

REQUEST FOR PROPOSALS FOR

**PENNSYLVANIA STATE COLLECTION & DISBURSEMENT UNIT
(PA SCDU)**

ISSUING OFFICE

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HUMAN SERVICES
Office of Administration
Bureau of Financial Operations
Division of Procurement & Contract Management
625 Forster Street
Harrisburg, PA 17120**

**RFP NUMBER
01-16**

DATE OF ISSUANCE

October 20, 2017

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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	November 6, 2017
<p>Pre-proposal Conference:</p> <p>Pennsylvania Training and Technical Assistance Network (PaTTAN) Susquehanna Room 6340 Flank Drive, Suite 600 Harrisburg, PA 17112</p>	Issuing Office/Potential Offerors	November 6, 2017 1:00 PM EST
<p>Answers to Potential Offeror questions posted to the DGS website at http://www.emarketplace.state.pa.us/Search.aspx no later than this date.</p>	Issuing Office	November 16, 2017
<p>Please monitor website for all communications regarding the RFP.</p>	Potential Offerors	Ongoing
<p>Sealed proposal must be received by the Issuing Office:</p> <p>Commonwealth of Pennsylvania Department of Human Services Bureau of Financial Operations Division of Procurement & Contract Management Room 402 Health & Welfare Building 625 Forster Street Harrisburg, PA 17120</p>	Offerors	December 19, 2017 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’ (“DHS” or Department) consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for the maintenance and operation of a Pennsylvania State Collection and Disbursement Unit (PA SCDU) to collect and disburse all support payments made for cases administered by the Pennsylvania Child Support Enforcement program (“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.** The DHS Office of Administration, Bureau of Financial Operations (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be Karen Kern, RA-pwrfpquestions@pa.gov, the Project Officer for this RFP. Please refer all inquiries to the Project Officer.
- I-3. Overview of Project.** The Commonwealth is under mandate by the United States Department of Health and Human Services (HHS) to operate a central statewide collection and disbursement unit (SCDU) (42 U.S.C. §654b). The PA SCDU was implemented statewide on October 1, 1999, in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act (PWRORA) of 1996, Pub. L. 104-193 and the Balanced Budget Act of 1997 (BBA) Pub. L. 105-33, and includes central processing and banking services for the collection and disbursement of child support enforcement payments. The functions performed by SCDU include collection processing, disbursement processing, employer and defendant billing, mailing operations, customer service, outreach support to stakeholders of the child support program, and all banking services in support of the receipt and disbursement of child support payments. In addition, the PA SCDU is required to interface with the Pennsylvania Child Support Enforcement System (PACSES), which performs the support distribution functions mandated by federal and state law. The PA SCDU has been in continuous statewide operation since 1999.

The Pennsylvania General Assembly enacted Act 1997-58, which provided Department of Public Welfare (DPW), now known as DHS, the authority to establish a SCDU. Act 2006-109 requires the SCDU to use automated procedures, electronic processes and computer technology to the maximum extent feasible for the efficient and economical collection and disbursement of support payments (23 Pa. C.S. §4374).

The HHS, Office of Child Support Enforcement (OCSE), conducted a PRWORA certification review of PACSES and SCDU in June 2000. DHS received full certification of the Federal FSA 88 Level 1, Level 2 and PRWORA requirements in October 2001.

In 2004, the Bureau of Child Support Enforcement (BCSE) initiated an eDisbursement initiative with the goal of replacing paper support disbursement to customers with electronic disbursements. The eDisbursement program was successfully implemented statewide in mid-2005. Support payees in Pennsylvania are offered the option to select direct deposit for receipt of their support payments. Currently, forty-one percent (41%) of all support payments are issued to customers via direct deposit. Those payees who do not choose the direct deposit option are issued PA EPPICards. Currently, fifty-seven percent (57%) of all support payments are issued to customers who hold PA EPPICards. A hardship exemption approved by the Division of Financial Services and Transactions (DFST) is provided under specific circumstances, and those payees who are eligible for a hardship exemption from the

eDisbursement program receive their support payments by check. There are currently less than 200 support payees with hardship exemptions. The two percent (2%) of support payments disbursed via check include agencies, institutions, and individuals with hardship exemptions. See **Appendix A – Processing Statistics**.

Act 2006-109 also requires employers who are withholding support for more than one obligor and employ fifteen (15) or more employees to remit payments to PA SCDU using electronic payment methods (23 Pa. C.S. §4374(b)(2)).

Business Partners:

Department of Human Services (DHS)

DHS is the umbrella agency responsible for administering the Title IV-D Child Support Enforcement Program. DHS also has direct responsibility for income maintenance programs including Title IV-A and IV-E programs that interface with the Title IV-D program.

Office of Income Maintenance (OIM)

OIM is the office within DHS responsible for delivery of cash payments, Supplemental Nutrition Assistance Program (SNAP), child support and other benefit programs for the Commonwealth.

The BCSE, Division of Financial Services and Transactions (DFST) is administered by OIM. BCSE is the program office for the child support program and is responsible for administering the delivery of child support services through a Cooperative Agreement with each of the sixty-five (65) county Domestic Relations Sections (DRS). See **Appendix B – BCSE Current Organizational Structure** for the current structure of BCSE.

The Bureau of Information Systems (BIS) is responsible for the operation of PACSES.

Domestic Relations Sections (DRS)

In the Commonwealth of Pennsylvania, direct child support enforcement services are provided by the Pennsylvania Judiciary through the Court of Common Pleas. These services are provided through sixty-five (65) DRS located in each county. County DRSs utilize PACSES in conducting daily child support business.

The Office of Comptroller Operations (Comptroller Operations)

Comptroller Operations, independent of the agency, provides financial management, quality assurance, and business process improvement services to DHS. In addition, Comptroller Operations serves as an advisor on matters relating to financial policies and procedures. Section 1501 of the Pennsylvania Fiscal Code assigns explicit authority to Comptroller Operations for the primary responsibilities of financial accounting, auditing, and reporting. The office ensures that funds administered by the agency are expended and accounted for properly.

Additional Business Partners

- Additional suppliers of services related to Child Support Enforcement program
- Federal, state and local child support enforcement agencies

The procurement process for this RFP will be conducted in accordance with the federal laws and regulations and applicable procurement procedures established by the Commonwealth.

I-4. Objectives.

A. General. The objective of this RFP is to procure a vendor capable of assuming all responsibilities, services, and operation of the PA SCDU without interruption or disruption of services and business practices to DHS, child support customers, users and business partners. Federal and state law require the SCDU to use automated procedures, electronic processes and computer driven technology to the maximum extent feasible for the efficient and economical collection and disbursement of support payments (42 U.S.C. §654b). In addition, the SCDU must interface with the PACSES that performs the support distribution functions mandated under the Family Support Act of 1988.

B. Specific. The Commonwealth's goal is to provide a support collection and disbursement operation. This includes: Transition; Collection Processing; Disbursement Processing; Employer/Non-Wage Withholding Billing Statement Processing; Employer's National Medical Support Notice (NMSN) Processing; Defendant Billing Statement/Payment Coupon, Reprints, State Tax Refund Offset Notice Processing, Special Notice Processing; Mailing Operations; Customer Service; Outreach Support; Finance and Banking Services; Data/Records Security; System Interfaces/Data Exchanges; Processing Center; End of Contract Turnover; Management Reporting; and Procedures Documentation.

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 IT Contract Terms and Conditions as shown in **Part VI**, which includes the DHS Addendum to Standard Terms and Conditions and the Business Associate Addendum. DHS, 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. Rejection of Proposals. DHS reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.

I-7. Incurring Costs. DHS 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-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)** individuals per Offeror. 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. All questions and written answers will be posted on the Department of General Services' (DGS) website as an addendum to, and shall become part of, this RFP. Attendance at the Pre-proposal Conference is **optional**.

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 01-16 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 shall not attempt to contact the Project Officer by any other means. The Project Officer 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 Commonwealth 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 DHS decides to respond to a non-administrative question *after* the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided 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 shall be responsible to monitor the DGS website for new or revised RFP information. DHS 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.

I-10. Addenda to the RFP. If DHS deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office 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. DHS will **not** accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. DHS will reject, unopened, any 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 **Section I-12B**, providing **seven (7) 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 shall submit one **complete and exact** copy 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 copy must be a mirror image of the paper copy and any spreadsheets must be in Microsoft Excel. The Offerors may not lock or protect any cells or tabs. 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 shall 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 **Appendix C – Proposal Cover Sheet** 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 **180** days or until a contract is fully executed. If DHS 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 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 Issuing Office'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 which 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 Small Diverse Business and Small Business cost data should be kept separate from and not included in the Technical Submittal. Offerors should not reiterate technical information in the cost submittal.

Proposals must follow the following format:

- a. Pages must be 8.5 by 11 inches with right and left margins of one (1) inch; and be double-sided.
- b. Must use Arial or Times New Roman font with a size of twelve (12).
- c. Section headings, shown in Part III, Technical Submittal, **MUST** be used.
- d. Each page of the proposal must include a page number and identification of the Offeror in the page footer.
- e. Materials provided in any Appendix must be specifically referenced by page number(s) in the body of the proposal.
- f. 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.

Each Proposal shall consist of the following **three** separately sealed submittals:

1. Technical Submittal, in response to **Part III**:
 - a. Complete, sign and include **Appendix D, Lobbying Certification and Disclosure Form** and if applicable, the Disclosure of Lobbying Activities
 - b. Complete, sign and include **Appendix E – Domestic Workforce Utilization Certification Form**;
 - c. Complete, sign and include **Appendix F, Iran Free Procurement Certification Form**
2. Cost Submittal, in response to RFP **Part IV**; and
3. Small Diverse Business and Small Business (SDB/SB) Participation Submittal, in response to RFP **Part V**:

- a. Complete and include **Appendix G - Small Diverse Business and Small Business Participation Submittal Form**; and
- b. Complete and include **Appendix H – Small Diverse Business and Small Business Letter of Intent**. Offeror must provide a Letter of Intent for each SDB and SB listed on the SDB/SB Participation Submittal Form

DHS reserves the right to request additional information which, in DHS' opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

DHS may make investigations as deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to the Issuing Office all requested information and data. DHS reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy DHS that such Offeror is properly qualified to carry out the obligations of the RFP and to complete the Project 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.** DHS has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. DHS 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 DHS to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Project Officer 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 the 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 process prior to contract execution.
- I-17. Prime Contractor Responsibilities.** The selected Offeror must perform the largest percentage of 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, DHS 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 herein, 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 **Part I-18, C** below and must additionally

provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

- B. Commonwealth Use.** All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the DHS'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 I – Trade Secret/Confidential Proprietary Information Notice Form** in this RFP that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to Part II 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, DHS reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers.” To obtain best and final offers from Offerors, DHS 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
 - 4. Enter into pre-selection negotiations

- B.** The following Offerors will **not** be invited by DHS to submit a Best and Final Offer:
 - 1. Those Offerors, which DHS has determined to be not responsible or whose proposals DHS has determined to be not responsive.
 - 2. Those Offerors, which DHS 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 assure good faith performance of the contract.
 - 3. Those Offerors whose score for their technical submittal of the proposal is less than 70% of the total amount of technical points allotted to the technical criterion.

DHS may further limit participation in the best and final offers process to those remaining responsible offerors which DHS 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 Best and Final offers.
 - D. Price reductions offered through any reverse online auction shall have no effect upon the Offeror's Technical Submittal.
 - E. Any reduction to commitments to Small Diverse Businesses and Small Businesses must be proportional to the reduction in the total price offered through any Best and Final Offer (BAFO) process or contract negotiations unless approved by Bureau of Diversity, Inclusion & Small Business Opportunity (BDISBO).
- I-20. News Releases.** Offerors shall not issue news releases, internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of DHS, and then only in coordination with DHS.
- I-21. Restriction of Contact.** From the issue date of this RFP until DHS awards a contract, the Project Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for DHS to reject the offending Offeror's proposal. If DHS later discovers that the Offeror has engaged in any violations of this condition, DHS 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 Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.
- I-22. Issuing Office Participation.** Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-22**. DHS will assign a DHS Project Manager who will be the selected Offerors' primary point of contact for communication and coordinating work for this Project. Additionally, the DHS Project Manager will oversee and monitor contract performance.
- I-23. Term of Contract.** The term of the contract will commence on the Effective Date and will end **six (6) years after the Effective Date**. Subject to performance and other considerations, DHS may extend the contracts on the same terms and conditions for up to two (2) additional one year periods. DHS 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 contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected 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 may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.

- B.** The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C.** The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D.** The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E.** The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F.** To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- G.** To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H.** The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I.** The Offeror has not made, under separate contract with DHS, any recommendations to DHS concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J.** Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K.** Until the selected Offeror receives a fully executed and approved written contract from DHS, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.
- L.** The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

I-25. Notification of Selection.

- A. Contract Negotiations.** DHS will notify all Offerors in writing of the Offeror selected for contract negotiations after DHS has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to DHS.

B. Award. Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and DHS 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. DHS 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 **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 contracts 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: Mac Spiker
Email Address: RA-pwrfpquestions@pa.gov

Offerors and prospective Offerors should 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.

I-28. Use of Electronic Versions of this 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 insure 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 Issuing Office'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 the Office of Administration, Office for Information Technology (OA-OIT). ITPs may be found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>, and Federal Office of Child Support Enforcement AT 06-03 at <http://www.acf.hhs.gov/programs/css/resource/policy-clarifications-automated-systems-title-iv-d>.

The selected Offeror must have a working knowledge of, comply with, and provide all services in compliance with applicable federal, state, and local laws, regulations, standards, guidelines and policies, including but not limited to: Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, and 2000e *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 *et seq.*), Title XIX of the Social Security Act (42 U.S.C. §§ 1396-1396v), the Pennsylvania

Human Relations Act of 1955 (71 P.S. §941 *et seq.*), and the Pennsylvania Human Services Code, (62 P.S. § 101 *et seq.*). The selected Offeror will also comply with the requirements of IRS Form 1075, as may be amended. Current requirements are found in **Appendix J - IRS Standard Contract Requirements** under Exhibit 7 –Contract Language for Technology Services and the following link: <https://www.irs.gov/pub/irs-pdf/p1075.pdf>

In the event that there are amendments, revisions or additions to the requirements of state or federal law, regulations, guidelines or policies (including IT policies and standards) which occur after the Effective Date of the contract, the selected Offeror and DHS will meet to determine the impact of such changes on the contract requirements. The selected Offeror will investigate the impact of the change on the grant and its requirements and price. If DHS and the selected Offeror agree on the results of the investigation and any necessary modifications to the grant, the contract will be modified to take into account the agreed upon changes and the change will be implemented. If the change is within the scope of the contract and does not require modification of its provisions, DHS will issue a change order in accordance with the Standard IT Contract Terms and Conditions, **Part VI**. If the change is within the scope of the contract but requires modification of other provisions, DHS and the selected Offeror will execute a written amendment.

All proposals must be submitted on the basis that all ITPs are applicable to this procurement. It is the responsibility of the Offeror to read and be familiar with the ITPs. Notwithstanding the foregoing, if the Offeror believes that any ITP is not applicable to this procurement, it must list all such ITPs in its technical response, and explain why it believes the ITP 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 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.

