The Pennsylvania Fish and Boat Commission (PFBC) is seeking to replace its existing electronic based license issuance system and to receive additional support in accordance with the enclosed Request for Proposals (RFP).

All proposals must be submitted to the issuing office: Pennsylvania Fish and Boat Commission, 1601 Elmerton Ave Harrisburg, PA 17110. Offerors shall submit one complete electronic copy set of the Technical Submittal, the Disadvantaged Business Submittal, and Cost Submittal in .PDF format. In addition to the electronic submission, each offeror shall provide the following hard copy submittals: (i) ten (10) copies of the Technical Submittal, (ii) two (2) copies of the Disadvantaged Business Submittal, and (iii) one (1) copy of the Cost Submittal. The hard copy submittals must be mirror images of, and exactly match the electronic copy submittal. Proposals must be submitted and received by no later than 2:00 P.M. EST, June 30, 2017. Late proposals will not be considered regardless of the reason.

All RFP questions must be submitted by email (with subject line "RFP_PFBC_ALS_2017 Question") to Christopher Wolf at ra-fb-alsrfp2@pa.gov no later than 9:00 A.M. EST, May 29, 2017. Answers to potential offerors questions will be posted to this DGS website: http://www.emarketplace.state.pa.us/Search.aspx by June 2, 2017.

We expect that evaluation of the proposals and selection of Contractor will be completed within three months after receipt of proposals.
REQUEST FOR PROPOSALS FOR

AUTOMATED LICENSE SYSTEM (ALS)

ISSUING OFFICE

PENNSYLVANIA FISH & BOAT COMMISSION (PFBC)

RFP_PFBC_ALS_2017

DATE OF ISSUANCE

May 10, 2017
REQUEST FOR PROPOSALS FOR
RFP_PFBC_ALS_2017, AUTOMATED LICENSE SYSTEM (ALS)

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CALENDAR OF EVENTS

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

<table>
<thead>
<tr>
<th>Activity</th>
<th>Responsibility</th>
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<tr>
<td>ALS RFP issuance date</td>
<td>Issuing Office</td>
<td>2:00 p.m. EST May 10, 2017</td>
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<tr>
<td>Deadline to submit Questions via email to <a href="mailto:ra-fb-alsrfp2@pa.gov">ra-fb-alsrfp2@pa.gov</a></td>
<td>Potential Offerors</td>
<td>9:00 a.m. EST May 29, 2017</td>
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<tr>
<td>Answers to Potential Offeror questions posted to the DGS website, <a href="http://www.emarketplace.state.pa.us/Search.aspx">http://www.emarketplace.state.pa.us/Search.aspx</a>, no later than this date</td>
<td>Issuing Office</td>
<td>June 2, 2017</td>
</tr>
<tr>
<td>Please monitor website for all communications regarding the RFP.</td>
<td>Potential Offerors</td>
<td>May 15 – June 30, 2017</td>
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<tr>
<td>Electronic and Hardcopy submissions of the proposal must be received by the Issuing Office at:</td>
<td>Potential Offerors</td>
<td>2:00 p.m. EST June 30, 2017</td>
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<td>Pennsylvania Fish and Boat Commission</td>
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<td>Attn: Christopher Wolf</td>
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<td>1601 Elmorton Avenue</td>
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<td>Harrisburg, PA 17110</td>
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<td>Email to: <a href="mailto:ra-fb-alsrfp2@pa.gov">ra-fb-alsrfp2@pa.gov</a></td>
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PART I

GENERAL INFORMATION

I-1. Purpose. This request for proposals (RFP) provides to those interested in submitting proposals for the subject procurement (“Offeror” or “Contractor”) sufficient information to enable them to prepare and submit proposals for a new Automated Licensing System (ALS) (“Project”). This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the services 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 PFBC (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The Issuance Officer for the RFP is Mr. Brian Barner. The sole point of contact appointed by the Issuing Office for this RFP shall be Mr. Christopher Wolf via 1601 Elmerton Avenue, Harrisburg, PA 17110, 717-705-7915, ra-fb-alsrfp2@pa.gov. Please refer all inquiries to the Issuing Officer via the sole point of contact.

I-3. Overview of Project. Approximately 1.1 million people fish in Pennsylvania and the revenue from their licenses enables the PFBC to manage entrusted species and public lands for conservation and recreational related benefits and activities. Pennsylvania has long established, separately administered organizations to manage game and fishing/boating in the Commonwealth. License fees and license types are established by legislation.

In 2007, the PFBC and Pennsylvania Game Commission (PGC) implemented an electronic licensing system to provide point of sale (POS) capabilities for license buyers, and in April 2017, the PFBC and PGC jointly released an RFP seeking proposals to upgrade their existing system. The PFBC and PGC are separate commissions and are vastly different, but they both understand the value in working together to procure an electronic automated licensing system to better serve their shared customer population. However, the PFBC is seeking an alternative approach in procuring an automated licensing service that would be able to independently deliver fishing licenses and permits to its customers, as detailed in this RFP.

More than 1.4 million Pennsylvania fishing licenses and permits are issued annually at multiple sites, including a network of issuing agents, County Treasurer offices, and the Internet. Some aspects of the PFBC’s relationship with agents are mandated by law; others are established by policy. There are 817 agents that issue PFBC licenses and permits. The majority of agents operate within Pennsylvania, but some are retailers in neighboring states. The PFBC currently offers licenses for sale
through its network of authorized issuing agents and online through the Outdoor Shop internet site. The PFBC and PGC currently share approximately 1,500 contractor provided and serviced POS devices, and the incumbent Contractor supplies the associated hardware and supplies through its current equipment supplier including printers (=930), pin pads (=600), mag stripe readers (=425), and VeriFone devices (=360). The business process of accounting for licenses is handled by the PFBC using the current POS system, outside systems and software, and manually. Accounting functions include reconciliation of inventory, cash receipts and voided/replaced licenses. The licenses themselves are composed of a durable, waterproof paper.

I-4.Objectives.

A. General. The awarded ALS RFP Offeror will upgrade and modernize the license sales process and provide better program and catalog management through the deployment of a modern, configurable, and scalable electronic web based Point of Sale (POS) license sales system, program management reports, financial processing, help desk support, agent supply, hardware support, training, system operations, mobile strategy, and application maintenance and support. The software and related license fulfillment services should be made available to the PFBC as a perpetual hosted, Software as a Service (SaaS) model.

B. Work Statement. The PFBC will replace and upgrade the current electronic-based licensing system with an industry best practices ALS using contemporary and emerging technology. Pennsylvania is one of the top-tier fishing states in the US, and the current electronic-based licensing system is seen as difficult to maintain and support, so a “rip and replace” IT strategy is mandatory for the future solution. The PFBC envisions a user-friendly system that will streamline the application and purchase process for customers, virtually eliminating manual auditing and reporting for agents, and provide new and dynamic electronic functionality to assist PFBC support staff in monitoring license administration. It will also enable the PFBC and its agents to search the ALS database for prior licenses to validate proper replacement of lost or damaged licenses. The data from the ALS will enable the PFBC to monitor license sales, create strategic business plans based on trend analysis, and track individuals who attempt to circumvent the system. More importantly, it will enable the PFBC to create marketing plans based on more accurate customer demographics.

The PFBC wants to attain an economical solution by leveraging existing industry specific technology and limiting PFBC-specific customization wherever possible.

The system must support Pennsylvania business rules.
Objectives for the project are as follows:

- Allow ALS creation of all license and permit components using current technology
- Provide customer self-service and self-fulfillment of select licenses and permits using the internet and/or applicable mobile applications/platforms
- Simplify and expedite the licensing processes using high-quality service
- Substantially reduce labor needed to support the business process
- Fully automate agent reporting, i.e. eliminate time lag of sales reconciliation
- Fully automate harvest reporting, i.e. intuitive internet and mobile ready reporting tools
- Allow custom views and reporting of system data for the PFBC, regional offices, County Treasurer offices, and agents, i.e. dynamic dashboards
- Create demographics on buyers that are configurable to enable better marketing and outreach
- Provide training for PFBC staff and agents
- Support requested hardware requirements
- Distribute and maintain agent license paper stock and other supplies/consumables
- Institute and maintain a ALS Help Desk

C. Perpetual Hosted Software Solution

The hosted solution provided by the Offeror should be a “balanced” approach that allows the PFBC to purchase the ALS software like a traditional on-premises installation, but then host the purchased software on the Offeror’s Cloud infrastructure like a SaaS implementation. The perpetual hosted solution would also include and utilize the Offeror’s ability to provide a high-quality service for identified PFBC business rules and the fulfillment, service delivery, and sales of licenses and privileges in support of their agent and customer communities. The perpetual hosted software solution works particularly well in two specific scenarios for the PFBC:

- The PFBC would own the ALS software modules associated with the functional and technical specifications needed to efficiently run the business, and also have an enterprise license model to allow all agents and customers to be users of the system. Because the system is owned, it could remain hosted in the cloud, but the PFBC could migrate the software to an on premise solution, if they so choose.
- The perpetual hosted model also changes how the current service is delivered from a transaction based model to a monthly service fee model.
The Contractor would no longer be paid by volume of transactions, but rather paid a monthly fee for the software maintenance and business services provided to the PFBC, PFBC agents, and PFBC customers. The perpetual hosted software solution would allow the PFBC to now manage the current fulfillment transaction fee, instead of a fixed fee that is paid by the PFBC from license and privileges revenue sales to the incumbent Contractor.

