Record Check form and procedure found at <http://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>.

9. The background check must be conducted prior to initial access by an IT employee and annually thereafter.

Before the Commonwealth will permit an employee access to the Commonwealth's facilities, Licensor must provide written confirmation to the office designated by the agency that the background check has been conducted. If, at any time, it is discovered that an employee has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, Licensor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems, unless the agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of Licensor to comply with the terms of this paragraph may result in default of Licensor under its contract with the Commonwealth.

10. Confidentiality: Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.
11. Publicity/Advertisement: The Licensor must obtain Commonwealth approval prior to mentioning the Commonwealth or a Commonwealth agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
12. Signatures: The fully executed Agreement shall not contain ink signatures by the Commonwealth. The Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent on the Agreement represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.
13. Software Publisher acknowledges and agrees the terms and conditions of this Exhibit shall supplement, and to the extent a conflict exists, shall supersede and take precedence over the terms and conditions of Software Publisher's Software License Agreement.

EXHIBIT D
SUBRECIPIENT / CONTRACTOR AUDITS

AUDIT CLAUSE D - CONTRACTOR

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 funding and state funding passed through DHS are subject to DHS audit requirements. If any federal statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern.

Contractor means a dealer, distributor, merchant, or other seller providing goods or services to an auditee that are required for the **administrative support** of a program. These goods or services may be for an organization's own use or for the use of beneficiaries of the federal program. The contractor's responsibility is to meet the requirements of the procurement contract.

Department of Human Services Audit Requirement

If in connection with the agreement, an entity **expends \$500,000 or more in combined state and federal funds** during the program year, the entity 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. These examinations shall be conducted in accordance with the American Institute of Certified Public Accountants' Statements on Standards for Attestation Engagements No. 10, Compliance Attestation (SSAE 10), and shall be of a scope acceptable to the DHS. The initial compliance examination shall be completed for the official annual reporting period of this agreement and conducted annually thereafter.

The Commonwealth reserves the right for state and federal agencies, or their authorized representatives, to perform financial and performance audits if deemed necessary. If it is decided that an audit of this contract will be performed, the contractor will be given advance notice. The contractor shall maintain books, records, and documents that support the services provided, that the fees earned are in accordance with the contract, and that the contractor has complied with contract terms and conditions. The contractor agrees to make available, upon reasonable notice, at the office of the contractor, 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.

The contractor shall preserve all books, records, and documents related to this contract for a period of time that is the greater of five years from the contract expiration date, until all questioned costs or activities have been resolved to the satisfaction of the Commonwealth, or as required by applicable federal laws and regulations, whichever is longer. 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 five years from the date of any resulting final settlement.

Records that relate to litigation or the settlement of claims arising out of performance or expenditures under this contract to which exception has been taken by the auditors, shall be retained by the contractor or provided to the Commonwealth at the DHS' option 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 this contract, the contractor may, in fulfillment of his obligation to retain records as required

by this Audit Clause, substitute 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 the Commonwealth.

DHS Required Audit Report Submission

The contractor shall submit the SSAE 10 report to the DHS within 90 days after the required period of audit has ended. When the SSAE 10 report is other than unqualified, the contractor shall submit to the DHS, in addition to the audit report, a plan describing what actions the contractor will implement to correct the situation that caused the auditor to issue a qualified opinion, a timetable for implementing the planned corrective actions, and a process for monitoring compliance with the timetable.

Submit **two copies** of the DHS required audit report package.

1. Independent Accountant's Report - on the Attestation of an entity's compliance with specific requirements during a period of time in accordance with the contract and the appropriate schedule, as required.
2. Submit the audit report directly to the program office.

REMEDIES FOR NONCOMPLIANCE

The provider's failure to provide an acceptable audit, in accordance with the requirements of the Audit Clause Requirements, may result in the DHS' not accepting the report and initiating sanctions against the contractor that may include the following:

- Disallowing the cost of the audit.
- Withholding a percentage of the contract funding pending compliance.
- Suspending subsequent contract funding pending compliance.

TECHNICAL ASSISTANCE

Technical assistance on the DHS' 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

The Department of Human Services (DHS) requires an Independent Accountant's Report on the Attestation to be in the format described by the American Institute of Certified Public Accountants (AICPA). The following is the form of report an independent Accountant should use when expressing an opinion on an entity's compliance with specified requirements during a period of time. For further guidance, refer to the AICPA Professional Standards.

Independent Accountant's Report

[Introductory Paragraph]

We have examined *[name of entity]*'s compliance with *[list specific compliance requirement]* during the *[period]* ended *[date]*. Management is responsible for *[name of entity]*'s compliance with those- requirements. Our responsibility is to express an opinion on *[name of entity]*'s compliance based on our examination.

[Scope Paragraph]

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence about *[name of entity]*'s compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on *[name of entity]*'s compliance with specified requirements.

[Opinion Paragraph]

In our opinion, *[name of entity]* complied, in all material respects, with the aforementioned requirements for the year ended December 31, 20XX.

[DATE]

[SIGNATURE]