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**)
 - B. Be properly signed by the Offeror (see **Part I, Section I-12A**)
- II-2. Technical Nonconforming Proposals.** The two (2) Mandatory Responsiveness Requirements set forth in **Section II-1** above (A-B) are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. DHS reserves the right, in its sole discretion, to (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.** DHS has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the Small Diverse Business and Small Business Participation Submittal and provide DHS with a rating for this component of each proposal. DHS 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 DHS 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: **Soundness of Approach, Offeror Qualification, Personnel Qualifications, and Understanding the Problem.**
 - **Soundness of Approach.** This refers to the Offeror's technical approach for completion of all deliverables in this RFP, if it is responsive to all requirements of the RFP, and if it meets the project's objectives. The Offeror should clearly state how the objectives of the project will be met and how each task will be performed. Where the proposal deviates from the RFP work statement, the Offeror should explain why.
 - **Offeror Qualifications.** This refers to the ability of the Offeror to meet the terms of the RFP, especially the time constraint and the quality, relevancy, and recentness of studies and projects completed by the Offeror. This also includes the Offeror's ability to undertake a project of this size.
 - **Personnel Qualifications.** This refers to the competence of professional personnel who would be assigned to the project by the Offeror. Qualifications of professional personnel shall be measured by experience and education, with reference to experience on studies/services similar to that described in the RFP. Emphasis is placed on the qualifications of the Project Manager and lead staff. During the project period, personnel not previously identified in the Offeror's proposal may only be substituted for another person or added to the project team when approved in writing.

- **Understanding the Problem.** This refers to the Offeror’s understanding of Commonwealth of Pennsylvania needs that generated the RFP, of the Commonwealth objectives in asking for the services, and of the nature and scope of the work involved.

The final Technical scores are determined by giving the maximum number of technical points available to the 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. Small Diverse Business and Small Business Participation:

BDISBO has established the minimum evaluation weight for the Small Diverse Business and Small Business Participation criterion for this RFP as **20%** of the total points.

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

<p>Small Diverse Business and Small Business Raw Score =</p> <p>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 Small Diverse Businesses and Small Businesses 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 DHS

that the Offeror be determined non-responsible for the limited purpose of eligibility to receive Small Diverse Business and Small Business 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>.

Offerors who seek consideration for this criterion must submit in hardcopy the signed the Domestic Workforce Utilization Certification as shown in **Appendix E - Domestic Workforce Utilization Certification Form** in the same sealed envelope with the Technical Submittal. The certification will be included as a contractual obligation when the contract is executed.

- 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 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 F, 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/Documents/Procurement%20Forms/ProposedIranFreeProcurementList.pdf>

- 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 assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers 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 **70%** of the **available technical points**; and

- B.** The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. DHS 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 which fails to demonstrate sufficient financial capability to assure good faith performance of the contract as specified herein may be considered by the Issuing Office, in its sole discretion, for Best and Final Offers 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 Issuing Office. Based on the financial condition of the Offeror, the Issuing Office 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, DHS 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 best and final offer process conducted, DHS will combine the evaluation committee's final technical scores, BDISBO's final Small Diverse Business and Small Business 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.** DHS will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C.** DHS must select for contract negotiations the offeror with the highest overall score.
- D.** DHS has the discretion to reject all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

PART III

TECHNICAL SUBMITTAL

III-1. Requirements.

A. Disaster Recovery. The selected Offerors must develop and document a disaster recovery plan for electronic records and files maintained by the selected Offerors. The selected Offerors must utilize reasonable data backup and disaster recovery procedures to prevent loss of information and with no interruption in the use of their proposed systems. The Offeror must describe its data backup and disaster recovery plans for restoring and maintaining operations during natural or human-induced disasters, or any other occurrence that damages systems or data. The Offeror must provide detailed information regarding its backup and disaster recovery systems, architecture/frameworks, capabilities, governance, and procedures. The Offeror must describe how its backup and disaster recovery plans enable the continuation of critical business processes for the protection and security of the data. The selected Offeror must provide an annual update of the data backup and disaster recovery plan and the disaster recovery plan testing process and testing frequency on the yearly anniversary start date of the fully executed contract.

B. Facility Location. The selected Offeror will be required to provide a facility for the contract staff and services defined in this RFP. Offeror must maintain a single central processing site and locate in-house project management, operational personnel, including customer service, financial operations and technical support in the greater Harrisburg area throughout the term of the contract. The location of the facility must be within a 15 mile radius of the Forum Place located at 555 Walnut St., Harrisburg, PA. When determining the facility location, Offerors must consider that the selected Offeror will be required to use the services of the United States Postal Facility at 1425 Crooked Hill Road, Harrisburg, PA 17107-9601. The Commonwealth staff assigned to this project will be located separately. However, the Offeror's project site must include appropriate office space for meeting space and parking facilities in order to host regular and frequent Commonwealth on-site observation, monitoring, and work site operations inspection of the selected Offeror in order to monitor contract performance.

DHS will provide Wide Area Network (WAN) connectivity (data circuit) between the Project facility and the Commonwealth technical resources necessary to perform contract responsibilities.

The Offeror is expected to propose a location(s) that is suitable for the facility location as delineated above to meet this requirement.

C. Emergency Preparedness. To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services. The selected Offeror must provide an annual update of the emergency preparedness plan and the emergency preparedness plan testing process and testing frequency on the yearly anniversary start date of the fully executed contract.

1. Describe how you anticipate such a crisis will impact your operations.

2. Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:
- a. Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)
 - b. Identified 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 due to illness.
 - ii. How employees in your organization will carry out the essential functions if contagion control measures 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, chain of communications (including suppliers), etc.
 - e. How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

D. Communication. The selected Offeror will not initiate contact with judges, legislators, other elected officials, or other government agencies, and will refer any contacts from such entities to designated BCSE staff. The selected Offeror shall not initiate contacts with any media source and will not respond to any media request without DHS BCSE approval. The selected Offeror may not make any reference to DHS in the selected Offeror's promotional materials or literature without prior written approval from BCSE.

E. Performance Bond and Employee Security Bonding. Prior to the executions of the negotiated contract by the Commonwealth, the selected Offeror must submit a performance bond for 10 percent of the estimated contract amount for the first year of the contract, conditioned upon faithful performance of all contract terms, conditions and specifications. Such a bond shall solely be for the protection of the Commonwealth.

The selected Offeror must also ensure that every person who has access to, or control over, funds collected under the child support enforcement program is covered by a bond against loss resulting from employee dishonesty (45 CFR 302.19). DHS' standard for the employee bond amount is \$100,000 per person for entities that handle more than \$1 million in child support-related receipts per year. The selected Offeror must provide verification of such bonding prior to the initiation of the support collection process.

F. Information Handling. The selected Offeror must protect the confidentiality of all Commonwealth customer and employer information. The selected Offeror agrees that any breach of this provision may result in immediate termination of this contract.

The nature of the work described in this RFP requires the handling of both sensitive and confidential information. The selected Offeror must treat all customer and employer information as confidential and is prohibited from using or disclosing this information except when required to perform its contractual duties. The selected Offeror is responsible for ensuring that adequate measures are in place to prevent unauthorized access, copying, and/or distribution of such information. The selected Offeror is responsible for proper disposal (i.e. shred, surrender) of both hard and electronic copies of all confidential and sensitive information obtained as a result of any contract that may be awarded.

For additional information concerning the handling of confidential and sensitive information, please go to **Part VI, Standard IT Contract Terms and Conditions**, which includes the **DHS Addendum to Standard Terms and Conditions/Audit Clauses** and the **Business Associate Addendum**.

The records created or maintained by the selected Offeror, and any of its subcontractors, in connection with the data capture of child support information, including information received from employers, are confidential and shall be open to public inspection or disclosure only to the extent permitted by DHS or required by law or court order. The selected Offeror must also establish procedures to ensure that information is not released to inappropriate individuals or agencies.

Each person hired by the selected Offeror must be informed of the confidentiality of child support data and the penalties involved in breaching confidentiality. All personnel, including subcontractors, are required to take the annual BCSE mandated Security Awareness training in the month of May to receive and maintain access to IRS/FTI (Federal Tax Information) and Federal Parent Locator Service (FPLS)/Child Support Confidential information. This training is available at the following link: <https://pacseti.psu.edu/>. Upon completion of training, a statement must be signed and dated stating that they understand the requirements of confidentiality prior to receiving authorization to process collection and to access PACSES. The selected Offeror, and any of its subcontractors, shall provide written notice to all employees of the confidential nature of child support records and shall specify that unauthorized disclosure is strictly prohibited and grounds for dismissal and/or any other applicable penalty.

Should a breach of confidentiality occur as a result of unauthorized disclosure by a person employed by the selected Offeror, or any of its subcontractors, the Commonwealth, and its Departments and personnel, shall be held harmless. The selected Offeror must assume total financial liability associated with any breach of confidentiality.

- G. Access to Records.** In accordance with 45 CFR part 74 and as required by 45 CFR §95.615, the selected Offeror must allow federal and state representatives to access the systems in all aspects, including, but not limited to, the operational and cost records of the selected Offeror and subcontractors at such intervals as are deemed necessary by the above government entities to determine.

The selected Offeror must maintain records of all processing activity undertaken as part of the contract. Such records shall be maintained at the selected Offeror's collection and disbursement processing site or other location specified by DHS and reviewable by DHS at any time.

The selected Offeror must maintain processing, statements and other records as specified in the contract for five (5) years from the date of the expiration of this contract, or until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

H. Staff Clearances. All individuals with access to confidential or sensitive information must sign a confidentiality agreement. Personnel policies must address disciplinary procedures relevant to violation of the signed confidentiality agreement. The Offeror is required to comply with all IRS security requirements as shown in **Appendix J – IRS Standard Contract Requirements** under 5.0 Restricting Access.

1. The selected Offeror shall, at its expense, arrange for a criminal background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth data and 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://epatch.state.pa.us>. If an employee has not been a resident of Pennsylvania for the last two (2) years, an FBI clearance check from the state of residence during the last (2) years, is required. The background check must be conducted prior to initial access, prior to the provision of intake and enrollment services by the individual, and thereafter on an annual basis.
2. Before the Commonwealth will permit access to the selected Offeror, the selected Offeror must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that an employee of the selected Offeror or an employee of a subcontractor of the selected Offeror 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 selected Offeror 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 at its sole discretion. Failure of the selected Offeror to comply with the terms of this Section on more than one occasion or selected Offeror's failure to appropriately address any single failure, to the satisfaction of the Commonwealth, may result in the selected Offeror being deemed in default of its Contract.
3. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.
4. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors entrances. Commonwealth contracted personnel who have regular and routine business access in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 Amended (January 30, 2008) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by the selected Offeror for contracted personnel photo identification or access badges.

DHS reserves the right to review all security clearance results and to disapprove any selected Offeror's employee(s). The selected Offeror employees who have physical access to checks or cash shall be bonded as described in Part III, Section III-1.E. The Offeror must have a security plan approved by DHS.

I. System Interfaces/Data Exchanges. The selected Offeror must maintain a secure network for interfacing with PACSES, providing data updates and receiving PACSES output files in order to accomplish the specific tasks identified in this RFP. PACSES operates in two technical environments:

a Unisys ClearPath mainframe system and a Unisys ES7000 server system. The PACSES mainframe system operates on a Unisys ClearPath Dorado 6380 mainframe with a DMS 1100 hierarchical database and an RDMS relational database via a TCP/IP WAN. The selected Offeror must be able to accept file transfers in support of SCDU processing and could occur at any time during the online processing window Monday through Friday, 6:00 AM to 6:00 PM; Wednesday evening until 9:00 PM; or during the overnight batch window. All data transfers to/from PACSES must be processed using the Department standard secure file transfer mechanism.

The selected Offeror must comply with current/ongoing Commonwealth ITPs. This may include system hardware and software.

The selected Offeror is required to comply with all IRS security requirements as shown in **Appendix J – IRS Standard Contract Requirements** under Exhibit 7 - Contract Language for General Services.

J. Processing Center. The selected Offeror must describe in detail their proposed plan to provide a secure environment for a fully functioning SCDU processing center including all hardware, software, networking and communication components as listed in Part III, Section III-1.I. The selected Offeror's proposal must describe in detail all hardware and software the selected Offeror will provide, including support of the non-exclusive, royalty-free, licensed SCDU applications software the selected Offeror must use. The selected Offeror's proposal must provide a detailed explanation of the selected Offeror's approach to handling all current and future processing volumes as defined in this RFP, including hardware and software upgrades. The selected Offeror's proposal must also explain in detail applications the selected Offeror will provide, such as scanning, including the associated hardware, software, networking and communication components.

K. Generally Acceptable Accounting Principles (GAAP). The selected Offeror must perform tasks while maintaining sufficient controls and records which conform to Generally Acceptable Accounting Principles (GAAP) and federal and state regulations. The controls and records must be maintained in each and every area of payment processing and must include, but are not limited, to the following:

- Maintenance of accurate audit trails
- Separation of functions
- System of checks and balances
- Documentation of Daily Quality Control
- Ensure that every payment received is fully processed and accounted for

The selected Offeror will provide a secure environment for all collections, data, records, and data processing operations. The selected Offeror must secure all data from sabotage, manipulation, theft or breach of confidentiality. The selected Offeror is subject to the existing Commonwealth security requirements to limit access and manipulation within PACSES and its related systems. The selected Offeror shall maintain a secure area for processing and holding collection data files consistent with accepted business practices and to the satisfaction of DHS audit practices.

L. Lobbying Certification and Disclosure of Lobbying Activities. This Project will be funded, in whole or in part, with federal monies. Public Law 101-121, Section 319, prohibits federal funds from being expended by the recipient or by any lower tier sub-recipients of a federal contract, grant, loan, or a cooperative agreement to pay any person for influencing, or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, the making of any federal grant or loan, or entering into any cooperative agreement. All parties who submit

proposals in response to this RFP must sign the Lobbying Certification and Disclosure Form, as shown in **Appendix D - Lobbying Certification and Disclosure Form** and, if applicable, complete the “Disclosure of Lobbying Activities” form (attached as **Appendix D**).

III-2. Statement of the Project. State in succinct terms your understanding of the project presented or the service required by this RFP.

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.

III-4. Prior Experience. Include experience with large-scale collection and disbursement processing services or other similar types of experience. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

In addition, provide the following information:

A. Corporate Background

The Offeror must describe the relevant experience of the Offeror and any subcontractors. This section must detail information on the ownership of the company (names and percent of ownership), the date the company was established, the date the company began operations, the physical location of the company, and the current size of the company. The Offeror must provide a corporate organizational chart as part of this section.

Offerors must identify any current contracting or subcontracting relationship(s) that may result in a conflict of interest with the requirements of this RFP.

B. References

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

- Name of contractor
- Type of contract
- Contract description, including type of service provided
- Total contract value
- Contracting officer’s name and telephone number
- Role of subcontractor(s) (if any)
- Time period in which service was provided

The Offeror must submit the Corporate Reference Questionnaire as shown in **Appendix K - Corporate Reference Questionnaire**, directly to the contacts listed. The references should return the completed questionnaires in sealed envelopes to the Offeror.

The Offeror must disclose any contract cancellations, suspensions or debarments within five (5) years preceding the issuance of this RFP. If a contract was canceled 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 contract cancellation. For any such cancellations, the Offeror must also include each customer’s:

- Company or entity name
- Address
- Contact name
- Phone number
- Email address

Offerors must provide similar organizational background information on any significant subcontractor. A significant subcontractor is defined as an organization undertaking more than ten (10%) on a total cost basis of the work as described in this RFP.

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.

III-5. Personnel.

A. Offeror Personnel: Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the Project. For key personnel, such as a project manager, an assistant project manager, a financial lead and IT staff, include the employee's name and, through a resume or similar document, the Project personnel's education and experience with providing collection and disbursement services. Indicate the responsibilities each individual will have in this Project and how long each has been with your company.

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. This includes home addresses and phone numbers, Social Security Numbers, Drivers' License numbers or numbers from state identification cards issued in lieu of a Drivers' License, financial account numbers, etc. If the Commonwealth requires any of this information for security verification or other purposes, the information will be requested separately and as necessary.

Include organizational charts outlining the staffing, reporting relationships and staff members in its description. Show the total number of staff proposed and indicate the Full Time Equivalency (FTEs) to account for any staff that are not assigned on a full-time basis. Provide similar information for any subcontractors that are proposed. The organizational chart must illustrate the lines of authority, designate the individual(s) responsible and accountable for the completion of each component in the RFP, indicate the names of the personnel or job title, and job descriptions and qualifications 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.