D. Specific. The PFBC will require the selected Offeror to fully document and implement the following activities.

a. Discovery Business Analysis and Business Process Workflow: The selected Offeror will do a full “as-is” and “to-be” business process and workflow analysis. This effort may include but not be limited to: “as-is” business process mapping, “to-be” business process mapping, and a gap analysis between how business processes and workflows interact within and outside the PFBC.

b. Functional Specification Document: The selected Offeror will provide a functional specification document for the system’s engineering and software development that describes the requested behavior of the system and is based on the functionality and business rules known from the Discovery phase. This document must be reviewed and approved by the PFBC.

c. Technical Specification Document: The selected Offeror will provide a technical specification document describing the software design (can be at the level of a system or component) and the minute detail of either all or specific parts of the design. Those specific parts can include but not be limited to: the signature of an interface, including all data types/structures required (input data types, output data types, exceptions); detailed class models including all methods, attributes, dependencies and associations; the specific algorithms that a component employs and how they work; and physical data models including attributes and types of each entity/data type. This document must be reviewed and approved by the PFBC.

d. Hardware Refresh: It is the intent of the PFBC to do a hardware refresh. All current POS equipment utilized by the PFBC and PGC agents is the property of the current PALS Contractor. The selected Offeror will be required to supply and maintain all necessary ALS peripheral devices to the PFBC’s network of agents. The PFBC will not entertain the deployment of any store and forward type device. The agent network will be informed and required to supply their own computer or electronic device plus internet connection to access the new ALS. The selected Offeror will supply and maintain all hardware as requested by the PFBC for the new ALS (i.e. all production and testing equipment). Additional detail is provided in Part III of this RFP.
e. **Data Conversion:** The selected Offeror will be responsible for a data conversion and cleansing of the current PALS historical data to the new ALS database. The objective is to have 100% conversion of all legacy PALS data to enable a complete and full switch from the current system to the new system, without running both simultaneously on the new system “go live” date.

E. **Nature and Scope of the Project**

The underlying concept of the system is that the ALS shall support real-time transactions with agents and provide online access to support most of the PFBC’s day-to-day activities related to licensing. The system is expected to process all sales, record and track all transactions, and to generate electronic fund transfer (EFT) transactions between the agents and the PFBC. The ALS will include, but shall not be limited to, a licensing system with associated hardware and software; an information and technical help desk support for agents, PFBC staff, and all customers; technical and database schema documentation; and regular, ad-hoc, and dashboard reporting functions. The selected Offeror will train PFBC staff and all agents, implement the system, and provide ongoing operational support and maintenance for the life of the contract.

The PFBC intends to leverage advancements in POS technology to obtain a state-of-the-art solution. The RFP commits to a ten-year contract. The PFBC and the selected Offeror will establish a payment fee schedule for the perpetual hosted software purchased, maintenance, and fulfillment and service delivery functions prior to the final contract negotiation. Any additional payments for the system will not commence until the full system functionality is approved and accepted by the PFBC.

a. **In scope Items**

The contract will result in a service commitment, with a service level agreement (SLA) between the selected Offeror and the PFBC. Components of the SLA includes but may not be limited to: system reliability, throughput, help desk support, database management, and timely implementation. Acting as a business partner with the PFBC, the selected Offeror will install at or ship hardware to the work site of each issuing agent (including PFBC offices), provide training and instructions in their use, generate EFT transactions, supply consumable inventory (license stock), and support all users via telephone help desk and on-site repairs (as necessary). Detailed SLAs appear in **Appendix G — Service Level Agreement**, and detailed specifications appear in **Appendix H — ALS Specifications and Specifications Checklist**.
Primary assumptions include the following:

- ALS must be implemented without requiring legislative or regulatory changes; the PFBC will identify any in-scope requirements in anticipation of future legislation.

- IT staff for the PFBC will utilize a replicated copy of the database for integrated and ad-hoc reporting.

- Licenses will be printed on a durable stock paper-like medium (*paper stock will be discussed in greater detail throughout this document and the supporting appendices*).

- The selected Offeror will be paid on a monthly service fee basis once the Commissions begin to sell license items through the ALS. This also assumes that the Commission has approved all ALS functionality prior to Go-live.

- The selected Offeror will provide “like for like” functionality within the new ALS for the current system, other secondary PFBC websites, and service elements being replaced, enhanced or upgraded.

b. Out of Scope Items

**Pre-printed Fixed Inventory.** The ALS will not include “inventory” functions to track preprinted, pre-numbered licenses. The system itself will uniquely identify each license, the device from which it was printed and the agent generating it.

**Credit-card Processing.** Financial processing is limited to EFT transactions between agents and the Commonwealth. The software/service does not interact with actual credit card or cash payment transactions made by purchasers. An Offeror implementing the Internet sales will accept credit card and electronic commerce payments, using its own system; the Commonwealth will have no involvement in the credit-card or electronic commerce payment aspect of the transaction.

I-5. **Type of Contract.** It is proposed that if the Issuing Office enters into a contract as a result of this RFP, The Offerors contract for negotiation should be prepared using the information found throughout this RFP and supporting appendices and the Contract Terms and Conditions as shown in Part VI. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.
I-6. **Rejection of Proposals.** The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.

I-7. **Incurring Costs.** The Issuing Office 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.** The Issuing Office will not be holding a Pre-proposal conference as part of this RFP.

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_PFBC_ALS_2017 Question”) to the Issuing Officer via the sole point of contact named in Part I, Section I-22 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 Issuing Office by any other means. The Issuing Office 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 PFBC 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 Issuing Office may respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office 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-9. Each Offeror shall be responsible to monitor the DGS website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described on the DGS website.

I-10. **Addenda to the RFP.** If the Issuing Office 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](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.** The Issuing Office will accept proposals in a .PDF format via email transmission. In addition to electronic submission, the Offeror shall send the following hard copy submittals: (i) ten (10) copies of the Technical Submittal, (ii) two (2) copies of the Disadvantaged Business Submittal, and (iii) and one (1) copy of the Cost Submittal. The hard and electronic copy submittals must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Offeror will be required to complete and sign *Appendix A – Proposal Cover Sheet*, stating that the Offeror certifies that its electronic copy submittal is an exact replica of its hard copy submittal, and the Offeror understands that if they are not the same, its proposal will be rejected. In addition, Offerors may send 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 .PDF format as a back-up electronic copy to any email electronic submission. 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. Any CD or Flash drives submitted as a part of the Offeror’s proposal will become property of the Issuing Office upon receipt of delivery, and they will not be returned to the Offeror for any reason. Offerors who send the hard copies and or electronic copies 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.

I-12. **Proposal Requirements.**

A. **Proposal Submission:** To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in *Part I, Section I-11*. Via the ALS RFP resource email account, Offerors shall submit one complete and exact copy of the entire proposal (Technical, Cost and SDB/SB submittals, along with all requested documents) in a .PDF format. In addition to a valid, on time electronic bid response submission, the Offerors will provide ten (10) paper copies 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. The hard copy submittals must be received by the Issuing Office on the same day as the electronic submission date. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. The electronic and hard copy submittals must
be mirror images of each other. 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 the Proposal Cover Sheet (Appendix A to this RFP) and the Proposal Cover Sheet is attached to the Offeror’s proposal, the requirement will be met. For this RFP, the proposal must remain valid for 180 days. If the Issuing Office 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 the Best and Final Offer process or contract 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; both the electronic submission and follow up hard copy modifications must comply 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. Each Proposal shall consist of the following submittals:

1. Technical Submittal, in response to Part III:
   
   a. Complete, sign and include Appendix B – Domestic Workforce Utilization Certification
   
   b. Complete, sign and include Appendix N – Iran Free Procurement Certification;

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 D - SDB/SB Participation Submittal Form; and

b. Complete and include Appendix E - SDB/SB Letter of Intent. Offeror must provide a Letter of Intent for each SDB and SB listed on the SDB/SB Participation Submittal Form; and

c. Complete and include Appendix F - Model Form of SDB/SB Subcontract Agreement, if applicable

The Issuing Office reserves the right to request additional information which, in the Issuing Office’s 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.

The Issuing Office 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. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Issuing Office 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. The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.

I-15. Discussions for Clarification. Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Issuing Office 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. The Issuing Office, at its discretion, may elect to have Offerors provide oral presentations of their proposals. All Offerors deemed by the Issuing Office as eligible to receive an award will be given the opportunity to provide such
oral presentations. Unless oral presentations are made a part of the evaluation process and points are assigned, oral presentations are for clarification purposes only. If an oral presentation is elected, a system demonstration will be required to show real time functionality and business process workflows, not a static presentation.

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, the Issuing Office 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 subsection 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 Issuing Office’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 C of the RFP for a Trade Secret Confidential Proprietary Information Notice Form that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to Part III of this RFP such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b) (26).


A. While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers” (BAFO). To obtain BAFO from Offerors, the Issuing Office may do one or more of the following, in any combination and order:

1. Schedule oral presentations;
2. Request revised proposals;
3. Conduct a reverse online auction; and
4. Enter into pre-selection negotiations.

B. The following Offerors will not be invited by the Issuing Office to submit a BAFO:

1. Those Offerors, which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.

2. Those Offerors, which the Issuing Office 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.

The Issuing Office may further limit participation in the BAFO process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.
C. The Evaluation Criteria found in Part II, Section II-4, shall also be used to evaluate the BAFO.

D. Price reductions offered 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 BAFO process or contract negotiations unless approved by the Bureau of Diversity, Inclusion and Small Business Opportunities (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 the Issuing Office, and then only in coordination with the Issuing Office.

I-21. Restriction of Contact. From the issue date of this RFP until the Issuing Office selects a proposal for award, the Commonwealth Project Coordinator/Manager is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror’s proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office 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.

Members of the ALS Project Management Team include personnel as identified below.

The Commonwealth Project Coordinator/Manager and sole point of contact will facilitate communication and coordination of efforts between the agencies and all Offerors:

Mr. Christopher Wolf
Bureau of Administration
Pennsylvania Fish & Boat Commission
1601 Elmerton Avenue
Harrisburg, PA 17110
Phone: (717) 705-7915
Fax: (717) 705-7901
Email: ra-fb-alsrfp2@pa.gov

The Commonwealth Co-Project Manager designated for this effort is:

Mr. Jeff N. Orban
Pennsylvania Fish & Boat Commission
1601 Elmerton Avenue
Harrisburg, Pa. 17110
Phone: (717) 379-7183
Fax: (717) 705-7901
Email: ra-fb-alsrfp2@pa.gov

The PFBC may retain the services of an Independent Verification & Validation (IV&V) vendor. The IV&V vendor will work on behalf of PFBC to perform the following tasks listed below. The selected Offeror will work cooperatively with the IV&V to accomplish these tasks.

- Create detailed test cases to thoroughly test the PFBC business rules
- Perform acceptance testing with the PFBC
- Responsible for problem resolution between the PFBC and selected Offeror
- Project management reporting
- Oversight of the selected Offeror’s successful implementation including central system and all agent locations
- Audit selected Offeror’s installation procedures, functionality of the system and validate agent satisfaction
- Conduct post-implementation satisfaction surveys of all agents
- Monitor the selected Offeror’s service level performance
- Audit the security and confidentiality of all data

Additionally, the PFBC will make available additional subject matter experts and technical support personnel. Appointments and/or meetings with these subject matter experts will be coordinated through the ALS Project Management Team on an as needed basis.

I-23. Term of Contract. The term of the contract will commence on the Effective Date and will have a duration of ten (10) years. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the PFBC 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 PFBC 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 the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The PFBC shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.

B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.

C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.

D. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.

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

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

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

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

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

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

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


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

B. Award. Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

I-26. Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office 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. The RFP Protest Procedure is on the DGS website at http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf. A protest by a party not submitting a proposal must be filed within seven days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within seven days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a
protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

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) issued by the Pennsylvania Office of Administration, Office for Information Technology (OA-OIT). ITPs may be found at [http://www.oa.pa.gov/Policies/Pages/itp.aspx](http://www.oa.pa.gov/Policies/Pages/itp.aspx).

Contractor shall comply with the IT standards and policies issued by the Governor’s Office of Administration, Office for Information Technology (OA/OIT), 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

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, the PFBC acknowledge that some ITPs may or may not be applicable to this RFP project, with that known, if the Offeror believes that any ITP is not applicable to this procurement, they may contact the Project Coordinator for this RFP with questions to verify if the ITPs is or is not applicable. Per any requests received, the Issuing Office will be the sole judge of if an ITP is or is not applicable to the procurement. The Offeror’s failure to question an ITP will result in its waiving its right to do so later, unless the Issuing Office, in its sole discretion, determines that it would be in the best interest of the Commonwealth to waive the pertinent ITP.
PART II

CRITERIA FOR SELECTION

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

A. Be timely received from an Offeror (see Part I, Section I-11); and

B. Be properly signed by the Offeror (see Part I, Section I-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. The Issuing Office 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. The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO) will evaluate the Small Diverse Business and Small Business Participation Submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office 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 Issuing Office has established the weight for the Technical criterion for this RFP as 50% of the total points. Evaluation will be based upon the following in order of importance:

Soundness of Approach,
Offeror Qualifications,
Offeror Industry Related Experience,
Personnel Qualifications,
Best Value

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 and Services
Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx.

B. **Cost:** The Issuing Office 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 and Services
Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.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:

   **Small Diverse Business and Small Business Raw Score =**

   \[200 \times (SDB\% + \frac{1}{3} \times SB\%)

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:
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 the Issuing Office 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 and Services Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx.

E. Iran Free Procurement Certification and Disclosure. Prior to entering a contract worth at least $1,000,000 or more with a Commonwealth entity, an offeror must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). All offerors must complete and return the Iran Free Procurement Certification form, (Appendix N, Iran Free Procurement Certification Form), which is attached hereto 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 BAFO 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. The Issuing Office 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 BAFO or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the 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, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

II-6. **Final Ranking and Award.**

A. After any BAFO process is conducted, the Issuing Office 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. The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.

C. The Issuing Office must select for contract negotiations the offeror with the highest overall score.

D. The Issuing Office 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

Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as appendices to the Proposal. Each Proposal shall consist of the following three submittals electronically: (i) Technical Submittal, which shall be a response to RFP Sections I-1 through I-18; (ii) Disadvantaged Business Submittal, in response to RFP Sections II-4C and (iii) Cost Submittal, in response to RFP Section II-4B.

The Issuing Office reserves the right to request additional information which, in the Issuing Office’s 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.

III-1. Statement of the Project. State in succinct terms your understanding of the project presented or the service required by this RFP.

III-2. Qualifications.

A. Management Summary. Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided over the life of the contract.

B. Prior Experience. It is mandatory for the Contractor to have experience successfully providing operational and integrated (web based POS solutions and Internet sales) hunting and fishing licensing systems in a complex public service environment. Experience shared should include work that was completed 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. Offeror industry related experience will be a technical scoring criterion as mentioned in Part II, Section 4A. In this Section III-2B, the Offeror must provide and describe the following:

1. Company Overview. Describe the history of the company, its organization, number of employees, and a synopsis of services provided.
2. **Core Products/Clientele.** Present an overview of the Offeror’s relevant work experience. Work experience should be adequately described and should note the name of the entity for which the services were provided, the period during which such services were rendered, and a brief description of those services as they relate to the services requested in this RFP, detailing the Offeror’s role and accomplishments on these projects.

3. **References.** Provide three (3) client references from state, federal agencies, or Canadian provinces for engagements similar to the size and scope of the work requested in this RFP. Provide the name of the agency and the name, address, telephone number and email of a responsible official of the customer who may be contacted. The PFBC also reserve the right to contact any named customer, including site visits. As inserts or attachments to their proposals, Offerors should also present specific samples of non-validated licenses from a current or prior client. If available, include an electronic copy of user manual(s) or other training materials that would be relevant to this project.

4. **Contract Default.** Indicate if the Offeror has had a contract terminated for default in the last five (5) years by any public sector client. If not applicable, please affirmatively state that the Offeror has not been in contract default.

C. **Personnel.** Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. Use this section of the proposal to describe the qualifications and roles of the individuals who will work on the project. Personnel assigned to this project must be able to communicate clearly in English (both written and verbal) and work in a cooperative fashion with staff during all phases of the project. Include the following information:

1. **Organization Chart.** Include an organizational chart of the proposed staffing and structure for the design/implementation phase and for the ongoing operation of the proposed ALS after implementation.

2. **Key Personnel.** For key personnel, include the employee’s name and, through a resume or similar document, his/her education and experience. Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Note: resumes may be attached in a separate appendix included with the Offeror’s bid/response.

At a minimum, the successful Offeror’s key staff must include:

i. **Project Manager:** This person must be the key contact person for the PFBC and must have demonstrated large project management skills, extensive experience in contract management, possess strong knowledge of licensing systems,
and have automated systems management experience. This person must be available to the PFBC via telephone or email during the PFBC’s regular business hours.

ii. **Information Systems Technical Lead:** This person must be the day-to-day contact person for the PFBC regarding data exchange and information systems issues, and the primary back-up to the Project Manager. This person must have demonstrated systems management skills and experience working with other states on the implementation and maintenance of similar licensing systems. This person must manage support staff, have the authority to make decisions resolve problems, and oversee emergency support services.

Offerors must not make changes to Key Personnel without receiving written agreement of the Commonwealth ALS Project Coordinator. Staffing changes will come under the heading of a “substitution” or a “replacement”. A “substitution” is defined as an individual temporarily filling-in for a permanent resource. A “replacement” is defined as an individual permanently replacing an already assigned resource. The replacement may be done for various reasons including but not limited to death, loss of employment, long-term sickness, subcontract default or retirement. If either a substitution or a replacement occurs, the Offeror must provide resumes for alternate resources within two weeks of the notification. Any substitute or replacement staff for Key Personnel positions must have background and experience comparable or superior to the original candidates.

3. **Work Location.** Show where these personnel will be physically located during the time they are engaged in the project. At a minimum, the assigned project manager, Offeror’s main point of contact, and or person in-the-know must be physically located onsite at the PFBC.

D. **Subcontractors.** If they are key personnel, identify by name any subcontractors you intend to use and the services they will perform. As noted under Key Personnel, substitution or replacement of subcontractors must be approved by the Commonwealth ALS Project Coordinator. 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 PFBC. 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-3. **Work Plan.** Describe in narrative form your technical plan for accomplishing the work using the task descriptions in Part III of this RFP and related documents Appendices G, H, J, K, and L 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. Offers must provide the following information in this section:

a. **Technical Solution.** Describe the technical and business solution, using diagrams or charts as relevant. This should address the functional and technical specifications of Appendix H – ALS Specifications and Specifications Checklist. Offerors should affirm their ability to meet all functional and technical specifications or take exception to specific specifications they are unable to meet.

b. **Project Plan.** Describe in narrative form your plan for accomplishing the work. Include a project timeline and Gantt chart showing each event. Offerors should also attach a Microsoft Project plan as part of electronic RFP submission.
c. **Tasks/Deliverables.** The Offeror should develop a project plan based on the contract signing date. Complete system implementation for both PFBC must occur during January-February. For a list of detailed tasks and deliverables, see Appendix J – Task and Deliverables. Some of the business issues driving this schedule are noted in Appendix G – Service Level Agreement. Offerors should note specific risk mitigation concepts as part of their response to RFP Part III.

d. **Training.** Describe in narrative, tabular or task-schedule form your approach to accomplishing training specifications of Appendix H – ALS Specifications and Specifications Checklist. Also, you may recommend training of agency personnel, including 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.

e. **Service Solution.** Describe, in detail, the services that will be provided to satisfy the specifications of Appendix H – ALS Specifications and Specifications Checklist.

f. **Approach.** Provide a description of the tools, techniques, and methods that will be utilized to produce the deliverables documented in this proposal. Offerors are expected to utilize appropriate project management and software development lifecycle methodologies that will lead to the successful development and deployment of the ALS in a predictable, controlled, secure, and timely fashion. The PFBC anticipates the tasks/deliverables in Appendix J – Tasks and Deliverables will be completed and maintained over the life of the contract.

g. **Total Cost of Ownership Assessment.** The PFBC will require the Offeror to provide a total cost of ownership (TCO) assessment with their RFP bid. Total cost of ownership is a well-respected business method of estimation that provides a comprehensive view of the costs of a system. In this case, the TCO covers all of the aspects of deploying the ALS perpetual hosted solution. It includes the direct costs, such as license fees and annual maintenance, the monthly service costs, such as license stock, hardware/equipment, internet fulfillment, and also indirect costs, such as the IT staff and hardware required to run the licensing issuance infrastructure. All TCO assessments should forecast 10 years of data and be presented in an easy to read and comprehend format.
h. **Risk Assessments.** Provide a candid risk assessment for the project, including areas where the PFBC, the potential IV&V vendor and the Prime Contractor can control risk for each other.

**III-4. Specifications Checklist.** This section will allow Offerors to indicate that they can provide the features as described in their response. The **Appendix H – ALS Specifications and Specifications Checklist** should be completely filled out reflecting the Offeror’s proposed solution inherent functional and technical capabilities, including any additional comments.

A. **Disaster Recovery.** State in succinct terms your Disaster Recovery Plan for this project.

B. **Emergency Preparedness.** To support continuity of operations during an emergency, including a pandemic, the PFBC 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.

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.