A minimum of three (3) client references for Key Personnel must be identified and they must be outside clients (non-DHS) who can give information on the individual's experience and competence to perform Project 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/Key Staff must submit a Personnel Reference Questionnaire as shown in **Appendix L - Personnel Reference Questionnaire**, directly to the contacts listed. The references should return completed questionnaires in sealed envelopes to the Offeror.

Key Staff Diversions or Replacement: Once Key Staff is approved by DHS, the selected Offerors may not divert or replace personnel without approval of the DHS Project Manager and in accordance with the following procedures. The selected Offerors must provide written notice of a proposed diversion or replacement to the DHS Project Manager at least thirty (30) days in advance and provide the name, qualifications, and background check (if required) of the person who will replace the diverted or removed staff. The DHS Project Manager will notify the selected Offeror within ten (10) 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 and disability, dismissal for cause or dismissal as a result of the termination of a subcontract or any other causes that is beyond the control of the selected Offerors or their subcontractor. DHS must approve the replacement staff.

The DHS Project Manager may request that a selected Offeror remove a staff person from this Project at any time. In the event that the selected Offeror staff person is removed from the Project, the selected Offerors will have ten (10) days to fill the vacancy with a staff person acceptable in terms of experience and skills, subject to the DHS Project Manager's approval.

B. Subcontractors: Provide a subcontracting plan for all subcontractors, including small diverse business and small business subcontractors, who will be assigned to the Project. The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project without the express written approval from the Commonwealth. Upon award of the contract resulting from this RFP, subcontractors included in the proposal submission are deemed approved. For each position 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 shall include (through a resume or a similar document) the employees' names, education and experience in the services outlined in this RFP. Information provided shall also indicate the responsibilities each individual will have in this Project and how long each has been with subcontractor's company.

- III-6. Training.** If appropriate, indicate recommended training of agency personnel. Include the agency personnel to be trained, the number to be trained, duration of the program, place of training, curricula, training materials to be used, number and frequency of sessions, and number and level of instructors.
- III-7. Financial Capability.** Describe your company's financial stability and economic capability to perform the contract requirements. Provide your company's financial statements (audited, if available) for the past three fiscal years. Financial statements must include the company's Balance Sheet and Income Statement or Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report, if available. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing hardcopies. Documentation regarding lines of credit available to your company, including maximum credit amount and amount available thirty (30) days prior to the submission of the proposal must be provided. The Commonwealth reserves the right to request additional information it deems necessary to evaluate an Offeror's financial capability.
- 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 (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

Work Order Process: The Department will utilize a Work Order process for the selected Offeror's services identified by the Department to be performed via the work order process described as follows:

1. The Department will provide the following information on the Work Order form:
 - a. A description of the work, or services to be performed,
 - b. The Tasks under which the selected Offeror will perform the requested work, or services; and
 - c. The completion date for the requested work, or services.
2. Once received, the selected Offeror will provide the following information:
 - a. A Work plan, which details how the work will be performed, a list of recommended staff for completion of the work, and the estimated hours needed for completion; hourly rate and total estimated cost; and
 - b. Other information as required by the Department.
3. When completing a Work Order, the selected Offeror should anticipate, and will only be paid for, no more than two (2) staff persons for each meeting conducted by the Department.
4. Once completed, the selected Offeror shall send the Work Order to the DHS Contract Administrator or designee for review. After review of the submitted Work Order, the DHS Contract Administrator or designee will either approve or disapprove the Work Order. The DHS Contract Administrator or designee may also enter into discussions with the selected Offeror and request modifications to the Work Order. If approved, the approval will constitute the selected Offeror's authority to commence work on the services included in the Work Order.

The selected Offeror will not be compensated for work performed until the Work Order is approved by the DHS Contract Administrator or designee. The Department may approve amendments and modifications to approved Work Orders. The Department may terminate any approved Work Order services upon written notice to the selected Offeror. If a project is terminated, the Department will compensate the selected Offeror for work performed under the terminated Work Order prior to the date of termination.

All deliverables must conform to the deliverables review process as shown in **Appendix N – Deliverables Management Guideline**.

The Commonwealth is most interested in those proposals which offer attainable and scalable innovations for the administration, operation, and cost efficiency of SCDU and its collection, disbursement, and customer service activities for the Department, its clients, and business partners.

Tasks: The Performance Standards for all tasks are provided as shown in **Appendix M – Performance Standards/Service Level Agreements/Service Level Objectives**. The Offeror must provide a detailed plan describing their approach to accomplishing all the following associated tasks. The Offeror is financially responsible for any financial errors due to failure to meet performance standards associated with all tasks; this includes all issues, constraints and assumptions used in the preparation and response to the tasks.

A. Transition

Transition consists of activities that must take place between the effective date of the contract and the date the selected Offeror is fully responsible for all contract activities. DHS has designated a maximum of six (6) months for the completion of all transition activities. DHS will evaluate the Offeror's proposed plans for development, testing, and implementation considering the Offeror's efforts to minimize implementation risk and to offer logical solutions that do not compromise the SCDU's performance and compliance standards.

The selected Offeror will provide a detailed transition plan within 45 days of the effective date that must include, but is not limited, to the following:

- Secure telecommunication lines to PACSES via BIS
- Customer Service telephone lines for child support customers, DRSSs, employers and other states, organizations and agencies
- Post office boxes for all support payors, employers and other SCDU functions
- Accept and process the current defendant and employer payment coupons
- Provide access to DHS, the DRSSs, PACSES users and Financial Exceptions Unit (FXU) to the current Vendor's historical payment images
- The Universal Payment Identification Code (UPIC) must be maintained
- Conversion of current SCDU Vendor's IVR Personal Identification Numbers (PIN) assigned to all support customers so that customers do not have to secure new PINS on a new IVR. The transition to the Offeror's proposed IVR must be seamless to all support customers.

1. Acceptance testing

The selected Offeror is required to conduct acceptance testing, which includes volume testing of the collections and disbursement system. The selected Offeror is required to schedule and complete testing and receive DHS approval on a schedule that provides for the Offeror's production system to be fully operational within six (6) months of a fully executed contract.

- a. The selected Offeror is required to complete in-house testing prior to beginning DHS acceptance testing and must include volume testing. The selected Offeror is required to ensure that the following testing objectives are met.

- i.) The selected Offeror's system functionality satisfies the federal and state functional requirements as referenced in Part I-28 Information Technology.
 - ii.) The selected Offeror's system will meet and/or exceed the performance requirements under peak statewide transaction volumes for receipts and disbursements.
 - iii.) The selected Offeror's processing system, security firewalls, hardware and software must be ninety nine and nine tenths percent (99.9%) error free.
 - iv.) The proper integration of all interfaces required by PACSES and other business partners that may be identified subsequent to this RFP and will be included throughout the duration of the Contract.
- b.** The selected Offeror is required to provide their comprehensive approach to testing SCUDU beginning with detailed planning of the testing function to Commonwealth acceptance as follows:
- i.) Provide a detailed description of the testing methodology that will be used to test the SCUDU. The methodology is required to address testing and validation of all aspects of the SCUDU including application software, hardware, network, security, and documentation. The methodology must also define the approach to testing all cycles including daily, weekly, monthly, quarterly, and annual.
 - ii.) If proposing automated testing tool(s), provide a description of the tool and how it will be used to facilitate all phases of testing.
 - iii.) Describe the proposed approach to developing test data and acceptance criteria.
 - iv.) Provide a description of the proposed problem tracking, reporting, and issue resolution.
 - v.) Describe the proposed approach to volume testing the system to ensure it meets the required performance criteria.

For acceptance testing purposes, the selected Offeror is required to process child support collections and disbursements as detailed in the tasks below. DHS will supply all electronic and paper collections for Offeror entry, edit, and transmittal to DHS. Data entry and processing of these collections and related disbursements are required. Acceptance Test Results must be provided to DHS for approval as a deliverable document. The schedule for delivery of the Acceptance Test Results document will be determined during contract negotiations with the selected Offeror.

DHS will provide limited support for project implementation and start-up on a schedule to be agreed upon with the selected Offeror during contract negotiations. This limited support provided by DHS will include the following:

- Automated system acceptance testing
- DHS and federal policy interpretations
- Problem resolution concerning automated system, process and policy issues
- Telecommunication networking support
- PACSES training materials, resource materials, and initial training for up to 10 vendor staff on the components of PACSES

2. Software and Hardware

The selected Offeror is required to complete its own in-house testing of all new software and hardware within thirty (30) calendar days of the contract's effective date. The selected Offeror is required to certify that the software and hardware have been successfully tested and operate effectively and efficiently in accordance with all contract requirements. The selected Offeror is

solely responsible financially for any errors that result from modifications to the software and hardware that the Offeror certified. The selected Offeror must complete all software and hardware modifications required by the PACSES program, federal and state laws, regulations and rules at no cost to the Commonwealth or its subdivisions.

The selected Offeror must provide an Outreach Plan to DHS for the implementation of any new software or hardware within four (4) months of a fully executed contract. The selected Offeror must inform and provide training to all Business Partners by the end of the transition period.

3. Implementation and Start-up

In order to facilitate a smooth transition of operations to the selected Offeror, DHS requires that the selected Offeror accept an assignment of the existing bank contract with the Wells Fargo, N.A. or with the current SCDU Vendor if the Offeror proposes a different bank, through an agreed upon initial transition phase of no less than 6 months. Prior to termination or expiration of this Contract with the Wells Fargo, N.A., the selected Offeror must establish a new banking relationship based on a Banking Transition Plan deliverable document that is approved in advance by DHS. Subsequent changes to the selected Offeror's banking relationship must be approved in advance by DHS.

Arrangements with the Wells Fargo, N.A., NCR eRecovery, or with the current SCDU Vendor so that the collection of bank returned checks can continue on items referred to the agency by the current SCDU Vendor through the end of the current SCDU contract.

If a new financial institution is selected, there is no requirement for the financial institution to be Pennsylvania based. The selected financial institution is strongly encouraged to be a partner affiliated with the Federal Reserve Bank and has capabilities of standard wire and ACH transactions.

The selected financial institution has the capability to accept check images for deposit.

The selected Offeror is required to provide for an orderly and controlled transition at the beginning of the contract period to DHS and to the current Vendor, and to ensure that there is no interruption of services provided to all child support customers and business partners.

The selected Offeror must provide a start-up plan that acquires no adverse attention, which is transparent to all support customers and business partners with no disruption of services. Please refer to the **Part I, Section I-3 Overview of Project** for a list of business partners.

The selected Offeror must use the existing SCDU data and maintain existing communications between the SCDU, the county DRSs, and the BCSE. Any proposed processes or operational changes that impact the interfaces or interactions between the SCDU, PACSES, the DRSs, and BCSE and any other external parties, must be approved by DHS, both in terms scope and timing of implementation.

The selected Offeror is required to operate concurrently with the current Vendor for the first six (6) months of this contract to ensure a seamless transition for **all** support customers and business partners.

The selected Offeror is required to describe in their plan the schedule required to begin transitioning the functions from the current Vendor by within six (6) months of a fully executed

contract. The final schedule for transition of functions from the current Vendor will be determined during contract negotiations with the selected Offeror.

The selected Offeror is required to identify and to describe all issues, constraints, and assumptions used in the preparation and response to this task.

The selected Offeror is required to provide to DHS for review and approval as a deliverable document a detailed Testing, Implementation and Start-up Plan no later than ten (10) business days after the date the contract is executed. The plan must provide for an orderly testing, implementation and start-up of all collection and disbursement activities and all other ongoing activities in support of the SCDU operational functions, as transitioned from the current SCDU vendor.

The selected Offeror must provide a Procedure Manual for all business processes included within this contract to DHS for approval as a deliverable document, within three (3) months of a fully executed contract.

The selected Offeror must provide a final deliverable transition document showing completion of all tasks related to Task A at the conclusion of the transition period.

4. Procedures Documentation

The selected Offeror is required to develop and maintain a Procedures Manual, which provides detailed documentation of all duties and tasks of each unit working for the Offeror or a sub-contractor of the Offeror. The selected Offeror will be required to submit to DHS for review copies of the SCDU Procedures Manual within two months (60 calendar days) of the start of the contract. Procedure changes proposed by the selected Offeror must be reviewed with DHS prior to implementation of operational changes. DHS reserves the right to determine if proposed procedural changes could have a negative effect on support customers. Such procedural changes will not be approved by DHS. If DHS approves a proposed procedural change, the selected Offeror will be required to provide updates to the SCDU Procedures Manual to DHS within five (5) business days of the date the change in processing/procedure is implemented.

B. Collection Processing

Collection Processing encompasses a daily basis receipt of mail, mail opening, acceptance of electronic files from employers and other states, payment identification, online posting of payments to PACSES, submission of processed receipt files to PACSES, electronic transmission of payment information to PACSES, deposit of payments into the SCDU bank account, and all ancillary functions required to maintain security and control over the entire process. The selected Offeror's responsibilities associated with completing the required payment processing function are described below. All collections received at the SCDU must be posted and deposited the same business day the collections are received at the SCDU, except for weekends and bank holidays. Receipts processed on non-business days must be deposited no later than the next business day. **See Appendix A – Processing Statistics.**

The Commonwealth is most interested in those proposals which offer the ability to process electronic fund transfer files on non-business days.

1. Receipts Processing

The selected Offeror is responsible for processing all collections, picked up at the U.S. Postal facility that calendar day for posting to PACSES by 6:00 PM Monday through Friday.

Collections received electronically must be processed and transmitted to PACSES the same day

they are received. Entry of data into PACSES may be accomplished through file input of data into PACSES system screen formats or direct entry. PACSES will provide the selected Offeror with weekly extracts of all active defendants and a weekly extract of demographic information for all active defendants. See **Appendix O – SCDU Interface File Specifications** for the data specifications and file lay-outs of the extracts. Child support collections are defined as monies paid for child or family support, maintenance (referred to in some states as "alimony" or "spousal support"), child support-related fees, and any other child support-related financial obligations ordered by a Pennsylvania court, or the court or administrative tribunal of another state or another nation with whom PA has an agreement to handle child support matters.

DHS will be responsible for working with the selected Offeror to provide access to those individuals who are authorized to access the PACSES system. DHS will assist the selected Offeror in determining the optimum tools and methods to use to gain this access. The selected Offeror is responsible for the procurement and maintenance of all equipment required to perform the services required by this RFP. DHS is under no obligation to provide any hardware or software to accomplish this effort.

The selected Offeror will be required to maintain the current ten (10) central collection post office boxes located at the U.S. Postal facility at 1425 Crooked Hill Road, Harrisburg, Pennsylvania. See **Appendix P - State Collection and Disbursement Unit - Post Office Box Listing** for a list of the specific post office box addresses. The U.S. Postal facility located at the aforementioned address is operated twenty-four (24) hours a day, seven (7) days a week. The selected Offeror must pick-up the mail addressed to the central collection post office boxes so that all receipts picked-up that calendar day are processed for posting to PACSES by 6:00 PM, Monday through Friday. The selected Offeror must provide their proposed schedule for daily pick-up of mail at the Crooked Hill postal facility and delivery of mail to the SCDU operational facility.

An audit trail must be maintained of all collections, including electronic collections. All collection documents, including checks, money orders, coupons, electronic files, and payment lists must be imaged. The images must be archived and must be available the next business day for retrieval by county users via a web-based image retrieval application operated and supported by the selected Offeror. ePACSES is a web-based image retrieval application provided to DHS and county DRS users.

Processed receipts must be reconciled to deposits and to PACSES daily. Collections processed by the selected Offeror must be deposited into DHS owned, Offeror-managed support account(s) daily and the account deposit must be credited the same day collections are received by SCDU. Receipts processed on non-business days must be deposited no later than the next business day. The selected Offeror is responsible for the costs associated with the secured daily transfer of negotiable items from the receipting site to the bank using Image Cash Letter (ICL).