III-5. 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, Income Statement, and Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report, if available. The Commonwealth reserves the right to request additional information it deems necessary to evaluate an Offeror’s financial capability.

III-6. Reports and Project Control. All contracts require formal control by the Issuing Office to ensure the selected offeror meets the Issuing Office’s needs. The Issuing Office usually exercises this Control through the requirement for oral and written reports and other documentation such as plans, proposals, or recommendations that the Issuing Office must approve before the selected Offeror proceeds further with the work. The detail and frequency of the reports generally are dependent upon the size and nature of the contract. Since the Offeror must necessarily include the cost of report preparation in its total costs, the Issuing Office should exercise care to keep the number and frequency of reports to a manageable minimum, consistent with the need for contract control. Consider the availability of Issuing Office manpower for review and consideration of the reports in making this determination. This portion of the RFP should be specific as to the content, frequency, and number of copies of each report required. It is desirable and, in the case of the final report, necessary to provide formats for the written reports. The reports and project control section of this RFP maybe included and or required separate from the task and deliverables identified in Appendix J – Tasks and Deliverables. The following illustrate the type and scope of reports and other documentation that might be required.

A. Status Report. A periodic progress report every two weeks covering activities, problems and recommendations. This report should be keyed to the work plan the Offeror developed in its proposal, as amended or approved by the Issuing Office.

B. Problem Identification Report. An “as required” report, identifying problem areas. The report should describe the problem and its impact on the overall project and on each affected task. It should list possible courses of action with advantages and disadvantages of each, and include Offeror recommendations with supporting rationale.
C. **Final Report.** In all cases, a requirement should be included for the submission of draft copies of the final report to permit the Issuing Office to satisfy itself as to the report’s completeness and factual accuracy. The Issuing Office should provide a format for the final report. The format should specify the content of the final report in detail comparable to the following:

1. Abstract or summarize the result of the study or service in terminology that will be meaningful to management and others generally familiar with the subject areas.

2. Describe data collection and analytical and other techniques used during the study.

3. Summarize findings, conclusions and recommendations developed in each task.

4. Include all supporting documentation; e.g., flow-charts, forms, questionnaires, etc.

5. Recommend a time-phased work plan for implementing the recommendations.

III-7. **Objections and Additions to Standard Contract Terms and Conditions.** The Offeror will identify which, if any, of the terms and conditions (contained in Part VI) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror’s failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if it chooses to do so, in the Issuing Office’s sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The 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**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror’s, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in **Part VI**. The Issuing Office 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 submitted electronically with the technical submittal. Electronic and hard copies shall be provided in accordance to Part I, Section I-12 of this RFP. Any proposal failing to meet this requirement will be automatically disqualified. The total proposed cost should be broken down into the components set forth in **Appendix K – Pricing Summary/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. Offerors should avoid including any assumptions in their cost submittals, and be documented under the appropriate heading of the technical proposal. If the Offeror includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office 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 the Issuing Office’s written answer so that all proposals are submitted on the same basis.

The PFBC and the selected Offeror will establish a payment fee schedule for the perpetual hosted software purchased, software maintenance, and the fulfillment and service delivery functions prior to the final contract negotiation. Any additional payments for the system will not commence until the full system functionality is approved and accepted by the PFBC. The selected Offeror will be paid on a monthly service fee basis once the PFBC begins to sell license items through the ALS. This also assumes that the PFBC have approved all ALS functionality prior to Go-live. The monthly service fees should include but not be limited to the following: license fees, annual software maintenance, hardware/equipment maintenance, system and hardware support fees (i.e. helpdesk), all PFBC license and privilege fulfillment fees, all PFBC license and privilege fulfillment service consumables (i.e. license stock), and all other PFBC service delivery.

In order to prepare a cost estimate, sales statistics over identified time periods have been summarized both in **Appendix L – Bidder’s Library** and **Appendix H – ALS Specifications and Specifications Checklist.** This data is provided to assist Offerors in estimating the anticipated volume of transactions. Four-year trend analysis figures can also be found in **Appendix L. – Bidder’s Library.**

Statistics on voided, free license components, and donations also appear in **Appendix L – Bidder’s Library** and should be considered in the quote to be submitted by the Offeror. All transactional information and volumes for the PFBC
are clearly labeled throughout the RFP Appendices, and Offerors will be expected to use this information to prepare their cost submittal.

The Offeror should prepare their cost submittal by using the Pricing Worksheet/Cost Submittal located in Appendix K – Pricing Summary/Cost Submittal. All Contractors must complete Sections A, B, and C of the Pricing Worksheet (Section D is optional) for a perpetual hosted software and service solution. Additional Worksheet instructions include:

**Section A.** Section A pricing should account for all requirements in the RFP. The Offeror’s price should be based on the transaction volume data provided for all license and privilege items and broken down into the three categories shown in Section A of Appendix K – Pricing Summary/Cost Submittal. The Offeror should list all related software and license/privilege fulfillment and service delivery included within the Section A price and detailed in Appendix K – Pricing Summary/Cost Submittal. Each value entered should reflect the cost for each item over a ten year period. Any area blacked out in Appendix K – Pricing Summary/Cost Submittal will not require an entered value.

**Section B.** Section B contains all of the items listed as Additional Components to be provided by the Offeror in addition, not optional, to the Section A price. The Offeror will provide pricing for Additional Components listed in Appendix K – Pricing Summary/Cost Submittal, and they should be entered as a per-item variance for all Additional Components listed. Any value entered in Section B will be added to the unit price quoted in Section A to yield the Offeror’s total price bid. Also, each component currently listed in Section B of Appendix K – Pricing Summary/Cost Submittal must be bid by the Offeror to qualify. Bids of zero cost will be acceptable within this section, but it will be assumed that the Additional Components and associated functionality will be provided by the Offeror at no cost. Each value entered should reflect the cost for each item over a ten year period. Any area blacked out in Appendix K – Pricing Summary/Cost Submittal will not require an entered value.

**Section C.** This section quotes unit pricing for additional ALS equipment and peripherals. This will be the lease price agents pay to the Contractor for additional equipment and peripherals. Each value entered should reflect the cost for each item over a ten year period. Any area blacked out in Appendix K – Pricing Summary/Cost Submittal will not require an entered value.

**Section D.** This section is to be completed for any additional options being offered by the Offeror. Enter a per transaction variance or per unit price for each option being offered. Indicate if price is per transaction or per item. Offeror will also supply a detailed description of items or services offered in this section, and that description should include a quantifiable value depicting how the item or service
relates to the PFBC and its business needs to address recruitment, retention and reactivation of license buying constituents. Each value entered should reflect the cost for each item over a ten year period. Any area blacked out in Appendix K – Pricing Summary/Cost Submittal will not require an entered value.

**Section E.** Section E provides the pricing methodology for this RFP. The PFBC will use the total price (section A + B) as a means of comparing all bids.
PART V

SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL

V-1. Small Diverse Business and Small Business General Information. The Issuing Office 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.


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](http://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 Small Diverse Business and Small Business Participation Submittal Form contained in (Appendix D) and related Letter(s) of Intent (Appendix E). 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 E is a 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 F – 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 the Issuing Office and BDISBO within ten (10) calendar 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 the Issuing Office 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 the Issuing Office 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

CONTRACT TERMS AND CONDITIONS

Section 1. RECITALS, DEFINITIONS AND CONSTRUCTION

a. The foregoing Recitals are incorporated herein and made a part hereof.

b. The headings and table of contents are for convenience only and shall not be considered in the interpretation of this Contract.

c. In the event of a conflict between an Exhibit or Appendix to this Contract and the body of the Contract itself, the terms of the body of the Contract shall prevail.

Section 2. TERM OF CONTRACT

a. The term of the Contract shall commence on the Effective Date and shall continue until the expiration of ten (10) years from the Effective Date (the “Expiration Date”), subject to the other provisions of the Contract. The Effective Date shall be the date the Contract has been fully executed by the Contractor and by the Commission and all approvals required by Commission’s contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the fully-executed Contract has been sent to the Contractor. The “Contract Term” shall include any renewals or extensions hereof, as provided for at Section 10 of this Contract.

b. The Commission 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 Commission’s purchasing agent constitute a valid, binding contract with the Commission. The printed name of the purchasing agent on the Contract represents the signature of the individual who is authorized to bind the Commission to the obligations contained in the Contract. The printed name also represents that all approvals required by Commission’s 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 Commission 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 Commission 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 system and services to the Commission as such system and services are defined in this Contract, the RFP and the Contractor’s Proposal and any amendments thereto accepted by the Commission.

Section 3. PURCHASE ORDERS

a. The Commission 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. Contractor is 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 Commission. The electronically printed name of the purchaser represents the signature of the individual who has the authority, on behalf of the Commission, 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. The Commission 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 at the Contractor, or any obligation to receive and pay for delivered products on the part of the Commission, unless and until the Commission has properly received an acknowledgement.

   (3) The parties agree that no writing shall be required in order to make the Purchase Order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements are 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 genuine Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

(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.

f. Purchase Orders under ten thousand dollars ($10,000) 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 Commission 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 the Commonwealth Procurement card.

Section 4. DEFINITIONS

a. Contracting Officer. The person authorized in writing to administer this Contract for the Commission 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 the System and the 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 System and 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 Commission.

f. Services. All Contractor activity necessary to satisfy the Contract, as more
particularly set forth in the Work Statement, attached hereto and incorporated herein by reference.

g. **System.** An automated licensing system, called ALS herein, as described in the RFP, consisting of a modern, point of sale license sales system, including management reporting, financial processing of transactions and payments; help desk services; service and supply of an agent licensing network; hardware and hardware support; system operations, maintenance and upgrades (as warranted and agreed); application(s) maintenance and support; training; business intelligence and related services for a complete and integrated system. The term shall include any part of the automated licensing system or any newly developed or additional parts of the automated licensing system developed in subsequent years of this Contract as provided for herein.

### Section 5. CONTRACT SCOPE

a. During the term of this Contract, Commission from time to time may request the Contractor to provide additional services or add new features to the System, whether included in the Proposal as optional services or otherwise pertaining to the System. It is specifically envisioned that Commission may amend this Contract to include Optional Services as provided in the RFP, or may add other Commonwealth licensing functions to the System at any time during the term hereof. Such services shall be incorporated into the System on the terms set forth in Contractor’s Proposal for Optional Services, or otherwise shall be incorporated in accordance with the Change Procedures set forth in Section 23 hereof, and shall be evidenced by an Additional Services Addendum, executed by Commission and Contractor.

b. If the Contractor must perform work at Commission facilities, outside of the daily operational hours set forth by the Commission, it must make arrangements with the Commission to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access, unless the Commission fails to provide access as set out in the RFP.

c. Except as set out in this Contract, the Contractor shall not offer for sale or provide Commission 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 Commission to purchase those tools. Software tools that are NOT on statewide contract will be acquired through purchase agreements, and the Contractor shall not be considered for award of such agreements if it has recommended their use.

d. 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](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 the System and Services procured under this Contract comply with the applicable standards. In the event such standards change during Contractor’s performance,
and the Commission’s request 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.

Section 6. IDENTIFICATION NUMBER

The Contractor’s SAP vendor number is ______________ and shall be used by Contractor as required by Commission.

Section 7. 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 amended by the Contractor and accepted by the Commission; then

c. The RFP; and then

d. Any Purchase Orders.

Section 8. CONTRACT INTEGRATION

a. This Contract, including the Contract signature pages, together with the proposal and Best and Final Offer (“BAFO”), if any, and the RFP and addenda thereto, if any, are incorporated herein by reference, constitutes the final, complete, and exclusive Contract between 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.

Section 9. CONTRACTOR PERFORMANCE

a. Commencing as of the Effective Date, Contractor shall commence to design and implement the System in accordance with the Work Statement and thereafter, continuing throughout the term of the Contract and any renewal(s) or extension hereof, Contractor shall provide ALS in accordance with the Contract. In no event shall the Commission be responsible or liable to pay for any work performed by the
Contractor prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such work.

b. Within thirty (30) days of the Effective Date hereof, Contractor shall submit, for review and approval by Commission, a Transition Plan, setting forth the tasks and milestones, resource requirements and timelines for the development and deployment of the System, including provision for acceptance testing by or on behalf of Commission, for transition of operational responsibility of the System to the Contractor by not later than ________________. As part of the Transition Plan, Commission and Contractor shall mutually establish transition criteria and shall perform system acceptance testing standards. Upon successful completion of acceptance testing, as determined by Commission in accordance with any applicable acceptance testing criteria in the Transition Plan, Commission may authorize Contractor to commence implementation of the live system, whereupon the Commission shall be required to pay the fee for the System.

Section 10. OPTION TO EXTEND

The Commission reserves the right, upon notice to the Contractor, to extend the term of the Contract for a minimum of one year upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary to enter into a new contract.

Section 11. SPECIAL REQUIREMENTS

The Commission reserves the right to purchase Services covered under this Contract through other procurement methods whenever the Commission deems it to be in its best interest.

Section 12. SUBCONTRACTS

The Contractor may subcontract any portion of the System and the Services described in this Contract to third parties selected by Contractor and approved in writing by the Commission, 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 Commission under this Contract. The Contractor shall ensure that all subcontractors are bound by the terms and conditions of this Contract. Upon request of the Commission, the Contractor must provide the Commission with a complete copy of the subcontract agreement between the Contractor and the subcontractor. The Commission reserves the right, for good cause, to require that the Contractor remove a subcontractor from the project. The Commission will not be responsible for any costs incurred by the Contractor in replacing the subcontractor if good cause exists.
Section 13. OTHER CONTRACTORS

The Commission may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commission’s employees, and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commission’s employees. This paragraph shall be included in the contracts of all contractors with which this contractor will be required to cooperate. The Commission shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

Section 14. PRIME CONTRACTOR RESPONSIBILITIES AND PERFORMANCE BOND

The Contractor will be responsible for full functioning of the System and 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.

As security for Contractor’s performance under this Contract, Contractor shall deliver to Commission a performance bond in a form and issued by an issuer reasonably satisfactory to Commission in the amount of $5,000,000 for the first two years starting on the Effective Date of this Contract. Thereafter, and for the remainder of the Contract, Contractor shall deliver to the Commission a performance bond or letter of credit in a form and issued by an issuer reasonably satisfactory to Commission in the amount of $5,000,000.

Section 15. COMPENSATION

a. In consideration of Contractor operating the System and providing the Services set forth herein, Commission shall pay the fees, as more particularly set forth in the fee schedule in Exhibit A attached hereto (the “Fees”). Except as expressly provided otherwise in this Contract, all expenses of Contractor relating to the System and providing the Services set forth herein are included in the Fees, and no such expenses or other costs or fees shall be reimbursed by Commission, unless otherwise agreed to in advance by Commission, in writing.

b. The Contractor shall be required to operate the System for the Fees provided for herein. Contractor’s work 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 Commission. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

c. Unless the Contractor has been authorized by the Commission 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.
d. The Contractor also shall receive reimbursement for actual costs up to 2.5% of credit card sales from each Commission for merchandise and magazines sold or donations made on the integrated internet sales web site established and maintained by the Contractor in accordance with the RFP and Proposal as amended and accepted by the Commission. The Contractor shall invoice Commission for this reimbursement. This reimbursement does not apply to any licenses, permissions, permits, stamps, renewals or similar items sold by Contractor via the integrated internet sales web site.

Section 16. PAYMENT

a. The Commission shall pay Contractor for the System upon delivery and acceptance of the System by the Commission. The Commission shall pay Contractor on a monthly basis for software maintenance and fulfillment and service delivery. The Commission shall put forth reasonable efforts to make payment by the required payment date. The required payment date is forty-five (45) days after an accurate invoice, along with all supporting documentation, actually is received at the “Bill To” address. An invoice is not received until the Commission accept the service as satisfactorily performed. Payment may be delayed while the Commission assesses liquidated damages.

b. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commission reserves the right to question or contest invoices after payment, but within a reasonable time after performance, and to reject incorrect or improper Fee charges.

c. If, as a result of invoice review or audit, Commission determines that Contractor has overcharged Commission, Commission shall notify Contractor of the amount of such overcharge, and Contractor shall promptly pay to Commission the amount of the overcharge, plus interest at the rate of six percent (6%) per annum, calculated from the date of receipt by Contractor of the overpaid amount until the date of repayment to Commission. Any disagreement between the parties with regard to the results of any such audit or invoice review shall be treated as a dispute between the parties subject to the provisions of Section 26 (CONTRACT CONTROVERSIES) of this Contract.

d. Electronic Payments

(1) The Commission may 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.

Section 17. 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 Commission, which consent may be withheld at the sole and absolute discretion of the Commission.

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

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

e. Any assignment consented to by the Commission 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.

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 Commission’s written notice of any such change of name.

Section 18. INSPECTION AND ACCEPTANCE

a. Acceptance of the System will occur in accordance with the Deliverable Approval Plan submitted by the Contactor as part of the Transition Plan and approved by the Commission. Upon approval of the Deliverable Approval Plan by the Commission, the Deliverable Approval Plan becomes part of this Contract. If software or a developed system 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 System conforms to the functional
specifications and/or the requirements of this Contract. Contractor shall notify the Commission when the deliverable is completed and ready for acceptance testing. The Commission will not unreasonably delay commencement of acceptance.

b. Contractor shall certify, in writing, to the Commission when a particular Deliverable milestone, interim or final, is completed and ready for acceptance (hereinafter Acceptance). Unless otherwise agreed to by the Commission, the Acceptance period shall be fifteen (15) days for interim milestones and thirty (30) days for final milestones. On or before the 15th day for interim milestones or 30th day for the final milestone, following receipt by the Commission of Contractor’s certification of completion of a particular milestone, the Commission shall either: (1) provide the Contractor with Commission’s written conditional acceptance of the System, or any part thereof, in the completed milestone, subject to the Commission’s final acceptance or (2) identify to Contractor, in writing, the failure of the System, or any part thereof, to comply with the specifications, listing all such errors and omissions with reasonable detail.

c. If the System is in compliance with the specifications, then the Commission shall provide the Contractor with Commission’s written conditional acceptance of the System in the completed milestone. If the System, or any part thereof, is not in compliance with the specifications, then the Commission shall provide the Contractor with Commission’s written rejection of the System or part thereof in the completed milestone.

d. If the System does 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 Commission may either waive the requirement as not applicable to the Commission’s business requirements or require that the Contractor provide an acceptable alternative. Any Commission waiver of the requirement must be in writing.

e. Upon Contractor’s receipt of the Commission’s written notice of rejection, which must identify the reasons for the failure of the System or part thereof in a completed milestone to comply with the specifications, the Contractor shall have fifteen (15) calendar days, or such other time as the Commission and Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected System, certifying to the Commission, in writing, that the failures have been corrected, and that the System has been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted System and certification, the Commission shall have thirty (30) calendar days to test the corrected System to confirm that it is in compliance with the specifications. If in compliance with the specifications, then the Commission shall provide the Contractor with Commission’s conditional acceptance of the System in the completed milestone.

f. If, in the opinion of the Commission, the corrected System still contains material failures, the Commission may either:
Section 19. SERVICE LEVELS AND LIQUIDATED DAMAGES

a. By accepting this Contract, the Contractor agrees to the delivery requirements and Service Levels established by mutual agreement of the Commonwealth and the Contractor as set forth in Exhibit B attached hereto and incorporated herein by reference ("Service Levels"). If a Contract schedule is not met or if System performance is not in accordance with the Service Levels, the delay or non-performance will interfere with the Commission’s licensing programs. In the event of any such delay or non-performance, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. The Commission and the Contractor therefore agree that, in the event of any such delay or non-performance, the amount of damage shall be the amount set forth in this Section 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. Contractor shall provide the System in full accordance with the Service Levels. Said Service Levels are agreed to be the minimum acceptable level of service delivery required from Contractor with respect to (1) Implementation, (2) System Operations Management, (3) Service Delivery, (4) Help Desk Support, (5) Asset/Inventory Management, (6) Internet/Mobile, (7) Financial Services, and (8) Contract Reporting.