The selected Offeror must not accept receipts which are not negotiable for bank processing. (Refer to Part III-8, B-4). The selected Offeror must identify all collections received from payors and employers that are not acceptable for deposit and return them to the employer or payor with an explanation of the returned collection. The unaccepted collection must be delivered to the post office for first class mail delivery the same day it is received. The selected Offeror also must have documented procedures and software in place to manage and track all returned checks. A daily report of all returned checks and the reason for return must be provided to DHS and the sixty-five (65) county DRS offices via electronic mail in a format approved by DHS. Additionally, the selected Offeror must not process mail not intended for the PA SCDU, i.e., mail delivered to the

SCDU boxes in error by the United State Postal Service (USPS), and must return all such misdirected mail un-opened to the USPS for processing.

Collection data will be received from a variety of sources. Collection sources include, but are not limited to: employers, payors, state agencies, private collection agencies, federal agencies, interstate agencies, and third party credit/debit card processors. Collection data will be received in both paper and electronic format. Collection data transmitted to PACSES for posting must be identified by type (i.e. check, money order, cash, credit/debit card, electronic, etc.) and source (i.e. income attachment, other state, other country, Financial Institution Data Match (FIDM), Child Support Lien Network (CSLN), etc.).

Paper collections will include, but are not limited, to the following:

- Payor collections with scannable coupons
- Payor collections without scannable coupons but with PACSES' account numbers
- Payor collections without scannable coupons and without PACSES' account numbers
- Employer collections with PACSES employer-generated lists
- Employer collections with employer lists
- Employer collections without lists/coupons or account numbers
- Interstate collections
- International collections
- Collections of cash, domestic, or foreign currency with or without coupons or PACSES account numbers
- Collections of money orders
- Unidentified Collections

Electronic collections will include, but are not limited, to the following:

- All FIDM collections
- Removable media: The selected Offeror will provide, at no cost, a template for employer input, but use of removable media by employers should be discouraged by offering other no-cost electronic options as shown in **Appendix Q – Data Specifications NACHA Record Layout**
- Electronic Data Interface (EDI) via Value Added Network (VAN): Use of EDI should be discouraged by offering other no-cost electronic options as shown in **Appendix Q – Data Specifications NACHA Record Layout**
- Electronic Funds Transfer (EFT): When EFT is used for collections or disbursements, the Offeror is responsible for Pre-Note or Zero Dollar File clean-up
- International collections: When EFT is used, the Offeror is responsible for the conversion to US dollars of foreign funds, Pre-Note or Zero Dollar File clean-up as shown in **Appendix Q – Data Specifications NACHA Record Layout**
- Other Processing Methods: The Offeror must propose alternative no cost or low cost child support collection methods such as internet-based electronic payments. Process design and implementation procedures must be approved prior to implementation by DHS

The selected Offeror must be able to process child support payments electronically for the following:

- Support collections from employers and third party payors for income withholding

- Support collections from all U.S. based governmental or international agencies
- Pay-by-phone for payors who wish to authorize deductions one collection at a time
- Support collections from both U.S. and foreign banked credit/debit cards made by telephone or online. The selected Offeror must propose alternative no cost or low cost child support collection methods such as internet-based electronic payments. The selected Offeror must provide all credit/debit cards available for support collections. Process design and implementation procedures must be approved prior to implementation by DHS
- Support collections made by payors via an internet site including third party internet sites
- Support collections made by employers' fee free via an internet site including third party internet sites
- Support collections made at 'point of sale' location

DHS requires all electronic transfers submitted from payors to be deposited within 3 business days of the transaction. The selected Offeror must report collections by individual payor when an electronic transfer is received with multiple payors. An employer collection can contain multiple transactions. Electronic collection transfers must be reviewed and balanced before transmittal to PACSES.

PACSES will provide the selected Offeror with a monthly extract of all employers who are ordered to withhold support for two (2) or more obligors. The selected Offeror is responsible for tracking non-compliant employers with Act 2006-109 (23 Pa. C.S. §4374(6)(b)). The selected Offeror is also responsible for providing a monthly report of employer compliance and non-compliance to DHS.

For paper collections the total amount submitted by an employer must be reconciled against the reported individual employee amounts and the check amount. If the amounts do not balance, the selected Offeror must contact the employer and determine the source of the discrepancy. The employer contact must occur the same day the collection is received. The selected Offeror may hold the unbalanced items for forty-eight (48) hours from the date of receipt. If the employer does not provide the necessary information within 48 hours, the check must be returned to the employer the same day. (See Part III-8, Task B-4). If there are problems with any electronic collection file the selected Offeror must contact the employer to determine the source of the problem. If it is determined that the file cannot be processed the funds must be returned to the employer the same day. The file must not be transmitted to PACSES until it is reconciled.

All checks received by the selected Offeror must be endorsed For Deposit Only to the PA SCDU account and deposited to the bank account the same day the check is received at the SCDU. Checks received on Saturday must be deposited no later than the next business day.

2. County Collections

Although the bulk of payor collections will be received by the selected Offeror, a small percentage will continue to be received in person from payors at the county level. County receipting will accommodate payors who are ordered to submit a payment on the day of a court hearing in order to avoid incarceration or other court-negotiated agreement as well as the occasional walk-in payor.

The selected Offeror must provide, operate, and operationally support a web-based application to be accessed from ePACSES by county offices to complete when the county has received child support monies. This web application will be subject to DHS approval. The application must provide the ability for county users to identify the case and/or member to which the collection is

to be applied and the type of collection; such as FIDM and CSLN. When a collection is received by the county, the county is required to forward the collection information to the Offeror for processing. The transfer of funds to cover the county collections must be handled by the selected Offeror using electronic banking services and must occur timely so that disbursements are not issued without funds to cover them. The selected Offeror will update PACSES and post the collection to the appropriate case the same day the county collection is received/transmitted.

3. Researching Payments without an Account Number

Payor collections without account numbers must be researched. If no account number or an invalid account number is received with a collection, the selected Offeror staff must access PACSES to determine the correct PACSES account number to which an unidentified payment must be posted. The selected Offeror must perform inquiries in PACSES following DHS procedures and using the information provided with a payment (e.g., client name, respondent name, Social Security Number, docket number) in an attempt to identify the PACSES account number(s) to which the payment should be posted. The identification of an account number must occur the same day the collection is received. The selected Offeror is encouraged to develop and utilize additional independent search methodologies to identify these payments.

There will be some instances when the payor of a collection cannot be identified after research has been conducted. Since all collections received must be receipted and deposited the same business day the collections are received, monies that are not identified to a PACSES member are recorded in PACSES as an "unidentified payment" with as much information available from the information received with the collection.

The selected Offeror must have documented procedures and software in place to manage and track the identification of all collections that cannot be identified within twenty-four (24) hours. Letters must be sent to the person who submitted the payment the day after the unidentified posting. The letter must request additional information so that the payment can be properly identified. A second notice must be sent if no response is received within thirty (30) calendar days. If no response is received after thirty (30) calendar days, (sixty (60) calendar days from the date of the first notice) the payment must be returned to the person who submitted the payment.

There will be some instances where there will be insufficient information to send a letter to the person who submitted the payment, however all available resources, including contacting the DRS office, must be utilized in an attempt to identify the payor.

4. Exception Processing

The selected Offeror is required to identify all receipts to recorded members in PACSES. If a collection is received from (or on behalf of) an individual who is not recorded as a PACSES member using the match criteria stated in Part III-8, B-3, it is the responsibility of the selected Offeror to determine whether the collection is for a Pennsylvania child support obligation. The selected Offeror will contact the individual or employer to determine where the order for support was issued and notify the appropriate county to have the participant and case established on PACSES. If the order is in another state and Pennsylvania is not enforcing the order, the selected Offeror must return the funds to the payor along with information regarding the reason for the return. If the Offeror cannot contact the payor, the selected Offeror must attempt to identify the case or county of ownership using other information that may be provided with the collection, such as custodial person name, child(ren) name(s) or other identifying information on the collection document(s) or envelope.

The SCDU must have a fireproof, immovable safe accessed by limited designated staff for keeping processed checks, money orders, and cash until the items are taken to the bank. In addition, money orders and cash not processed during the day must be stored in a fireproof, immovable safe overnight.

The selected Offeror is responsible for resolving the following receipt exceptions including, but not limited to:

- a. Checks which are found to be unacceptable for deposit. For example: mutilated checks, checks with no magnetic ink bank routing numbers and account numbers, checks with no sequence number, or checks without other standard identification information. (i.e. name and address preprinted on the check, no date, etc.)
- b. Insufficient funds checks, including those identified as insufficient funds because the account has been closed or receipt stopped. The selected Offeror's proposal must describe how the Offeror will ensure that the SCDU bank accounts are reimbursed or made whole for any NSF checks. The selected Offeror's proposal must also explain the Offeror's strategy for precluding the processing of subsequent NSF checks from payors. The selected Offeror is required to identify payors who have previously submitted an NSF check and maintain accurate records of these payors. The selected Offeror is responsible for keeping accurate and accessible records of all NSF checks.
- c. Items damaged by the Post Office. The selected Offeror is responsible for obtaining replacement items from individuals or employers.
- d. Foreign currency collections. The selected Offeror is required to obtain the exchange rate and record the deposit at the amount of the United States currency equivalent on the date of receipt of the collection. This includes the electronic transfer of foreign funds. The amount posted to PACSES must be in US Dollars.
- e. Items on the PACSES financial exceptions reports are the responsibility of the Commonwealth, DRS, or Offeror based on the reason an item is on hold status.
- f. The term "checks" includes personal or business checks, bank checks, and money orders. Undated checks, checks which are postdated, checks dated six (6) months or more prior to the date of processing, checks that are not payable to PA SCDU or endorsed over to PA SCDU as a third party endorsement, checks with amounts differing between the written and numeric, checks with missing signatures, and international receipts.
- g. The selected Offeror is responsible for keeping accurate and accessible records of all returned checks. The data must be available the next business day for retrieval by county users via a web-based retrieval application operated and supported by the selected Offeror. Access to this web-based application should be provided to DHS and county DRS users via ePACSES.

5. Other Correspondence Received

The selected Offeror will submit the appropriate DRS payor/payee communications submitted with collections to the appropriate DRS office on the same business day it is received. The selected Offeror is required to submit proposals which include imaging of the correspondence and transmission to the county offices via email.

C. Disbursement Processing

Disbursement processing for the purposes of this RFP includes all activities necessary and required to process a daily disbursement file from PACSES and to issue the disbursements in that daily file in the format and type identified in the file. **See Appendix A – Processing Statistics.**

PACSES produces daily files related to the issuance of new stored value cards which must be processed to ensure that all customers who require a stored value card are in fact issued a card. Disbursement processing therefore also encompasses all activities related to the establishment, maintenance and support of customer stored value card accounts, and includes all activities required to issue, inactivate, close, and support stored value cards. The selected Offeror should explain their plan to establish stored value cards for support payments, including timeframes to operate, fee structures (if any), payment card resolution procedures and timeframes, and the hardship exemption procedure and policy to be used by the selected Offeror.

PACSES disbursement file layouts are as shown in **Appendix O – SCDU Interface File Specifications**.

Disbursement processing also includes all activities related to the establishment, maintenance and support of customer direct deposit account information, including development, distribution and data entry into PACSES of customer Direct Deposit Request forms, and allowance for a ten (10) day Pre-Note and retention of original customer Direct Deposit Request forms. The selected Offeror should explain their plan to offer and support direct deposit for support payees who chose the direct deposit option for receipt of support payments, including Direct Delivery Request Form processing and procedures.

Disbursement activities the selected Offeror is required to perform include, at a minimum: printing of checks and associated stubs and transmittal reports; all activities required to ensure all checks printed daily are appropriately sorted and delivered mail-ready to the USPS for processing the same day the check is printed; disbursement of funds electronically from the SCDU disbursement bank account for direct deposit to payee bank accounts identified in the PACSES disbursement file; disbursement of funds electronically from the SCDU disbursement bank account to payee stored value card accounts; maintenance of adequate supplies of check stock; security of check stock and fraud prevention associated with maintenance and operation of check printing activities; all activities associated with the issuance and inactivity of stored value cards to support payees identified by PACSES; stored value card account maintenance and customer support for all support payees who are issued a stored value cards; distribution and all processing associated with support customers' Direct Deposit Request forms, including data entry of accurate direct deposit account information in PACSES, maintenance of customer completed Direct Deposit Request forms used as source documents for data entry in PACSES, and dispute resolution; all ancillary functions required to maintain security and control over the entire disbursement process.

1. Check Processing Requirements

- a.** The selected Offeror is required to accept the daily disbursement file from PACSES and to process all disbursements identified as check disbursements on that file the same day the check file is received. The PACSES disbursement file will be transmitted to the selected Offeror by 6AM Tuesday through Saturday.
- b.** The selected Offeror shall maintain, operate and support an automated system to print support-related checks to custodial parents and other court-ordered payees. Approximately two percent (2%) of support disbursements are made by check. The check must include a stub and must provide payment-related information. See **Appendix R – Check Stub and PACSES Transmittal Form** for a copy of the current SCDU Check and stub. All information included on the check and check stub is subject to DHS approval.

- c. The selected Offeror is required to print, and include with the check for mailing, any associated transmittal document or report included with the check as defined in the PACSES disbursement file. See **Appendix R – Check Stub and PACSES Transmittal Form** for a copy of the current transmittal document/report.
- d. The selected Offeror is required to print and mail all checks in the daily PACSES disbursement file the same day the PACSES disbursement file is transmitted from PACSES. Any check holds will be controlled by PACSES.
- e. The selected Offeror is required to pull from the daily check print/mail process any check upon request by DHS received prior to delivery of the checks to the USPS on a schedule agreed to with DHS.
- f. The selected Offeror must pre-sort, bar-code, and bundle the checks by zip code and take all steps necessary to ensure that DHS is afforded the lowest possible mailing costs. All envelopes used by the selected Offeror for the purpose of issuing disbursements or other correspondence shall have a SCU return address, unless DHS specifically requests an alternative. The selected Offeror is responsible for costs associated with mailing checks, except for postage costs which will be passed-through to DHS.
- g. The selected Offeror must provide the ability to print and possess informational text on the check stub. DHS will determine the content of the text to be printed on the check stub and this text is subject to change as DHS determines that changes are required.
- h. The selected Offeror shall assume responsibility for researching returned checks to determine if they should be voided or canceled and re-issued. If the returned check is voided, the selected Offeror will update PACSES online the same day the check is returned to SCU. The selected Offeror must also enter the void requests into the FXR database the same day the returned check is received.
- i. The selected Offeror is required to return a daily disbursement file to PACSES updated with the check numbers assigned to PACSES in order for PACSES to update disbursement records.
- j. The selected Offeror is required to order and maintain a sufficient supply of blank check stock to ensure that check printing is not interrupted.
- k. The selected Offeror is required to maintain the check template in an electronic format to allow for easy update or modification. The electronic check design template is subject to DHS approval. A copy of the current check design as shown in **Appendix R – Check Stub and PACSES Transmittal Form**.
- l. The selected Offeror is required to utilize the latest check stock security features to prevent check fraud. The selected Offeror’s financial institution/subcontractor is required to provide Positive Pay or a similar feature to preclude check fraud.
- m. The selected Offeror is required to securely store all blank check stock and to provide audit and control measures to prevent check fraud and/or theft.
- n. The selected Offeror is required to stale-date all checks one-hundred eighty (180) days from the date of issue.

- o. The selected Offeror is required to provide to PACSES a daily file of cleared and stale-dated checks. PACSES will update the disbursement information and provide any new disbursement information to the selected Offeror.
- p. After the USPS returns undeliverable checks, the selected Offeror is required to update PACSES with the new address, if provided by the USPS. Update of check payee address information in PACSES by the selected Offeror is required within one (1) business day, and is to be done ONLY if the USPS provides a forwarding address with addressee name that exactly matches the name on the check. If a forwarding address is not provided by the USPS, the selected Offeror is required to end date the address in PACSES.
- q. Occasionally the need to reprint one or several checks may occur. The situations can include, but are not limited to the following:
 - check mutilated in processing
 - check information not aligned properly
 - check number or information inconsistent with check register.

The selected Offeror is required to reprint checks. The selected Offeror is required to ensure that no duplicate checks are printed. In the event that duplicate checks occur, the selected Offeror is responsible for all duplicate checks issued in error and any and all costs associated with the issuance of duplicate checks.

2. eDisbursement Processing Requirements

- a. The selected Offeror is required to process all disbursements identified as electronic disbursement on the daily PACSES disbursement file. All electronic disbursements must be applied within one (1) banking day to the payees' account. The selected Offeror is required to process support disbursements electronically (eDisbursements) for the following:
 - Direct deposit of disbursements to payee bank accounts
 - Direct deposit of child support disbursements to payee stored value card accounts
 - Disbursement to other state child support agencies' bank accounts
 - Disbursement to other in-state and local agencies' bank accounts
 - Disbursement to foreign financial institutions
- b. The selected Offeror is required to support a stored value card. Currently, the Pennsylvania EPPICard MasterCard debit card is the stored value card for child support, and has been in use in Pennsylvania since 2004. Approximately fifty-seven percent (57%) of all support disbursed in Pennsylvania is disbursed to individual EPPICard accounts.
- c. The selected Offeror is required to comply with the Consumer Credit Protection Act as mandated in accordance with federal and state laws, regulations and rules at no cost to the Commonwealth or its subdivisions.
- d. The selected Offeror is required to provide all services, related to a stored value card, fee free including the following:

- Card account must allow for additional funds to be deposited/transferred into the account from various sources
 - Card issuance including for members living abroad
 - Returned card processing
 - Card account maintenance, including annual escheatment of accounts in accordance with Commonwealth law:
<http://www.patreasury.gov/bup/forms/>
 - Inactivation processing of cards
 - Card reissuance (first replacement must be fee free)
 - Customer support for card holders, to include toll free access to customer service representatives Monday through Friday from 8AM to 5PM local time; access to account information via a secure Internet website.
- e. The selected Offeror is required to provide a toll free telephone number for stored value card recipients to obtain a PIN, to provide information about their account and all services related to stored value card account ownership and maintenance activities, for reporting of lost/stolen cards, request processing for replacement cards, requests for account balance information, requests for account statements, requests for account refunds in the case of deceased cardholders, and all other customer service related to stored value cards proposed by the selected Offeror.
- f. The selected Offeror is required to provide secure, on-line access 24/7 to account information to cardholders proposed by the selected Offeror, via the Internet.
- g. The selected Offeror is required to support the direct deposit of support payments to payee bank accounts. Approximately forty-one percent (41%) of all support disbursed in Pennsylvania is disbursed to payee bank accounts.
- h. The selected Offeror is required to provide all services related to the direct deposit of support to individual payee bank accounts, including the following:
- Customer support to payees requesting direct deposit enrollment and dispute resolution
 - Provision of Direct Deposit Request forms. See **Appendix S – Direct Deposit Request Forms** for a copy of the Direct Deposit Request Form
 - Data entry of payee direct deposit account information in PACSES
 - Retention and storage of all original completed Direct Deposit Request Forms
- i. The selected Offeror is required to produce a detailed daily management report with control totals of the number of disbursements by type, the total dollar amount of each disbursement type, and a grand total for all disbursements. The Offeror will be given access to appropriate PACSES financial reports via ePACSES. The Offeror is required to retain daily disbursement file until the Child Support Collection account is reconciled each month by the Offeror and approved by DHS.

D. Employer/Non-Wage Withholding Billing Statement Processing

Employer/Non-wage Billing Statement Processing encompasses the continued printing and mailing of monthly withholding/billing statements for entities responsible for income withholding. These entities

may include small and large employers, and other entities, such as pension funds, responsible for income withholding.

PACSES will provide an employer billing file to the selected Offeror. See **Appendix T – Employer Billing Notice and Transmittal Form** for a copy of the current employer billing notice and coupon and the current employer billing file layout.

1. Employer/Non-Wage Withholding Billing Statement Processing

The selected Offeror must print, stuff, and mail first class, transmit electronically, or by other DHS-approved means, employer/non-wage withholding billing statements. The billing statement is intended to expedite collection processing for income withholding collections from employers and other entities responsible for income withholding.

2. Reprints

Occasionally the need to reprint one (1) or several employer/non-wage billing statements arises. The situations can include, but are not limited to statements mutilated in processing and transmittal information not aligned properly.

The selected Offeror is responsible for reprinting the employer/non-wage billing statement.

E. Employer’s National Medical Support Notice (NMSN) Processing

The selected Offeror must print, stuff, and mail first class, or by DHS approved means, the NMSN. The selected Offeror must answer employer questions about the NMSN and provide assistance to the employer in the completion of this form. See **Appendix U – National Medical Support Notice Form** for a copy of the current National Medical Support Notice.

- Currently, PACSES generates approximately 4,563 NMSN forms per month.

F. Defendant Billing Statement/Payment Coupon, Reprints, State Tax Refund Offset Notice Processing, Special Notice Processing

Defendant Billing Statement/Payment Coupon/Special Notice Processing encompasses the printing and mailing or electronic transmission of monthly payment billing statements and coupons to individuals whose child support payments are not wage attached. Special Notice Processing encompasses the printing and mailing of special notices, including monthly State Tax Refund Offset notices, and other special notices, as needed, by the BCSE. See **Appendix A – Processing Statistics**.

1. Defendant Billing Statement/Payment Coupon Processing

PACSES will transmit the monthly defendant billing file to the Offeror following PACSES BOM (Beginning Of Month) batch processing. The selected Offeror must process and mail or otherwise distribute the defendant billing statements within two weeks of receipt of the PACSES defendant monthly billing file to ensure defendants receive the billing statements in time to use for submission of support payments in the month following the month in which the file is provided by PACSES. Additionally, PACSES produces a daily off-cycle defendant billing file each day which will be transmitted to the selected Offeror by PACSES following completion of PACSES nightly batch processing. The selected Offeror is required to print and mail or otherwise distribute the daily defendant billing statements on the same day that the file is received from PACSES. See **Appendix V – Defendant Billing Notice and Transmittal Form** for a current sample defendant billing statement and payment coupon and the defendant billing file layout. This scannable coupon is intended to expedite collection processing for individuals who are not wage attached.

2. Reprints

The selected Offeror will be responsible for reprinting billing statements/coupons as the need arises. Reprint of one or several billing statements/coupons may be required as a result of billing statements/coupons mutilated in processing and billing statement/coupon information not aligned properly.

3. State Tax Refund Offset Notice Processing (STROP)

The selected Offeror will be responsible for monthly printing and mailing of STROP notices, as shown in **Appendix W - Pre-Offset Notices for State Tax Intercept**. PACSES will transmit the STROP notice file to the SCDU contractor each month. The SCDU contractor is responsible for printing and mailing the STROP notices.

4. Special Notice Processing

The selected Offeror will also be responsible for special notices, as needed and approved by DHS. Special notice processing can include, but is not limited to, design, development, printing and mailing of outreach material, posters, brochures, letters, notices, forms, or other special materials to be identified by BCSE as the need arises. All special notices will be subject to approval by DHS. When a special notice is required, the selected SCDU contractor will assess the requirements submitted by BCSE, and the costs for producing, printing, and mailing the special notice.

G. Mailing Operations

The selected Offeror is responsible for postage equipment. The selected Offeror must work with the USPS to ensure that DHS receives the lowest possible postage costs available for first class. DHS will reimburse the selected Offeror for postage costs for the purposes of this contract. The postage costs will be billed separately from contract costs on a monthly basis.

Mailing operations also encompasses receiving all other documents that need to be mailed by the SCDU. These may include, but are not limited, to the following:

- DRS/SCDU correspondence
- Payment documentation requested
- Rejected payment documentation
- All employer/non-wage billing statements and defendant billing statement and coupons
- Direct deposit enrollment forms
- Replacement payments
- Stored value card returns
- eDisbursement returns
- Special mailing returns
- National Medical Support Notices (NMSN)

H. Customer Service

The selected Offeror will provide customer service to support payors, payees, employers, and business partners involved in the remittance and disbursement of support payments.

For purposes of this section, child support agency is defined as county DRS and Family Courts, DHS, and Child Support Enforcement Agencies from other states.

The selected Offeror will be responsible for providing the following customer service tasks:

1. Provide a customer service Integrated Voice Response system (IVR) with DHS approved messages which provides toll free access for each of the following customer groups:
 - Child support agencies for questions/problem resolutions
 - Employers for questions, problem resolution, updates of address, contact and other employer-related information including electronic payment options, and assistance in establishing electronic remittance from employers
 - TTY (text telephone) access for payor and payees
 - A voice response system, for payor and payee inquiries
 - Spanish speaking customer service representatives for payors and payees

The toll free access must be available for in-state and out-of-state callers and operate twenty-four (24) hours a day, seven (7) days a week. The system must contain a sufficient number of telephone lines and staff so that a caller can receive personal assistance Monday through Friday from 8:00 AM to 5:00 PM local time. The selected Offeror must provide sufficient capacity so all calls are answered prior to the fourth ring, no caller is on hold for more than one (1) minute, and provide messages to the caller when the system is down or busy.

2. The Offeror must provide in their proposal strategies for payment of child support obligation which offer a no cost/fees or low cost/fees regardless of payment option including online; no chargebacks to the Commonwealth; and the ability to track payment information in real-time and provide the ability for real-time reporting. At a minimum these strategies will include, but not limited to, the following:
 - An option for automatic reoccurring charges to all major credit cards
 - A 'one-click' payment option for the mobile and desktop versions of the child support websites
 - 100% of funds must be guaranteed
 - Accept third party credit cards
 - Ability to make a payment at 'Point of Sale' location
 - Provide kiosks throughout the Commonwealth at convenient locations
3. Provide assistance to payors, payees, employers and agencies regarding collection, and disbursement information.
4. Provide assistance to payors, payees and employers to change collection, and disbursement methods/data.
5. Provide general problem resolution and any necessary forms regarding lost, damaged, or delayed collection and disbursements.
6. Provide customers with the appropriate agency telephone number as necessary.
7. Provide multilingual customer service; at a minimum English and Spanish; to respond to payor, payee, and employer inquiries. Language Line services are available through DHS.
8. Include a security component so confidential information is protected.
9. Include the capability for supervisory/DHS monitoring.

10. Include the capability for providing detailed management reporting as defined by DHS.
11. Provide information on the most recent receipt and disbursement transactions, as shown in **Appendix O – SCDU Interface File Specifications**.
12. The selected Offeror shall design, develop, maintain, operate, and support an Employer Maintenance Unit (EMU). EMU staff centrally validates and processes requests to add and update all employer information stored on the PACSES employer table database, including employer Federal Employer Identification Number (FEIN), address(es), contact information, etc. EMU staff also updates PACSES with all changes of defendant employment status and employer address and contact changes submitted with collections, received by telephone, or received from the Child Support website the same day the information is received. The selected Offeror's EMU must provide the county DRSs capability to submit requests to the EMU, and must provide an acknowledgment/response to the requesting DRS worker when the request has been processed. The EMU will be accessed by the DRSs via the PACSES intranet on ePACSES and must provide for telephone contacts with the DRSs and BCSE staff. See **Appendix X – Employer Maintenance Unit (EMU) Request Process** for an overview.
13. The selected Offeror shall design, develop, maintain, operate, and support a Financial Exceptions Unit (FXU) to centrally process financial program exceptions in PACSES. The selected Offeror's FXU must provide the capability to receive Financial Exceptions Requests (FXRs) from the county DRS as well as from BCSE staff. The selected Offeror's FXU must provide for the submission of FXRs by designated DRS workers, provide for identification of the FXRs type, route requests to the appropriate work entity (either the FXU or to BCSE Division of Field Operations) for processing, provide an email to the requestors which reports the status or the resolution of the FXRs. The selected Offeror's FXU will be accessed by the DRSs via the PACSES intranet on ePACSES and must provide for telephone contacts with the DRSs and BCSE staff as shown in **Appendix Y –Financial Exception Review (FXR) Overview**.

Proper security procedures must be maintained so the requesting party receives only the information he/she is entitled to receive. All child support confidentiality rules must be strictly applied.

I. Outreach Support

Outreach Support encompasses functions designed to make it easier for customers/groups to remit payments with required respondent information, in a timely fashion and in a manner that will facilitate and expedite payment processing. The selected Offeror is required to minimize the impact to DHS, the County DRSs and business partners if any changes are initiated by the offeror. All outreach activities and developed materials must be closely coordinated with and approved by DHS prior to use by the selected Offeror. The collection and disbursements customers/groups may include the following:

- Employers and payroll companies, agencies, and support payors support payees
- County DRSs, child support agencies, and Financial Institutions
- Judges, legislators, and attorneys

1. Employer Outreach

- a. The selected Offeror shall develop and distribute outreach materials to educate employers about support collection and disbursements program requirements, including employers' responsibilities for remitting support payments and the provisions of Act 109 of 2006, which requires employers to remit support payments electronically.

- b. The selected Offeror shall develop and conduct an ongoing outreach effort to encourage employers to remit support payments electronically via EFT. The selected Offeror must provide technical support to employers, their agents and their financial institutions to assist them in conversion to electronic payment options.
- c. DHS is most interested in proposals which include a variety of no and/or low cost options for employers to remit support payments electronically and which include technical and operational support of employer conversion to electronic support remittance options.

2. Other Customer Outreach

The selected Offeror shall develop and distribute outreach materials that provide information to support customers and business partners about the support collection and disbursements program requirements, operational policies and customers' responsibilities.

The selected Offeror collection and disbursements education and outreach program must include, but is not limited to, the following:

- Programs designed for each customer group
- News articles which can be inserted in various mailings
- Training programs which define requirements, operational policies and responsibilities for each customer group
- Publications and materials provided in a browser accessible format.

J. Finance and Banking Services

The selected Offeror is required to provide accountable and auditable financial transactions critical to the success of the SCDU operation. The selected Offeror's procedures and practices must conform to GAAP standards.

1. Financial Overview

- a. SCDU financial activities include, but are not limited to: reconciliation of the SCDU data and bank accounts with PACSES financial reports; day to day management and oversight of the financial operation of the SCDU; review and enhancements of internal financial controls; all activities related to the SCDU banking relationship, including maintenance of bank accounts, monthly book to balance reconciliation of the SCDU bank accounts; responsibility for exception processing activities (e.g., stop payment requests, replacement of lost/stolen checks, forgeries, and non-sufficient funds); processing receipts; and preparing the daily bank deposits. The selected Offeror's proposal must describe the process that will be followed for all SCDU financial activities defined in this section.