c. In the event periodic reporting by Contractor to Commission of Service Level performance, in accordance with Exhibit B, reveals any failures of Contractor to meet established Service Levels, Contractor, in addition to Contractor’s obligation to correct the conditions leading to the service level failure, shall be responsible to pay Liquidated Damages to Commission, which amounts may be withheld from sums due to Contractor, in amounts set forth in Exhibit B, which amounts have been mutually agreed to fairly represent the cost to the Commission for each such failure to achieve required service levels. Notwithstanding the foregoing, the Contractor shall be provided the cure period described by Section 24.c (TERMINATION) of this Contract only with respect to a failure to meet the required Service Level for the Measurable Events within Help Desk Support and Asset/Inventory Management, unless such failure is a complete failure to furnish the services required for a period of greater than 24 hours for Help Desk Support and 72 hours for Asset/Inventory Management. A “non-compliant reporting period” is defined as a reporting period where non-compliance with the appropriate service levels occurs, whether initially once the Contract is effective or after a cure has been completed under this subsection. If the cure period applies, the Contractor must restore the required Service Level to the minimum required as evidenced by the SLA Report for the first reporting period after the non-compliant reporting period. If the non-compliance is cured within the first reporting period after the non-compliant reporting period and compliance is continued through the
second consecutive reporting period after the non-compliant reporting period, no Liquidated Damages will be imposed and the cure will be considered complete. If the non-compliance is not cured within the first reporting period after the non-compliant reporting period, Liquidated Damages for one reporting period will be imposed. After any instance of non-compliance, a cure will not be considered complete until two consecutive reporting periods of compliance occur. Liquidated Damages will be assessed for each reporting period where the appropriate service levels have not been achieved, other than the initial non-compliant reporting period, until a cure is complete.

d. Liquidated Damages shall be paid by the Contractor and collected by the Commission by deducting them from the invoices submitted under this Contract or any other contract Contractor has with the Commission, by collecting them through the performance security, if any, or by billing the Contractor as a separate item.

e. To the extent that the delay is caused by the Commission, no liquidated damages will be applied.

f. 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.

g. The parties hereto may review and adjust Service Levels periodically during the contract term by mutual agreement, in accordance with Exhibit B.

Section 20. DEFAULT

a. The Commission may, subject to the provisions of Section 22 (NOTICE OF DELAYS) and Section 52 (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 24 (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 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 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, of the Contractor 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 this 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 Commission terminates this Contract or any Purchase Order in whole or in part as provided in Subsection a. above, the Commission may procure, upon such terms and in such manner as it determines, a replacement System or required services similar or identical to those so terminated, and the Contractor shall be liable to the Commission for any reasonable excess costs for such similar or identical System or services included within the terminated part of the Contract or Purchase Order.

c. If the Contract or a Purchase Order is terminated as provided in Subsection a. above, the Commission, in addition to any other rights provided in this Section, may require the Contractor to transfer title and deliver immediately to the Commission in the manner and to the extent directed by the Issuing Office, such
partially completed work, 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 as has been terminated. Except as provided below, payment for completed work accepted by the Commission shall be at the Contract price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the Commission shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commission 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 Commission against loss.

d. The rights and remedies of the Commission 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 Commission’s failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by the Commission 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 26 (CONTRACT CONTROVERSIES), the Contractor’s exclusive remedy shall be to seek damages in the Commonwealth Board of Claims.

Section 21. 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 immediately give notice thereof in writing to the Commission 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 Commission 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 23 (CHANGES).

Section 22. CONDUCT OF SYSTEM AND SERVICES

Following the Effective Date of the Contract, Contractor shall proceed diligently with the System and all Services and shall perform its obligations with regard to the System and 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 Commission 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 Commission and the
Commission’s designated representatives. If the Commission reasonably determines that the Contractor has not performed with due diligence, the Commission and the Contractor will attempt to reach agreement with respect to such matter. Failure of the Commission or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of Section 26 (CONTRACT CONTROVERSIES) of this Contract.

Section 23. CHANGES

a. At any time during the performance of the Contract, the Commission 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 Commission is the requestor of the change, the Contractor will inform the Commission if there will be any charges for the Contractor’s services in investigating the change request prior to incurring such charges. If the Commission and the Contractor agree on the results of the investigation and any necessary amendments to the Contract, the Contract will be modified to take into account the agreed changes and the changes will be implemented. If the parties cannot agree upon the results of the investigation or the necessary amendments to the Contract, the contracting officer may unilaterally order the work to be done, and the matter will be handled in accordance with Section 26 (CONTRACT CONTROVERSIES) of this Contract. The change request will be evidenced by a Purchase Order issued by the Commission. No work may begin on the change request until the Contractor has received the Purchase Order.

b. Except as provided herein at Section 5.a., changes outside the scope of this Contract shall be accomplished through the Commission’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.

c. Any change order for work related to the ALS that is not covered by the fee schedule set forth in Exhibit A shall be performed by the Contractor in accordance with the rate schedule attached as Exhibit C.

Section 24. TERMINATION

a. Termination For Convenience:

(1) The Commission may terminate this Contract without cause by giving Contractor thirty (30) days prior written notice (Notice of Termination) whenever the Commission shall determine that such termination is in the best interest of the Commission (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 26 (CONTRACT CONTROVERSIES) of this Contract.

(2) In the event of termination hereunder, Contractor shall cease work as of the date set forth in the Notice of Termination, and shall be paid only such Services that have already been satisfactorily completed up to and including the termination date set forth in said Notice of Termination and for such completed transactions or other services performed thereafter in the thirty (30) day notice period, if such termination services are requested by the Commission, for the collection, assembling, and transmitting to the Commission 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 work required under this Contract.

(3) The above shall not be deemed to limit the Commission’s right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.

b. Termination for Non-Appropriation

Any payment obligation or portion thereof of the Commission 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 Commission 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. Termination for 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 other party if the other party 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 aggrieved party may specify in writing) after receipt of written notice from the aggrieved party specifying such failure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

(1) Subject to the Section 32 (LIMITATION OF LIABILITY) of this Contract, in the event the Commission terminate this Contract in whole or in part as provided in this Subsection c., the Commission may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commission for such default, 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 immediately in writing of its inability to perform because of a cause beyond the control of the Contractor.

(3) Nothing in this Subsection c. shall abridge the Commission’s right to suspend, debar, or take other administrative action against the Contractor.

(4) If it is later determined that the Commission 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 c., the Commission may, in addition to any other rights provided in this Subsection, and subject to Section 38 (OWNERSHIP RIGHTS) of this Contract, require the Contractor to deliver to the Commission 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 26 (CONTRACT CONTROVERSIES), the Contractor’s exclusive remedy shall be to seek damages in the Board of Claims.

Section 25. 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 Commission’s customer data, either through on-site access or through remote access. The extent of required background checks shall be set forth in the Transition Plan and mutually approved by the parties hereto. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at https://epatch.state.pa.us/Home.jsp. Background checks may be accepted if conducted in the applicable jurisdiction where the employee is located in accordance with the procedures of that jurisdiction. The background check must be conducted prior to initial access and on an annual basis thereafter.

b. Before the Commission 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 a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commission’s facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commission consents to the access, in writing, prior to the access. The Commission may withhold its consent in their complete discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor’s failure to appropriately address any single failure to the satisfaction of the Commission may result in default of the Contractor under its Contract.

c. The Commission specifically reserves the right of the Commission to conduct background checks over and over that described herein.

Section 26. 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(s) 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(s) 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(s) and the Contractor. The Contracting Officer(s) shall send his/her written determination to the Contractor. If the Contracting Officer(s) 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 Commission shall compensate the Contractor pursuant to the terms of the Contract.

Section 27. CONFIDENTIALITY

a. The Contractor agrees to protect the confidentiality of the Commission’s confidential information. The Commission agrees to protect the confidentiality of Contractor’s confidential information. In order for information to be deemed to be 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 Work Statement). 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, except when essential for authorized use 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 20.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 Commission in connection with Services provided to the Commission under this Contract.

The Contractor shall use the following process when submitting information to the Commission 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:

(iii) the attached document contains confidential or proprietary information or trade secrets;

(iv) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and

(v) 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.

Section 28. 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 Commission 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 Commission, 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 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 designed to limit and restrict any action by the Commission as an additional insured against the insurance coverages in regard to the work performed for the Commission.

   (3) Errors & Omissions/Professional Liability/Cyber Insurance in an amount not less than $1,000,000 per claim and annual aggregate, covering all acts, errors, omissions, negligence, and including infringement of intellectual property (except patent and trade secret) in the performance of Services for ALS or on the behalf of the Commission under this Contract. Contractor’s insurance policy will provide Data Security and Privacy “Cyber” coverage (including coverage for unauthorized access as use, failure of security, breach of confidential information, of privacy perils, as well as breach mitigation costs and regulatory coverage). Such insurance shall be maintained in force at all times during the term of the Contract and for a period of two years thereafter for Services completed during the term of the Contract. The Commission shall be given at least 30 days’ notice of the cancellation or expiration of this insurance for any reason.

b. Prior to commencing work under the Contract, the Contractor shall provide the Commission 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 Section until at least thirty (30) days prior written notice has been given to the Commission.

c. The Contractor agrees to maintain such insurance for the life of the Contract.

d. Upon request to and approval by the Commission, Contractor’s self-insurance of the types and amounts of insurance set for above shall satisfy the requirements of this Section, provided the Commission may request from Contractor evidence each year during the term of the contract that Contractor has sufficient assets to cover such losses.

Section 29. CONTRACTOR RESPONSIBILITY PROGRAM

a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Contract that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commission or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit a written explanation of why such certification cannot be made.

b. The Contractor also certifies, that as of the date of its execution of this 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 Commission 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 Commission 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 Commission.

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

Section 30. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS

The Contractor agrees that the Commission 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.

Section 31. 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.

Section 32. LIMITATION OF LIABILITY

a. Except to the extent that the required Contractor insurance coverage under Section 28 (INSURANCE) exceeds the Contract value, the Contractor's liability to the Commission under this Contract shall be limited to the value of this Contract. 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;

(5) the Contractor’s indemnity of the Commission for patent, copyright, trade secret, or trademark protection; or

(6) security breach.

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 34 (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 Commission in restoring such lost records or data to their most recent backup copy.

c. Nothing in this Contract is meant to limit or waive the sovereign immunity of the Commonwealth or the Commission.

Section 33. COMMISSION HELD HARMLESS

a. The Contractor shall hold the Commission harmless from and indemnify the Commission 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 Commission 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 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.

Section 34. 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 System components utilized by the Contractor or its subcontractors that may come in contact with the Commonwealth’s software or computer networks. Contractor shall perform such security scan prior to introducing any System components 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 System components 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 Commission 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.