2. Banking Services

- a. The selected Offeror is required to either provide banking services directly or through subcontract for necessary banking services for the SCDU. As the prime contractor, the selected Offeror is required to ensure that all banking services required to support and operate SCDU are provided, subject to the following:
 - The banking contract between the selected Offeror and the bank will be subject to both DHS and PA Treasury approval

- The selected bank must not charge check cashing fees to individuals who do not maintain a deposit account at the bank for cashing their child support checks at its facilities
 - The selected bank must not charge an ATM surcharge fee to individuals using the Pennsylvania EPPICard MasterCard stored value card or any stored value card proposed by the selected Offeror, at its ATM
 - The selected bank must not charge Pennsylvania EPPICard cardholders or card holders of the stored value card proposed by the selected Offeror for cashing out their Pennsylvania EPPICard or the selected Offeror's proposed stored value card
- b.** The banking services required include deposit, checking, electronic disbursement via ACH transaction, and account maintenance and management services including, but not limited, to the following:
- Checking and deposit services, including processing and depositing items delivered to the bank for the state collection and disbursement program
 - Checking services and direct deposit services, including making payment and reconciling all checks and direct deposits/electronic funds transfers drawn; providing an automated reconciliation system for all disbursements issued, including stale dating of outstanding checks one-hundred eighty (180) days from the date of issuance
 - Processing ACH transactions for direct deposit and stored value card disbursements
 - Processing stop payment orders
 - Positive Pay or similar services and security features to prevent check fraud and forgery
 - Debit block on the account to prevent charge backs
 - Electronic funds transfer services, to include ACH and other funds transfer services, as needed
 - Account management services to ensure maximum interest earned on the concentration account
 - Provision of services required to accept, reconcile and report on electronic collections received in the SCDU account
 - The selected Offeror must ensure that the SCDU Bank Accounts contain sufficient funds to liquidate the remaining liability (including interest), regardless of the cause or the responsible party

In order to facilitate a smooth transition of operations to the selected Offeror, DHS requires that the selected Offeror accept an assignment of the existing bank contract through an agreed upon initial start-up phase. Prior to termination or expiration of this contract with the bank, the selected Offeror must establish a new banking relationship based on a banking transition plan that is approved by DHS. Subsequent changes to the selected Offeror's banking relationship must be approved in advance by the Commonwealth.

The selected Offeror must process disbursements to the correct payee within the federally mandated 48 hours. DHS is most interested in Offeror's proposals which process disbursements to the correct payee in 24 hours, which is what current support customer's experience.

Currently, DHS owns three bank accounts (collection account and disbursement account which are maintained as zero balance accounts, and the support concentration account) located in Wells Fargo, N.A. and which are managed and operated under the direction of the SCDU contractor. The

SCDU contractor has fiduciary responsibility for the maintenance and operation of these SCDU accounts, subject to DHS/Comptroller Operations audit and oversight.

3. Invoicing for Banking Services

- a. The selected Offeror is required to submit detailed invoices for banking services and fees on a monthly basis but no later than ninety days from the end of the month services were provided, as shown in **Appendix Z – Sample Invoices for Main Services, Permit Postage, and PO Box Renewal**. The selected Offeror’s invoices for banking services must include all charges and the off-setting interest earnings.
- b. The selected Offeror is required to report and to transfer the interest earned on the support concentration account to Comptroller Operations monthly. The interest earnings for the support concentration account shall be no less than the four-week average 90-day Treasury Bill Auction Rate.
- c. The selected Offeror is required to calculate net bank account earnings, after deduction of fees, for all SCDU accounts and to apply the interest earnings against the cost of bank services. Any excess will be credited to DHS as reductions in the selected Offeror’s net monthly invoice. If banking charges exceed account earnings, the selected Offeror is responsible for the excess charges. The selected Offeror is required to show the gross earnings on the SCDU accounts on the monthly invoices five days after end of month.

4. Additional Banking Tasks

- a. The selected Offeror is required to provide the bank with a daily file containing the check number and amount of each check issued.
- b. The bank is required to provide the selected Offeror with a daily canceled check file containing check number, amount and date cleared. The selected Offeror is required to provide this information in approved file layout to PACSES within twenty four (24) hours of when it is received for update of PACSES records. See **Appendix O - SCDU Interface File Specifications** for file layout.
- c. The bank is required to provide the selected Offeror with a staled check file containing checks uncashed after one-hundred eighty (180) days from the date of the check issuance. The selected Offeror is required to provide PACSES, within twenty four (24) hours of when it is received, with this information in the approved file layout so that PACSES records can be updated. See **Appendix O - SCDU Interface File Specifications** for file layout.
- d. The bank is required to provide Positive Pay or similar service to reduce potential check fraud.

K. Data/Records Security

1. The selected Offeror is responsible for providing, in accordance with federal and state laws, regulations and rules a secure environment for all collections, data, records, and data processing operations.
2. The selected Offeror is required to comply with the **Appendix J – IRS Standard Contract Requirements**.

3. The selected Offeror must secure all data from sabotage, manipulation, theft or breach of confidentiality.
4. The selected Offeror must use encryption of data in accordance with federal and state requirements.
5. The selected Offeror is required to use existing State security to limit access and manipulation within PACSES and its related systems.
6. The selected Offeror shall maintain a secure area for processing and holding collections, printing checks, storing check stock and data files and allowing access to the IVR consistent with normal business practice and the satisfaction of DHS.
7. The selected Offeror must comply with all requirements included in **Part I, Section I-29**.
8. The selected Offeror must demonstrate evidence that they will provide a secure area for PACSES personal computers to which only those employees given security clearance on PACSES have access.
9. The selected Offeror must include surveillance and monitoring system for the check processing and mail operations area.

L. End of Contract Turnover

The selected SCDU Offeror is required to provide for an orderly and controlled transition at the end of the contract period to DHS, or a successor Offeror without interruption of processing and services provided to local DRS's and clients.

The current Vendor is required to turn over the complete collection and disbursement functions to DHS, or at DHS's option, a successor Offeror. DHS seeks a low risk turnover which has no adverse effect on the local DRS's and all clients. The selected Offeror's responsibilities at the time of turnover shall include management and control of its turnover assistance and cooperation with the other party or parties to the turnover. Source documents must be retained in electronic format for seven (7) years from the date of the expiration of this contract, or until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

The Offeror is required to provide to DHS, with submission of their proposal, an End of Contract Turnover Plan. The selected Offeror will provide a revised End of Contract Turnover Plan one year after the fully executed that will be reviewed and approved by DHS. A new turnover plan must be provided to DHS at their discretion within two (2) months of the request. The plan must provide for an orderly transition of all collection and disbursement activities, and all other ongoing activities in support of the SCDU operational functions to DHS or any new Offeror that DHS may select. The plan will include a schedule of all activities with time frames to ensure that all components of the SCDU are included in the turnover plan.

The plan must document how the selected Offeror plans to transition these tasks to DHS or a new Offeror with no or minimal disruption to parents, children and the county DRSs.

The Offeror's turnover plan must provide an approach to accomplishing the specific tasks associated with transition to a new supplier. For example:

- Turnover plan
- Turnover of banking services

- Turnover of all USPS PO Boxes
- Turnover of all Customer Service Phone Lines and IVR
- Turnover of Customer Service network
- Turnover of all data and imaging

The selected Offeror must identify and describe all issues, constraints and assumptions used in the preparation and response to this task.

The selected Offeror must describe the schedule required to turnover the functions from a new vendor.

III-9. Reports and Project Control. The selected Offeror will provide reports as shown in **Appendix AA – SCDU Reports.**

A. Management Reporting. The selected Offeror will produce the following reports:

1. A detailed daily management report showing an item count of mail received, an item count of any backlog at the end of the day, and where in the work flow the backlog exists; item counts and dollars collected for each type of receipt category received and completed; carryover/research items; total number of payments; dollars deposited; dollars deposited by deposit type; other deposits; total unidentified; item count and dollars disbursed by disbursement type; total number of calls to customer service; number of calls answered by customer service; average talk time for calls; number of calls abandoned; average abandon time; average customer wait time for call to be answered; total number of calls to employer customer service; number of calls answered by employer customer service; average talk time for employer calls; number of employer calls abandoned; average abandon time; average employer wait time for call to be answered.
2. A weekly management report which provides numbers of unidentified and rejected collections.
3. A detailed monthly report which provides the total number and total amount of collections and disbursements by type, including but not limited to: Collections - paper (check/money order), credit card (telephone), on-line/web-based; a month by month percentage of collections received electronically vs. paper/check, foreign currency electronic files; Disbursements – check, direct deposit, stored value card; and a month by month percentage of disbursements issued electronically vs. check. A monthly report of the number of employer and defendant billings notices and coupons printed and mailed.
4. A daily IVR report indicating the number of calls received abandoned calls, average call lengths, and any other standard IVR call monitoring indicators.
5. A monthly summary of management reports.
6. A weekly report of checks returned by the bank unpaid.
7. A weekly Quality Assurance report on all aspects of the SCDU operation. The offeror must provide a written sampling plan to be used for measuring performance.
8. A daily report of Over the Counter payments received and processed for each DRS.

9. A daily report of the checks returned to payers and employers; an item count for each type of check return; and information on larger employer checks on hold for a day waiting for a response from the employer.
10. A daily report which provides the collection item count from SCDU accounting software.
11. A daily stored value card report indicating the dollar value, posting date, and time.
12. A monthly report which provides the amount of interest earned on the SCDU account for the previous month.
13. The selected Offeror shall provide any other management reports required by DHS to ensure contract performance standards are met and to meet DHS reporting requirements.
14. A sample report format must be submitted for each of the above reports. The final report format must be approved by DHS. The selected Offeror must provide a draft of any new report within thirty (30) days of the request by DHS. The selected Offeror must provide the completed variable report no later than sixty (60) days from the date of the original request from DHS.
15. The selected Offeror shall provide a management report to DHS at the end of each month, on a schedule to be agreed upon with DHS; detailing the number and type of employer outreach activities for the month as well as the number of customer outreach activities for the month.

III-10. Potential Future Enhancements

DHS is exploring future enhancements to the system. If these enhancements are implemented, the selected Offeror will provide these additional services. The selected Offeror is required to propose a response to these services and enhancements. The Offeror will propose a technical response to these future enhancements. The technical response to these future enhancements **will not** be included in the technical scoring of the Offeror's proposal. Currently, DHS is contemplating the following enhancements:

A. Enhanced Employer Customer Services:

- Provide a consistent point of access and information to employers, including: Income Withholding Orders– Services, to include but not limited to, printing and issuance/ mailing of income withholding orders to employers. Currently, approximately 127,986, income withholding orders are generated by PACSES monthly
- Early intervention and employer compliance monitoring contact with employers who have not remitted a wage withheld payment to the SCDU within 20 days of issuance of the income withholding order to encourage timely submission of support payments
- Answering employer questions about the income withholding order and explanation of electronic payment options
- Replacement of income withholding orders to employers who request a copy, with the copy of the wage withholding order to be either mailed or faxed to the employer within one (1) day of employer's request for replacement/copy.

B. National Medical Support Notice (NMSN):

- Provide the employer the ability to access notice from a secure location electronically
- Follow-up contact with employers who have not responded to the NMSN within ten (10) days of issuance of the National Medical Support Notice

- Follow-up contact with employers who have responded affirmatively via NMSN regarding the availability of insurance coverage but who have not yet provided insurance coverage in response to the courts' order to do so.

C. FIDM asset freeze and seize services, to include:

- Receipt of data files from PACSES
- Processing of these FIDM files to print and mail FIDM initiated asset freeze and seize notices centrally by DHS. Currently, PACSES generates approximately 9,391 freeze notices per month
- Receipt, tracking, processing and disposing of payor appeals of FIDM asset freeze/seize. Disposition of payor FIDM appeals includes interaction with the payor, the financial institution, the appropriate DRS and BCSE to determine the validity of the payor appeal. Appeal processing services will also include the provision management reports to DHS. Report format and frequency will be determined if this option is implemented

D. PA SCDU website and support services to be established and operated by the selected Offeror, separate from DHS's <https://www.humanservices.state.pa.us/csww/>, to provide services and options directly associated with the work performed by the PA SCDU contractor. The PA SCDU website and support services for the website should include the following:

- The establishment of a unique, PA SCDU-specific website for PA SCDU payor, payee and employer customers
- For payees, the PA SCDU website should provide, at a minimum, the ability for the payee to: request forms (for example, Direct Deposit Request form, stop payment request form); obtain information on payments disbursed, including payment history and the ability to inquire about a specific payment or by specific date; the capability to request a change in disbursement method from Direct Deposit to stored value card or from stored value card to Direct Deposit; answers to "frequently asked questions"; the capability to contact PA SCDU Customer Service with questions; (a "contact us" option)
- For payors, the PA SCDU website should provide, at a minimum, the ability for payors to: request forms; the capability to inquire about payment history, and provide options to inquire for a specific payment or specific payment date; information about and access to on-line payment and other payment options available; answers to "frequently asked questions"; the capability to contact PA SCDU Customer Service with questions; and ("contact us" option)
- For employers/business partners who remit support payments, the PA SCDU website should provide, at a minimum: an overview of and information about electronic remittance and other payment options; approved file layouts for electronic remittance of support payments to the PA SCDU; employer payment coupon information and services (such as reprint capability, requests for stop coupons, etc.); the capability to request and perform a case reconciliation prior to initiating electronic remittance of support payments to the PA SCDU; answers to "frequently asked questions"; the capability for employers to contact PA SCDU Employer Customer Service with questions ("contact us" option); enhanced employer customer service, and/or FIDM freeze processing options, the PA SCDU website should also provide functionality to facilitate interaction with employers, and business partners to facilitate those processes.

E. Enterprising Imaging

- Provide the ability for electronic imaging to be incorporated into the case folders contained in the PACSES.

III-11. Objections and Additions to Standard Contract Terms and Conditions.

The selected Offeror will identify which, if any, of the terms and conditions (contained in **Part VI**, which includes the **DHS Addendum to Standard Terms and Conditions/Audit Clauses** and the **Business Associate Addendum**) 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 selected Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but DHS may consider late objections and requests for additions if to do so, in its sole discretion, would be in the best interest of the Commonwealth. DHS may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The selected Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Part VI, which includes the DHS Addendum to Standard Terms and Conditions/Audit Clauses** and the **Business Associate Addendum**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the selected 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 selected Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in **Part VI**. DHS 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** shall constitute the Cost Submittal. The Cost Submittal shall be placed in a separate sealed envelope within the sealed proposal, separated from the technical submittal. Offerors should ensure that there is no costing information in the technical submittal. Offerors should not reiterate technical information in the cost submittal. The total proposed cost should be broken down into the components set forth in **Appendix BB – Cost Submittal**. The percentage of commitment to Small Diverse Businesses and Small Businesses 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, DHS may reject the proposal. Offerors should direct in writing to DHS pursuant to **Part I, Section I-9** of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of DHS’s written answer so that all proposals are submitted on the same basis.

The Offeror will propose costs for each of the proposed future enhancements that will be included in the “Future Enhancements” section of the Offeror’s Cost Submittal, as shown in **Appendix BB – Cost Submittal**. The proposed costs for these services and enhancements will not be included in the scoring of the Offeror’s proposal. Final costs for these services and enhancements will be negotiated at such time as DHS elects to exercise the option to add the services and/or enhancements.

DHS 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 DHS 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. DHS encourages participation by Small Diverse Businesses and Small Businesses as prime contractors, and encourages all prime contractors to make significant commitments to use Small Diverse Businesses and Small Businesses as subcontractors and suppliers.

A Small Business 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 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 Small Business 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 Small Diverse Business 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 Small Diverse Business 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/Pages/default.aspx>.

An Offeror that qualifies as a Small Diverse Business or a Small Business 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 Small Diverse Business or Small Business may be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

The Department's directory of self-certified Small Businesses and DGS/BDISBO-verified Small Diverse Businesses 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 Small Diverse Business and Small Business 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: RA-BDISBOVerification@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 **Appendix G – Small Diverse Business and Small Business Participation Submittal Form** and related **Appendix H – Small Diverse Business and Small Business Letter of Intent**. The submittal must be sealed in its own envelope, separate from the remainder of the proposal, and must be provided on the Small Diverse Business and Small Business Participation Submittal form, with information as follows:
- A.** Offerors must indicate their status as a Small Diverse Business and as a Small Business 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 Small Diverse Businesses and Small Businesses as subcontractors.
 - C.** Offerors must include a listing of and required information for each of the Small Diverse Businesses and/or Small Businesses with whom they will subcontract to achieve the participation percentages outlined on the Small Diverse Business and Small Business Participation Submittal.
 - D.** Offerors must include a Letter of Intent (attached as **Appendix H – Small Diverse Business and Small Business Letter of Intent** template which may be used to satisfy these requirements) signed by both the Offeror and the Small Diverse Business or Small Business for each of the Small Diverse Businesses and Small Businesses identified in the Small Diverse Business and Small Business 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 Small Diverse Business or Small Business; and
 - 2.** A description of the services or supplies the Small Diverse Business or Small Business will provide; and
 - 3.** The timeframe during the initial contract term and any extensions, options and renewals when the Small Diverse Business or Small Business will perform or provide the services and/or supplies; and
 - 4.** The name and telephone number of the Offeror’s point of contact for Small Diverse Business and Small Business participation; and

5. The name, address, and telephone number of the primary contact person for the Small Diverse Business or Small Business.

- E. Each Small Diverse Business and Small Business commitment which is credited by BDISBO along with the overall percentage of Small Diverse Business and Small Business 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 Small Diverse Business and Small Business Participation Submittal. Offerors will not receive credit for stating that after the contract is awarded they will find a Small Diverse or Small Business.

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 Small Diverse Business and/or Small Business Status or entitle an Offeror to receive credit for Small Diverse Business or Small Business participation.

V-3. Contract Requirements—Small Diverse Business and Small Business Participation.

All contracts containing Small Diverse Business and Small Business Participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

- A. Each Small Diverse Business and Small Business commitment which was credited by BDISBO and the total percentage of such Small Diverse Business and Small Business 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 Small Diverse Business and Small Business subcontractors credited by BDISBO must perform at least 50% of the work subcontracted to them.
- C. The individual percentage commitments made to Small Diverse Businesses and Small Businesses cannot be altered without written approval from BDISBO.
- D. Small Diverse Business and Small Business commitments must be maintained in the event the contract is assigned to another prime contractor.
- E. The selected Offeror and each Small Diverse Business and Small Business for which a commitment was credited by BDISBO must submit a final, definitive subcontract agreement signed by the selected Offeror and the Small Diverse Business and/or Small Business 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 CC – Model Form of Small Diverse and Small Business Subcontract Agreement**. The subcontract must contain:
 1. The specific work, supplies or services the Small Diverse Business and/or Small Business 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 Small Diverse Business and/or Small Business will receive based on the final negotiated cost for the initial term of the prime contract.
 3. Payment terms indicating that the Small Diverse Business and/or Small Business 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 Small Diverse Business and/or Small Business relative to the nature and level of the Small Diverse Business' and/or Small Business' participation in the project.
- F.** If the selected Offeror and a Small Diverse Business or Small Business 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 DHS 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 Small Diverse Business and Small Business 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 DHS and BDISBO when circumstances arise that may negatively impact the selected Offeror's ability to comply with Small Diverse Business and/or Small Business commitments and to provide a corrective action plan. Disputes will be decided by DHS and DGS.
- I.** If the Selected Offeror fails to satisfy its Small Diverse Business and/or Small Business 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 Small Diverse Business status and/or Small Business status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.

Part VI
Standard 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:

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 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 Request for Proposals (RFP) and the Contractor's Proposal.

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 which 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:
 - (1) No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
 - (2) Upon receipt of a Purchase Order, the Contractor shall promptly and properly transmit an acknowledgement in return. Any order which 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.
 - (3) 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 acknowledgement shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
 - (4) 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.

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.
- (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 a Request for Proposals (RFP) issued by the Issuing Agency.
- (f) Services. All Contractor activity necessary to satisfy the Contract.

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 to assure 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.

5. IDENTIFICATION NUMBER

The Contractor must have a SAP vendor number.

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 proposal, as accepted by the Commonwealth; and then
- (c) The RFP.

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.

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.

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.

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.

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.

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.

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.

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.

15. PAYMENT

- (a) The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
 - (1) the date on which payment is due under the terms of the Contract; or
 - (2) 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) above.

- (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
 - (1) 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).
 - (2) 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.
 - (3) 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.

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.

17. INSPECTION AND ACCEPTANCE

- (a) 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.
- (b) 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.

- (c) 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.
- (d) 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.
- (e) 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.
- (f) If, in the opinion of the Commonwealth, the corrected Developed Materials still contain material failures, the Commonwealth may either:
 - (1) Repeat the procedure set forth above; or
 - (2) Proceed with its rights under Section 22 (TERMINATION).

18. DEFAULT

- (a) The Commonwealth may, subject to the provisions of Section 19 (NOTICE OF DELAYS) and Section 53 (FORCE MAJEURE), and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Section 22 (TERMINATION)) the whole or any part of this Contract for any of the following reasons:
 - 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - 3) Unsatisfactory performance of the work;
 - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - 5) Improper delivery;

- 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - 7) Delivery of a defective item;
 - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - 9) Discontinuance of work without approval;
 - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - 11) Insolvency or bankruptcy;
 - 12) Assignment made for the benefit of creditors;
 - 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - 14) Failure to protect, to repair, or to make good any damage or injury to property;
 - 15) Breach of any provision of the Contract;
 - 16) Failure to comply with representations made in the Contractor's bid/proposal; or
 - 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, 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.

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 thereof in writing to the Commonwealth stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Commonwealth of any rights or remedies to which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with Section 21 (CHANGES).

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 hereunder shall be monitored by the Commonwealth and the Commonwealth's designated representatives. If the Commonwealth reasonably determines that the Contractor has not performed with due diligence, the Commonwealth and the Contractor will attempt to reach agreement with respect to such matter. Failure of the Commonwealth or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of Section 24 (CONTRACT CONTROVERSIES) of this Contract.

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.

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;
- (ii) all actual and reasonable costs incurred by Contractor as a result of the termination of the Contract; and

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

Failure to agree on any termination costs shall be a dispute handled in accordance with Section 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 of the Commonwealth created by this Contract is conditioned upon the availability and appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance 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 to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying

such failure, and diligently and continuously proceed to complete the cure . The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

- (1) 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.
 - (2) 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.
 - (3) Nothing in this Subsection 22 (c) shall abridge the Commonwealth's right to suspend, debar, or take other administrative action against the Contractor.
 - (4) 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).
 - (5) 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.

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.

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.

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

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.

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

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.

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.

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:
- (1) bodily injury;
 - (2) death;
 - (3) intentional injury;
 - (4) damage to real property or tangible personal property for which the Contractor is legally liable; or

- (5) 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.

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.

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.

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

- (a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, 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 which 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.

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 Protected Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA). Further, by signing this Contract, the Contractor agrees to the terms of the Business Associate Agreement, which is incorporated into this Contract as Exhibit A. It is understood that Exhibit A is only applicable if indicated in the procurement documents.
- (d) Rights and obligations of the parties under this Section 34 survive the termination of this Contract

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.

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 includes but is not limited to, methodologies, information, concepts, toolbars for maneuvering between pages, search engines, JAVA applets, and ActiveX controls.

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

1. 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 NonExclusive 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.

- (l) 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

It is understood that certain funding under this Contract may be provided by the federal government. Accordingly, the rights to Developed Works or Patentable Items of Contractors or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. Section 401, and other applicable statutes.

(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.

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.

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).

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.

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.

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.

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.

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 three (3) years from the date of final payment under 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 three (3) 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.

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*.

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.

46. NONDISCRIMINATION CLAUSE/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

- (a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate 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 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 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-lit places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- (d) The Contractor and each subcontractor shall not discriminate 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 and regulations 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 Small Business Opportunities (BSBO), 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.

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 or 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.

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.

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/or 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.

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.

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.

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.

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 #53, 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:
 - (1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - (2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

- (e) The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- (f) If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- (g) The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- (h) The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- (i) The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

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.

55. 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.

56. 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	Groundwood 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
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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 Industrial wipers	Used in cleaning and wiping applications	40

Paperboard and Packaging Products

Corrugated containers	Used for packaging and shipping a variety Of goods (<300 psi) (300 psi)	25 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) which 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 AGREEMENT

WHEREAS, the *[name of program and/or Department]* (Covered Entity) and Contractor (Business Associate) intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (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), the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, and the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, and all other applicable laws; and

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

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity that is in electronic form, which PHI must be handled in accordance with this Agreement and the standards established by HIPAA and the Security Rule and other applicable laws; and

NOW, THEREFORE, the parties to this Agreement set forth the following as the terms and conditions of their understanding.

1. Definitions.

- a. "Breach" shall have the meaning assigned to such term at 42 USCS § 17921 and HIPAA regulations at 45 C.F.R. § 164.402.
- b. "Business Associate" shall have the meaning given to such term under the Privacy and Security Rules, including but not limited to, 45 C.F.R. §160.103.
- c. "Covered Entity" shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 C.F.R. §160.103.
- d. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- e. "Privacy Rule" shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164.
- f. "Protected Health Information" or "PHI" shall have the meaning given to such term under HIPAA and the HIPAA Regulations in 45 C.F.R. Parts 160, 162 and 164, including, but not limited to 45 C.F.R. §160.103.
- g. "Security Rule" shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164.
- h. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (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), the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, and the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164.

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

NO OTHER USES OR DISCLOSURES OF PHI ARE PERMITTED.

3. BUSINESS ASSOCIATE OBLIGATIONS:

- a) **Security and Privacy Provisions Applicable to Business Associate.** Business Associate shall abide by the security and privacy provisions applicable to Covered Entities which are made applicable to the Business Associate by 42 USCS § 17931 and 17934.
- b) **Limits On Use And Further Disclosure Established By Agreement And Law.** Business Associate hereby agrees that the PHI provided by, or created or obtained on behalf of Covered Entity shall not be further used or disclosed other than as permitted or required by this Agreement or as Required by Law.
- c) **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity.
- d) **Reports Of Improper Use Or Disclosure.** Business Associate hereby agrees that it shall report to the Covered Entity's Privacy Officer, or his designee, and the Covered entity's legal office, within two (2) days of discovery any Breach or use or disclosure of PHI not provided for or allowed by this Agreement (unless some more stringent standard applies under this Contract). Business Associate agrees to conduct reasonable diligence to discover improper use or disclosure of PHI.

Such notification shall be written and shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the improper use or disclosure or Breach. An improper use or disclosure or Breach shall be treated as discovered by the Business Associate on the first day on which it is known to the Business Associate (including any person other than the person committing the Breach, that is an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate (or such person) to have occurred.

- e) **Reports Of Security Incidents.** In addition to following the Breach notification requirements in section 13402 of the HITECH Act and related regulations and guidance, Business Associate shall report to Covered Entity's Privacy Officer, or his designee, within two (2) days of discovery any Security Incident of which it becomes aware.
- f) **Subcontractors And Agents.** Business Associate hereby agrees that any time PHI is provided or made available to any 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 Agreement.
- f) **Right Of Access To PHI.** Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within five (5) business days of receiving a written request from the Covered Entity or individual. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity of same within two (2) business days. Business associate shall further conform with and meet all of the requirements of 45 C.F.R. §164.524, 42 USCS § 17936(e), and other applicable laws.
- 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 and other applicable laws. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity within five (5) business days.

- h) Provide Accounting Of Disclosures.** Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 C.F.R. §164.528, 42 USCS § 17935(c), and other applicable laws. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, the purpose of the disclosure, and shall include disclosures made on or after the date that is six (6) years prior to the request or April 14, 2003, whichever is later. 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, or within such other time as may be dictated by applicable law.
- i) Access To Books And Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, 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 the HIPAA Privacy Regulations.
- j) Return Or Destruction Of PHI.** At termination of this Agreement, Business Associate hereby agrees to return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Agreement. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Agreement to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.
- k) Maintenance of PHI.** Notwithstanding Section 5(j) of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under §5(h) of this Agreement for a period of six (6) years after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise.
- l) Mitigation Procedures.** Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Agreement or the Privacy Rule. Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement or the Privacy Rule.
- m) Training.** Business Associate will train all members of its workforce on its policies and procedures with respect to PHI as necessary and appropriate for the workforce members to carry out the functions required by this contract.
- n) Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement or other applicable laws.
- o) Grounds For Breach by Covered Entity.** Upon Business Associate's knowledge of a material breach by Commonwealth of this Business Associate Agreement, Business Associate shall notify Commonwealth of such breach and Commonwealth shall have at least thirty (30) days to cure such breach. In the event Commonwealth does not cure the breach, Business Associate shall have the right to report the violation to the Secretary. Notwithstanding any other language in this Agreement, the parties agree that termination by the Business Associate is infeasible.
- p) Grounds For Breach.** Any non-compliance by Business Associate with this Agreement or the Privacy or Security Rules will automatically be considered to be a breach of the Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take

reasonable steps to cure the non-compliance. Business Associate shall have thirty (30) days to cure such breach from the date of notice to cure by the Commonwealth. In the event Business Associate does not cure the breach, the Commonwealth shall have the right to immediately terminate this Agreement and the underlying agreement. If termination is infeasible, the Commonwealth shall report the violation to the Secretary.

- q) **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion, that the Business Associate has violated a material term of this Agreement.
- r) **Failure to Perform Obligations.** In the event Business Associate fails to perform its obligations under this Agreement, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Agreement and applicable law.
- s) **Privacy Practices.** The Department 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 Department. The Department retains the right to change the applicable privacy practices, documents and forms. The Business Associate shall implement changes as soon as practicable, but not later than 45 days from the date of notice of the change.

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 laws, as well as changes to such notice.
- b) **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware, if such changes affect Business Associate's permitted or required uses and disclosures.
- c) **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. §164.522 and other applicable laws, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. MISCELLANEOUS:

a. Regulatory References. A reference in this exhibit to a section in the Privacy or Security Rules means the section as in effect or as amended as reasonably determined by the Covered Entity.

b. Amendment. The Parties agree to take such action as is necessary to amend this exhibit from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

c. Survival. The respective rights and obligations of Business Associate under section 5(i) of this exhibit shall survive the termination of the Agreement.

d. Interpretation. Any ambiguity in this exhibit shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules as reasonably determined by the

Covered Entity.

e. Changes in Law. Business Associate shall comply with all applicable privacy and security rules and regulations, including but not limited to HIPAA regulations and the HITECH Act and HITECH regulations which are now in effect or which take effect during the term of this contract.

Exhibit A to Commonwealth of Pennsylvania Business Associate Agreement

Permitted Uses and Disclosures of Protected Health Information

1. Purpose of Disclosure of PHI to Business Associate: To allow _____ to meet the requirements of Contract # _____.
2. Information to be Disclosed to Business Associate: _____.
3. Use to Effectuate Purpose of Agreement: _____ may use and disclose PHI to the extent contemplated by Contract # _____ ,and as permitted by law with Commonwealth approval and guidance.

EXHIBIT B

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. Enterprise Language:** The parties agree that more than one agency of the Commonwealth may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "Commonwealth Agency" as defined by the Commonwealth Procurement Code, 62 Pa. C.S. §103, the terms and conditions of this Agreement apply to any purchase of products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software.
- 2. 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.
- 3. 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.
- 4. 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 4 for:
 - (1) modification of any licensed products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;

- (2) any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare the product;
 - (3) 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;
 - (4) use of the licensed products in other than its specified operating environment;
 - (5) 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;
 - (6) infringement of a non-Licensor product alone;
 - (7) the Commonwealth's use of the licensed product beyond the scope contemplated by the Agreement;
or
 - (8) 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.

5. 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.

6. 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.

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>.

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.

9. 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.

10. 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.

11. 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.

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.

IN WITNESS WHEREOF, Software Publisher has executed this Exhibit to Software Publisher's Software License Agreement on the date indicated below.

Witness:

Software Publisher

Signature Date

Signature Date

Printed Name

Printed Name

Title

Title

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

By: _____ [Signature Affixed Electronically] _____
Deputy Secretary Date

APPROVED:

_____ [Signature Affixed Electronically] _____
Comptroller Date

APPROVED AS TO FORM AND LEGALITY:

_____ [Signature Affixed Electronically] _____
Office of Chief Counsel Date

_____ [Signature Affixed Electronically] _____
Office of General Counsel Date

_____ [Signature Affixed Electronically] _____
Office of Attorney General Date

**DEPARTMENT OF HUMAN SERVICES
ADDENDUM TO STANDARD TERMS AND CONDITIONS/AUDIT CLAUSE**

A. APPLICABILITY

This Addendum is intended to supplement the Standard Terms and Conditions. To the extent any of the terms contained herein conflict with terms contained in the Standard Contract Terms and Conditions, the terms in the Standard Contract Terms and Conditions shall take precedence. Further, it is recognized that certain terms contained herein may not be applicable to all the services which may be provided through Department contracts.