Section 35. **PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET PROTECTION**

a. The Contractor shall hold the Commission harmless from any suit or proceeding which may be brought by a third party against the Commission, 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 Commission agrees to give Contractor prompt notice of any such claim of which they learn. 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 Commission will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement which prevents the Commission from continuing to use the Developed Materials as provided herein shall be made without the Commission’s prior written consent. In all events, the Commission shall have the right to participate in the defense of any such suit or proceeding through counsel of their own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commission to provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commission for all expenses (including attorneys’ fees, if such are made necessary by the Contractor’s request) incurred by the Commission 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 Commission 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 Commission. If information and assistance are furnished by the Commission 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, with the prior consent of the Commission, 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 Commission 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 with the prior consent of the Commission, 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 Commission:

(1) any amounts paid by the Commission 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 Commission;

(2) any material provided by the Commission 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 Commission’s distribution, marketing or use beyond the scope contemplated by the Contract; or

(7) the Commission’s failure to use corrections or enhancements made available to the Commission by the Contractor at no charge.

  i. The obligation to indemnify the Commission, under the terms of this Section, shall be the Contractor’s sole and exclusive obligation for the infringement or misappropriation of intellectual property.

Section 36. SENSITIVE INFORMATION

  a. Contractor shall design, implement and operate the System in such fashion as to ensure the confidentiality and security of all private licensee and issuing agent data and personal information, including without limitation name, address, social security number, date of birth, driver’s license number, and agent bank account information (“Sensitive Information”).

  b. The Contractor shall not publish or otherwise disclose, except to the Commission or the Contractor’s subcontractors and except matters of public record (which is to be determined entirely in the discretion of the Commission), any information or data obtained hereunder from private individuals, organizations, or public agencies.

  c. The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a program of the Commission 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 Commission.

  d. Contractor will comply with all federal or state laws related to the use of information that constitutes Personal Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA). Further, in order to address the provision of PHI to the Contract, by signing this Contract, the Contractor agrees to the terms of the Business Associates Agreement, which is incorporated into this Contract as Exhibit D. It is understood that Exhibit D is only applicable if PHI is provided to the Contractor.

  e. If Contractor or any of its subcontractors will or may receive PCI under the Contract, Contractor shall provide for the security of the PCI in accordance with applicable industry standards, customs and practice. For the purposes of the Contract, “PCI” shall mean any data related to cardholders’ names, credit card numbers, or other credit card information as may be protected by State and
f. Rights and obligations of the parties under this Section 36 survive the termination of this Contract.

Section 37. 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.

Section 38. OWNERSHIP RIGHTS

a. Ownership of Properties

(1) All parts of the System shall be owned according to the provisions set forth in this Section 38.

(2) All software owned by the Commission or its licensors (“Commission’s Software”) as of the Effective Date, shall be and shall remain the exclusive property of the Commission or its licensors, and Contractor shall acquire no rights or interests in the Commission’s Software or Tools or that of their licensors except as described in this Section or in another provision set forth in this Contract. The Contractor shall not use any Commission’s Software, Commission’s Tools or software or tools of their licensors for any purpose other than for completion of work to be performed under this Contract. In the use of Commission’s Software, Commission’s Tools or software or tools of their 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 Commission’s Software.

c. Commission’s Property – Non-Exclusive, License Grant and Restrictions

During the term of this Contract, Commission 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 Commission is a party) to do the following:

1. Obtain access to and use of the Commission’s Software in accordance with the terms of this Contract.

2. Reproduce the Commission’s Software for archival purposes or for other purposes expressly provided for under this Contract.

3. Modify the Commission’s Software consistent with the terms and conditions of this Contract provided that Contractor agrees to assign to the Commission, its rights, if any, in any derivative works resulting from Contractor’s modification of the Commission’s 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 Commission to obtain access to the Commission’s 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 Commission’s Software. Commission 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 Commission’s Software, Commission’s Tools or software or tools of their licensors, 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 Commission is a party, (i) the Commission shall, at no cost to Contractor, provide Contractor with access to the Commission’s Software in the form in use by Commission 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 Commission’s 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 to Contractor on a non-exclusive basis, including
the right to grant non-exclusive licenses and other rights, are reserved by the
Commission.

f. Termination of Commission’s 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 shall immediately cease. Contractor shall, at no cost to Commission, deliver
to Commission all of the Commission’s 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) days
after termination, Contractor shall provide the Commission with a current copy of
the list of Commission’s 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 Commission’s Software then in Contractor’s possession or
under its control unless otherwise instructed by Commission, in writing; provided,
however, that Contractor may retain one archival copy of such Commission’s
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 Commission’s
Software or any other work which incorporates the Commission’s Software. The
obligations of this Section 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) prior to the Effective Date of this Contract shall be
and shall remain the exclusive property of Contractor. The Commission 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, and toolbars for maneuvering between
pages, search engines, and JAVA applets.
j. **Required Reports, Records and Inventory of Contractor Tools and Contractor Software**

(1) Contractor must provide a list of all Contractor Tools and Contractor Software to be used in the design, development, operation and maintenance of the System and/or 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 in connection with the System but which will not become part of or necessary for the use of the Developed Materials. All such Contractor Tools and Contractor Software shall be delivered to the Commission along with the license set forth in Subsection f. Contractor may amend these lists from time to time while the Contract is being carried out or upon its completion. Any Contractor Tools or Contractor Software not included on the lists will be deemed to have been created under this Contract.

(2) 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) 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 Commission prior to use on the Contract.

k. **Expiration or Termination Non-Exclusive License Grant – Non-Commercial Contractor Tools and Software**

Upon the expiration or termination for any reason of Contractor’s obligation to provide the Services under this Contract, and at the request of Commission, Contractor shall (i) grant to Commission a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works and unless Commission terminate this Contract without cause, grant to third parties engaged by Commission 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 Commission’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 Commission 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 Commission to complete and maintain such work. If Commission enters into a contract through a mechanism other than this Contract that allows for the use of the Contractor Software or Contractor Tools for which a license is granted under this Section, the Commission will include a provision in that contract that limits the use of the Contractor Software or Contractor Tools as delineated in this Section.

I. 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 materials shall be the property of the Contractor, and Contractor hereby grants Commission an irrevocable, nonexclusive, worldwide, fully paid-up license for the term of the Contract including the period that any renewals or extensions would cover, to use, modify, execute, reproduce, display, perform, prepare derivative works from and distribute, within the Commission, copies of such Developed Works. For purposes of distribution under the license grant created by this Section, Commission 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 Commission by the Contractor, then such modifications, improvements and enhancements shall be the property of the Commission or its licensor. To the extent Commission owns the software or other materials, they hereby grant 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 Commission 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 Commission 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 Commission, 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 Commission shall have all right, title, and interest (including ownership of copyright and trademark) to such Developed Works and the Commission 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 – Works Developed as Part of the Work Statement for the Project

The Developed Works developed as part of the Work Statement for the System, including Developed Works developed by subcontractors, are the sole and exclusive property of the Commission 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 Commission. 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 Commission. Commission 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 Commission. 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 Commission shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. Commission 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. Commission understands and agrees that any third party disclosure will not confer any license to such Patentable Items to a third party.

(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 Commission. Any Pre-Existing Materials used by Contractor for performance of Services under this Contract without Commission’s consent shall be deemed to be Developed Works as that term is used in this Section. In the event that Commission 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 Commission (alone or jointly with the Commission) develops or learns in connection with Contractor’s provision of Services to Commission under this Contract.

q. Commission’s Intellectual Property Protection

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

r. Contractor Intellectual Property Protection

Commission 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

Upon the request of the Commission, 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 Commission.

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 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 E (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.
Section 39. **PUBLICATION RIGHTS AND/OR COPYRIGHTS**

a. Except as otherwise provided in Section 38 (OWNERSHIP RIGHTS), the Contractor shall not publish any of the results of the work without the written permission of the Commission. 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 Commission with written permission of the copyright owner.

b. Except as otherwise provided in Section 38 (OWNERSHIP RIGHTS) and the confidentiality provisions of Section 27 (CONFIDENTIALITY), the Commission shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the Commission as part of the performance of the Contract.

c. Rights and obligations of the parties under this Section survive the termination of this Contract.

Section 40. **CHANGE OF OWNERSHIP OR INSOLVENCY**

In the event that the Contractor should change ownership for any reason whatsoever, the Commission 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 Commission’s exercise of any rights that the Commission may have under Section 24 (TERMINATION).

Section 41. **OFFICIALS NOT TO BENEFIT**

No official or employee of the Commission and no member of the Pennsylvania 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 Commission or member of said General Assembly have any interest, direct or indirect, in this Contract or the proceeds thereof.

Section 42. **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 Commission nor as a partnership or joint venture between the Commission and the Contractor.
b. Except as otherwise provided by the terms of this Contract, the Commission 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 Commission’s direction or control over the manner of the performance of Services provided by the Contractor.

Section 43. COMPLIANCE WITH LAWS

The Contractor shall comply with all federal, state, and local laws applicable to its work, 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 Contractor’s expense all licenses and all permits necessary for the fulfillment of its obligation.

If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the Services provided under this Contract, the parties to the Contract shall modify this Contract to the extent reasonably necessary to (i) ensure that such Services will be in full compliance with such laws, regulations and/or policies; (ii) modify the rates applicable to such Services, and (iii) address any schedule impacts.

Section 44. 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 Commission 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.

Section 45. 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 in connection with
the System and/or Fees charged hereunder.

b. The Contractor agrees to make available at the office of the Contractor at all
reasonable times, and upon reasonable written notice, during the term of this
Contract and the period set forth in Subsection c. below, any of the records for
inspection, audit, or reproduction by any authorized Commission representative.
To the extent allowed by law, the Commission agrees to maintain any documents
so provided in accordance with the confidentiality provisions in Section 27
(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 Subsection 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
Commission 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.

f. The Contractor shall provide the Commission 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 Commission under this
Contract. 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 Commission and in accordance with the
Statement on Standards for Attestation Engagements No. 16.

(1) The initial SSAE 16 examination shall be conducted for the first official annual reporting period required by the Contract.

(2) 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 Commission for review and comment as soon as reasonably practicable and in all events within sixty (60) days after completion of an examination. Final reports shall be submitted to the Commission no later than September 1.

(3) The Commission 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.

(4) The Commission will share the report with internal and external auditors of the Commonwealth of Pennsylvania and federal oversight agencies.

(5) The Commission 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.

g. The Contractor shall provide the Commission a report in accordance with attestation standards established by the American Institute of Certified Public Accountants (AICPA) (Attestation Engagements AT Section 101) in the form of a SOC 2 Type 2 report. This report will provide:

(1) A description of the Contractor’s system and an opinion on the fairness of the presentation of the description of the system;

(2) The suitability of the design of the controls and the operating effectiveness of the controls to meet the criteria for the principles set forth in TSP section 100, Trust Services Principles, Criteria, and Illustrations for Security, Availability, Processing Integrity, Confidentiality, and Privacy (AICPA, Technical Practice Aids) (applicable trust services principles); and,  

(3) A description of the tests of controls and results of the tests.

The examination will cover the following relevant principles: Security, Availability, Confidentiality, Processing Integrity, and Privacy throughout the related 12-month period.
This section applies to the Contractor and to any supplier, if it is a separate Entity from the Contractor, and if the supplier is performing Services applicable to the processing of the Commission’s transactions or storage of the Commission’s related data. Such examinations shall be performed at no additional cost to the Commission and in accordance with attestation standards established by the American Institute of Certified Public Accountants (AICPA) (Attestation Engagements AT Section 101).

The initial SOC 2 Type 2 report will cover ‘start date’ through ‘end date’ with a report due to the Commission ‘date to be determined’. All subsequent reports shall cover July 1st through June 30th. The contractor and all relevant subcontractors agree to provide a complete copy of the final SOC 2 Type 2 report(s) to the Commission within 90 days of the period ending date. This reporting requirement shall continue until the expiration date or upon the termination of this Contract. All SOC2 Type 2 reports, including those of the Contractor and any relevant subcontractor, shall be provided at no additional expense to the Commission. The Contractor and any relevant subcontractor shall provide to the Commission, within 30 calendar days of the issuance of each report, a documented corrective action plan which addresses each exception contained in a report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or subcontractor(s) along with the date(s) when each remedial action is to be implemented.

Section 46. 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 Commission 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.

Section 47. 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
**Section 48. NONDISCRIMINATION CLAUSE/SEXUAL HARASSMENT CLAUSE**

The Contractor agrees to the following:

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-lighted 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.

Section 49. 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.

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

(1) “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.

(2) “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.

(3) “Contractor” means the individual or entity that has entered into this contract with the Commonwealth.

(4) “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.

(5) “Financial Interest” means either:
(i) Ownership of more than a five percent interest in any business; or
(ii) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

(6) “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.

(7) “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

(1) 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.

(2) 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.

(3) 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.

(4) 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.

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

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

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

(iii) had any business license or professional license suspended or revoked;

(iv) 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

(v) 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.

(6) 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).*

(7) 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.

(8) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor’s compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor’s suspension or debarment.

(9) 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.

(10) 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.

Section 50. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS

The Contractor and the Commission 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 Commission. As part of the consideration for the award of this Contract, and intending to be legally bound, the Contractor assigns to the Commission 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.

Section 51. WARRANTIES

For the entire Contract Term, Contractor warrants that the System, Services and Developed Works will conform in all material respects to the functional specifications for the System and/or the requirements of the Contract.

a. The Contractor hereby represents and warrants to the Commission that the Contractor will not cause, or take any action that may directly or indirectly cause a disruption of the Commission’s operations.

b. In the event of any nonconformity with the foregoing warranties, the Commission will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the Commission, shall within ten (10) days notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the Commission, until such time as the deliverable conforms, in all material respects, to the functional specifications of the Developed Materials 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 System under this Contract.

d. In the event of an action or complaint by Commission against Contractor pertaining to these warranties, Contractor may raise any defenses that it may have.
Section 52. 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 are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commission 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 Commission may reasonably request. After receipt of such notification, the Commission 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 Commission by notice to the Contractor, may suspend all or a portion of the Contract.

Section 53. RECYCLED MATERIALS

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commission as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content.

Section 54. CONTRACTOR REPRESENTATIONS AND WARRANTIES

Contractor represents, warrants and covenants as of the Effective Date that (1) it is a corporation, duly incorporated, validly existing and in good standing under the laws of ______________; (2) it has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract; (3) it is duly licensed, authorized and qualified to do business and is in good standing in Pennsylvania and in every other jurisdiction required for Contractor to perform its obligations hereunder; (4) the execution, delivery and performance of this Contract by Contractor has been duly authorized; (5) it is in compliance with all applicable Federal, state and local laws and regulations applicable to Contractor and shall obtain all applicable permits and licenses required of Contractor in connection with its obligations under this Contract; (6) it is not currently under suspension or debarment by Commission, Commonwealth of Pennsylvania, or any other state, or the Federal government.
Section 55. NOTICES

Except as otherwise provided, all notices, requests, consents, approvals and other communications required or permitted under this Contract shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by telecopy (with receipt confirmed) to the address specified below:

In the case of Commission:

Pennsylvania Fish and Boat Commission
Director
Bureau of Administration
P.O. Box 67000
Harrisburg, PA 17106-7000

With a copy to:
Pennsylvania Fish and Boat Commission
Office of Chief Counsel
P.O. Box 67000
Harrisburg, PA 17106-7000

In the case of Contractor:

Either party may change its address or telecopy number for purposes of notification by giving the other party notice of the new address or telecopy number and the date upon which it will become effective.

Section 56. PAYMENT OF INVESTIGATION COSTS

Contractor agrees to reimburse Commission for all necessary and reasonable costs and expenses incurred by the Commonwealth Office of Inspector General for investigations of Contractor’s compliance with the terms of this Contract or any other agreement between Contractor and Commission or Commonwealth which result in suspension or debarment of Contractor.

Section 57. SEVERABILITY

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Contract or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision of this Contract shall be valid and enforceable to the extent permitted by law.
Section 58. PUBLICITY

Contractor shall not use Commission’s name(s) or refer to Commission(s) directly or indirectly in any media release, public announcement or public disclosure relating to this Contract, its subject matter, or the System, including any promotional or marketing material, without prior written consent of Commission(s) for each such use or release.

Section 59. AMENDMENTS

No amendment to, or change, waiver, or discharge of, any provision of this Contract shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, change, waiver or discharge is sought to be enforced.

Section 60. 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 26 (CONTRACT CONTROVERSIES), Commission and Contractor agree that the courts of the Commonwealth of Pennsylvania and the federal courts sitting in 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.

Section 61. COVENANT OF FURTHER ASSURANCES

Commission and Contractor covenant and agree that, subsequent to the execution and delivery of this Contract, and without additional consideration, Commission and Contractor will execute and deliver such further legal instruments and perform any commercially reasonable acts which are or may become necessary to effectuate the purposes of this Contract.

Section 62. 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 Section, the term “the Commonwealth” shall refer to Commission.

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) 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) 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) calendar 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.

Section 63. ENHANCED MINIMUM WAGE

a. Enhanced Minimum Wage. Contractor 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 and for an employee’s hours performing ancillary services necessary for the performance of the contracted services when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.

b. Adjustment. Beginning January 1, 2017, and annually thereafter, Contractor shall pay its employees described in paragraph a. 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.

c. Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:

   (1) exempt from the minimum wage under the Minimum Wage Act of 1968;

   (2) covered by a collective bargaining agreement;

   (3) required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or

   (4) required to be paid a higher wage under any state or local policy or ordinance.

d. Notice. Contractor shall post these Enhanced Minimum Wage Provisions for the entire period of the Contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.

e. Records. Contractor must maintain and, upon request and within the time periods requested by the Commission, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.

f. Sanctions. Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to,
termination of the Contract, nonpayment, debarment or referral to the Commission’s Offices of Chief Counsel for appropriate civil or criminal referral.

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

Section 64. RESPONSIBILITIES UPON TERMINATION

a. Contractor agrees that upon termination of this Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of Services to the Commission or another contractor. The Contractor shall provide full disclosure to the Commission and the third-party contractor about the equipment, software, or services required to operate the System for the Commission. The Contractor shall transfer licenses or assign agreements for any software or third-party services used to operate the System to the Commission or to another contractor.

b. Upon request by the Commission made before or within sixty (60) days after the effective date of termination of the Contract, Contractor will make available to the Commission a complete and secure (i.e. encrypted and appropriately authenticated), download file of all System data in XML format, including all schema and transformation definitions, and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. The Parties agree that on termination, the Contractor shall, at the choice of the Commission, return all the Sensitive Information transferred and the copies thereof to the Commission or shall destroy all the Sensitive Information and certify to the Commission that it has done so, unless legislation imposed upon the Contractor prevents it from returning or destroying all or part of the data transferred; provided, however, that Contractor may retain a copy of the Sensitive Information in order to comply with its legal, regulatory and records retention obligations. In that case, the Contractor warrants that it will guarantee the confidentiality of the data transferred and will not actively process the data transferred anymore.

c. The Commission shall have the right but not the obligation to run a parallel pilot test of a new system for up to three (3) months before the end of this Contract. The Commission may begin the cutover to the new System during the final month of this Contract, as extended. Contractor will provide support and development for providing services that allow parallel pilot testing. During parallel pilot testing, the Commission will collect any fees from sales in the new system pilot tests. Contractor will only receive payment from purchases processed through the System, not the replacement system.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
IN WITNESS WHEREOF, the parties hereto have each caused this Contract to be signed and delivered by their duly authorized representatives.

ATTEST: ________________________________
Secretary/Treasurer ________________________________
President/Vice President

ATTEST: Pennsylvania Fish & Boat Commission
_____________________________________
Administrative Secretary ________________________________
Executive Director

APPROVED FOR FORM AND LEGALITY:

_____________________________________
PFBC Authorized Attorney (date)

_____________________________________
Deputy Attorney General (date)

APPROVED:

_____________________________________
Comptroller (date)
Exhibit A
Fee Schedule
(To be negotiated with Contractor)
Exhibit B
Service Level Agreement
(See Appendix G of RFP)
Exhibit C
Rate Schedule
(To be negotiated with Contractor)
Exhibit D
Business Associates Agreement

Permitted Uses and Disclosures
ofProtected 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 E
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.

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<tr>
<th>Witness:</th>
<th>Software Publisher</th>
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<td>Signature Date</td>
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COMMONWEALTH OF PENNSYLVANIA
PA FISH AND BOAT COMMISSION

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 Attorney General Date