B. CONFIDENTIALITY

The parties shall not use or disclose any information about a recipient of the services to be provided under this contract for any purpose not connected with the parties' contract responsibilities except with written consent of such recipient, recipient's attorney, or recipient's parent or legal guardian.

C. INFORMATION

During the period of this contract, all information obtained by the Contractor through work on the project will be made available to the Department immediately upon demand. If requested, the Contractor shall deliver to the Department background material prepared or obtained by the Contractor incident to the performance of this agreement. Background material is defined as original work, papers, notes and drafts prepared by the Contractor to support the data and conclusions in final reports, and includes completed questionnaires, materials in electronic data processing form, computer programs, other printed materials, pamphlets, maps, drawings and all data directly related to the services being rendered.

D. CERTIFICATION AND LICENSING

Contractor agrees to obtain all licenses, certifications and permits from Federal, State and Local authorities permitting it to carry on its activities under this contract.

E. PROGRAM SERVICES

Definitions of service, eligibility of recipients of service and other limitations in this contract are subject to modification by amendments to Federal, State and Local laws, regulations and program requirements without further notice to the Contractor hereunder.

F. CHILD PROTECTIVE SERVICE LAWS

In the event that the contract calls for services to minors, the contractor shall comply with the provisions of the Child Protective Services Law (Act of November 26, 1975, P.L. 438, No. 124; 23 P.S. SS 6301-6384, as amended by Act of July 1, 1985, P.L. 124, No. 33) and all regulations promulgated thereunder (55Pa. Code, chapter 3490).

G. PRO-CHILDREN ACT OF 1994

The Contractor agrees to comply with the requirements of the Pro-Children Act of 1994; Public Law 103- 277, Part C-Environment Tobacco Smoke (also known as the Pro-Children Act of 1994) requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health care services, day care and education to children under the age of 18, if the services are funded by Federal programs whether directly or through State and Local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law does not

apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug and alcohol treatment.

H. MEDICARE/MEDICAID REIMBURSEMENT

1. To the extent that services are furnished by contractors, subcontractors, or organizations related to the contractor/subcontractor and such services may in whole or in part be claimed by the **Commonwealth for Medicare/Medicaid reimbursements, contractor/subcontractor agrees to comply with 42 C.F.R, Part 420, including:**
 - a. Preservation of books, documents and records until the expiration of four (4) years after the services are furnished under the contract.
 - b. Full and free access to (i) the Commonwealth, (ii) the U.S. Comptroller General, (iii) the U.S. Department of Health and Human Services, and their authorized representatives.
2. Your signature on the proposal certifies under penalty of law that you have not been suspended/terminated from the Medicare/Medicaid Program and will notify the contracting DHS Facility or DHS Program Office immediately should a suspension/termination occur during the contract period.

I. TRAVEL AND PER DIEM EXPENSES

Contractor shall not be allowed or paid travel or per diem expenses except as provided for in Contractor's Budget and included in the contract amount. Any reimbursement to the Contractor for travel, lodging or meals under this contract shall be at or below state rates as provided in Management Directive 230.10, Commonwealth Travel Policy, as may be amended, unless the Contractor has higher rates which have been established by its offices/officials, and published prior to entering into this contract. Higher rates must be supported by a copy of the minutes or other official documents, and submitted to the Department. Documentation in support of travel and per diem expenses will be the same as required of state employees.

J. INSURANCE

1. The contractor shall accept full responsibility for the payment of premiums for Workers' Compensation, Unemployment Compensation, Social Security, and all income tax deductions required by law for its employees who are performing services under this contract. As required by law, an independent contractor is responsible for Malpractice Insurance for health care personnel. Contractor shall provide insurance Policy Number and Provider' Name, or a copy of the policy with all renewals for the entire contract period.
2. The contractor shall, at its expense, procure and maintain during the term of the contract, the following types of insurance, issued by companies acceptable to the Department and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:
 - a. Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor, engaged in work at the site of the project as required by law.
 - b. Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all subcontractors from claim 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 the activities performed under this contract or the failure to perform under this contract whether such performance or nonperformance 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 each person and \$2,000,000 each occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of

Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designated to limit or restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.

Prior to commencement of the work under the contract and during the term of the contract, the Contractor shall provide the Department with current certificates of insurance. These certificates shall contain a provision that the coverages afforded under the policies will not be cancelled or changed until at least thirty (30) days' written notice has been given to the Department.

K. PROPERTY AND SUPPLIES

1. Contractor agrees to obtain all supplies and equipment for use in the performance of this contract at the lowest practicable cost and to purchase by means of competitive bidding whenever required by law.
2. Title to all property furnished in-kind by the Department shall remain with the Department.
3. Contractor has title to all personal property acquired by the contractor, including purchase by lease/purchase agreement, for which the contractor is to be reimbursed under this contract. Upon cancellation or termination of this contract, disposition of such purchased personal property which has a remaining useful life shall be made in accordance with the following provisions.
 - a. The contractor and the Department may agree to transfer any item of such purchased property to another contractor designated by the Department. Cost of transportation shall be born by the contractor receiving the property and will be reimbursed by the Department. Title to all transferred property shall vest in the designated contractor. The Department will reimburse the Contractor for its share, if any, of the value of the remaining life of the property in the same manner as provided under subclause b of this paragraph.
 - b. If the contractor wishes to retain any items of such purchased property, depreciation tables shall be used to ascertain the value of the remaining useful life of the property. The contractor shall reimburse the Department in the amount determined from the tables.
 - c. When authorized by the Department in writing, the contractor may sell the property and reimburse the Department for its share. The Department reserves the right to fix the minimum sale price it will accept.
4. All property furnished by the Department or personal property acquired by the contractor, including purchase by lease-purchase contract, for which the contractor is to be reimbursed under this contract shall be deemed "Department Property" for the purposes of subsection 5, 6 and 7 of this section.
5. Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, preservation and insurance of Department Property so as to assure its full availability and usefulness.
6. Department property shall, unless otherwise approved in writing by the Department, be used only for the performance of this contract.
7. In the event that the contractor is indemnified, reimbursed or otherwise compensated for any loss, destruction or damage to Department Property, it shall use the proceeds to replace, repair or renovate the property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall reimburse the Department, at the Department's direction.

L. DISASTERS

If, during the terms of this contract, the Commonwealth's premises are so damaged by flood, fire or other Acts of God as to render them unfit for use; then the Agency shall be under no liability or obligation

to the contractor hereunder during the period of time there is no need for the services provided by the contractor except to render compensation which the contractor was entitled to under this agreement prior to such damage.

M. SUSPENSION OR DEBARMENT

In the event of suspension or debarment, 4 Pa Code Chapter 60.1 through 60.7, as it may be amended, shall apply.

N. COVENANT AGAINST CONTINGENT FEES

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business). For breach or violation of this warranty, the Department shall have the right to annul this contract without liability or, in its discretion, to deduct from

the consideration otherwise due under the contract, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

O. CONTRACTOR'S CONFLICT OF INTEREST

The contractor hereby assures that it presently has not interest and will not acquired any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The contractor further assures that in the performance of this contract, it will not knowingly employ any person having such interest. Contractor hereby certifies that no member of the Board of the contractor or any of its officers or directors has such an adverse interest.

P. INTEREST OF THE COMMONWEALTH AND OTHERS

No officer, member 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 his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such officer, member or employee of the Commonwealth or member of its General Assembly have interest, direct or indirect, in this contract or the proceeds thereof.

Q. CONTRACTOR RESPONSIBILITY TO EMPLOY WELFARE CLIENTS

(Applicable to contracts \$25,000 or more)

1. The contractor, within 10 days of receiving the notice to proceed, must contact the Department of Human Services' Contractor Partnership Program (CPP) to present, for review and approval, the contractor's plan for recruiting and hiring recipients currently receiving cash assistance. If the contract was not procured via Request for Proposal (RFP); such plan must be submitted on Form PA-778. The plan must identify a specified number (not percentage) of hires to be made under this contract. If no employment opportunities arise as a result of this contract, the contractor must identify other employment opportunities available within the organization that are not a result of this contract. The entire completed plan (Form PA-778) must be submitted to the Bureau of Employment and Training Programs (BETP): Attention CPP Division. (Note: Do not keep the pink copy of Form PA-778). The approved plan will become a part of the contract.
2. The contractor's CPP approved recruiting and hiring plan shall be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to the CPP Division which will make a recommendation to the Contracting Officer regarding course of action. If a contract is assigned to another contractor, the new contractor must maintain the CPP recruiting and hiring plan of the

original contract.

3. The contractor, within 10 days of receiving the notice to proceed, must register in the Commonwealth Workforce Development System (CWDS). In order to register the selected contractor must provide business, location and contact details by creating an Employer Business Folder for review and approval, within CWDS at [HTTPS://WWW.CWDS.State.PA.US](https://www.cwds.state.pa.us). Upon CPP review and approval of Form PA-778 and the Employer Business Folder in CWDS, the Contractor will receive written notice (via the pink Contractor's copy of Form PA-778) that the plan has been approved.
4. Hiring under the approved plan will be monitored and verified by Quarterly Employment Reports (Form PA-1540); submitted by the contractor to the Central Office of Employment and Training – CPP Division. A copy of the submitted Form PA-1540 must also be submitted (by the contractor) to the DHS Contract Monitor (i.e. Contract Officer). The reports must be submitted on the DHS Form PA- 1540. The form may not be revised, altered, or re-created.
5. If the contractor is non-compliant, CPP Division will contact the Contract Monitor to request corrective action. The Department may cancel this contract upon thirty (30) days written notice in the event of the contractor's failure to implement or abide by the approved plan.

R. TUBERCULOSIS CONTROL

As recommended by the Centers for Disease Control and the Occupational Safety and Health Administration, effective August 9, 1996, in all State Mental Health and Mental Retardation Facilities, all full-time and part-time employees (temporary and permanent), including contract service providers, having direct patient contact or providing service in patient care areas, are to be tested serially with PPD by Mantoux skin tests. PPD testing will be provided free of charge from the state MH/MR facility. If the contract service provider has written proof of a PPD by Mantoux method within the last six months, the MH/MR facility will accept this documentation in lieu of administration of a repeat test. In addition, documented results of a PPD by Mantoux method will be accepted by the MH/MR facility. In the event that a contractor is unwilling to submit to the test due to previous positive reading, allergy to PPD material or refusal, the risk assessment questionnaire must be completed. If a contractor refuses to be tested in accordance with this new policy, the facility will not be able to contract with this provider and will need to procure the services from another source.

S. ACT 13 APPLICATION TO CONTRACTOR

Contractor shall be required to submit with their bid information obtained within the preceding one-year period for any personnel who will have or may have direct contact with residents from the facility or unsupervised access to their personal living quarters in accordance with the following:

1. Pursuant to 18 Pa.C.S. Ch. 91(relating to criminal history record information) a report of criminal history information from the Pennsylvania State Police or a statement from the State Police that their central repository contains no such information relating to that person. The criminal history record information shall be limited to that which is disseminated pursuant to 18 Pa.C.S. 9121(b) (2) (relating to general regulations).
2. Where the applicant is not, and for the two years immediately preceding the date of application has not been a resident of this Commonwealth, the Department shall require the applicant to submit with the application a report of Federal criminal history record information pursuant to the Federal Bureau of Investigation's under Department of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109). For the purpose of this paragraph, the applicant shall submit a full set of fingerprints to the State Police, which shall forward them to the Federal Bureau of Investigation for a national criminal history check. The information obtained from the criminal record check shall be used by the Department to determine the applicant's eligibility. The Department shall insure confidentiality of the information.

3. The Pennsylvania State Police may charge the applicant a fee of not more than \$10 to conduct the criminal record check required under subsection 1. The State Police may charge a fee of not more than the established charge by the Federal Bureau of Investigation for the criminal history record check required under subsection 2.

The Contractor shall apply for clearance using the State Police Background Check (SP4164) at their own expense. The forms are available from any State Police Substation. When the State Police Criminal History Background Report is received, it must be forwarded to the Department. State Police Criminal History Background Reports not received within sixty (60) days may result in cancellation of the contract.

**T. LOBBYING CERTIFICATION AND DISCLOSURE
(applicable to contracts \$100,000 or more)**

Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds. With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000 all recipients must certify that they will not use federal funds for lobbying and must disclose the use of non-federal funds for lobbying by filing required documentation. The contractor will be required to complete and return a “Lobbying Certification Form” and a “Disclosure of Lobbying Activities form” with their signed contract, which forms will be made attachments to the contract.

**U. AUDIT CLAUSE
(applicable to contracts \$100,000 or more)**

This contract is subject to audit in accordance with the Audit Clause attached hereto and incorporated herein.

SUBRECIPIENT/CONTRACTOR AUDITS

AUDIT CLAUSE D-CONTRACTOR

The Commonwealth of Pennsylvania, Department of Human Services (OHS), 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 OHS are subject to OHS 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 OHS. 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 OHS' option until such litigation, claim, or exceptions have reached final disposition.

SUBRECIPIENT/ CONTRACTOR AUDITS

AUDIT CLAUSE D- CONTRACTOR

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 IO report to the DHS within 90 days after the required period of audit has ended. When the SSAE IO 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 OHS 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 OHS' 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 OHS' audit requirements will be provided by:

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

SUBRECIPIENT/CONTRACTOR AUDITS

AUDIT CLAUSE D-CONTRACTOR

ENCLOSURE I

The Department of Human Services (OHS) 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]

DHS ADDENDUM TO STANDARD TERMS AND CONDITIONS/AUDIT CLAUSES

SSAE 16 AUDIT CLAUSE

The Contractor shall provide the Department a SOC 1 Type 2 report in accordance with American Institute of Certified Public Accountants, Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization. The report will assess the design of internal controls and their operating effectiveness for the services provided to the Department under this agreement. The Contractor shall ensure that an independent certified public accounting firm performs this examination of internal controls of the Contractor, and of any supplier if it is a separate Entity from the Contractor, that are applicable to the processing of transactions or storage of related data. Such examination shall be performed at no additional cost to the Department and in accordance with the Statement on Standards for Attestation Engagements No. 16.

- a) The initial SSAE 16 examination shall be conducted for the first official annual reporting period required by the Agreement.
- b) Thereafter, SSAE 16 examinations shall be conducted annually and shall each cover the entire Commonwealth's fiscal year commencing on July 1 of a given calendar year and ending on June 30 of the subsequent calendar year. The Contractor shall provide a copy of each SOC 1 Type 2 Report to the Department for review and comment as soon as reasonably practicable and in all events within thirty (30) days after completion of an examination. Final reports shall be submitted to the Department no later than September 1.
- c) The Department in its sole discretion may require the Contractor to provide a SOC 1 Type 2 report of any Subcontractor or Vendor providing any Services impacting the internal controls related to the Commonwealth's data.
- d) The Department will share the report with internal and external auditors of the Commonwealth of Pennsylvania and federal oversight agencies.
- e) The Department shall make available to the service auditor, upon request, data and information pertaining to services being contracted and/or controls that are necessary for the completion of the Service Auditor's Report.

ENHANCED MINIMUM WAGE PROVISIONS

- 1. Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$10.15 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- 2. Adjustment.** Beginning January 1, 2017, and annually thereafter, Contractor/Lessor shall pay its employees described in Paragraph 1. above 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.
- 3. Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
- 4. Notice.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- 5. Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- 6. Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- 7. Subcontractors.** Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.