

Appendix A

Pennsylvania MMIS Terms and Conditions

A-1 Terms and Conditions

The following provisions constitute the terms and conditions of the contractual agreement between the Commonwealth of Pennsylvania Department of Public Welfare (DPW), Office of Medical Assistance Programs (OMAP) and its Pennsylvania MMIS Contractor for the transition, operation and maintenance, modification, and turnover of the Pennsylvania MMIS.

The Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate Commonwealth form. *No work to be performed under the terms of an amendment shall begin until the Commonwealth has issued a Notice to Proceed which shall include the effective date of the amendment.*

A-2 Contract Composition

A-2.1 Reserved

A-2.2 Term of Contract

The term of the Contract shall commence on the Effective Date and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Effective Date shall be fixed by the Contracting Officer after the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth Contracting procedures have been obtained, the date on which the Contract receives federal approval or the date referenced in the Contract, whichever is later. The Contract shall not be a legally binding Contract until after the Effective Date is affixed and the fully-executed Contract has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Commonwealth shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract. The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

In the event of a turnover of MMIS to the Commonwealth or a new vendor, the Commonwealth may extend the term of this Contract for an additional three (3) month period in order to permit the completion of the Turnover Phase of this Contract. During this period, the Contractor will only be responsible for turnover activities described in the Contract and will be paid as provided in Appendix B, Section 8, Turnover Phase.

A-2.3 Reserved

A-2.4 Contract Administration and Management

The contract to be awarded from this RFP shall be administered for the Commonwealth by the Department of Public Welfare (DPW). The DPW Secretary shall name a DPW Project Manager to manage the Commonwealth's contract responsibilities. The DPW Project Manager will be responsible for ensuring that the RFP and contract comply with all procurement policies of the Commonwealth of Pennsylvania, for monitoring compliance with contract terms and conditions, for negotiating any contract amendments, and for any related contractual issues. In addition, the DPW Project Manager is responsible for coordination and accountability with external Commonwealth and federal agencies and for monitoring and approval of Contractor activities during the Transition Phase as well as the other Phases of the contract. The DPW Project Manager will make written determinations with respect to the contract. The DPW Project Manager will designate a full-time MMIS Project Manager. The MMIS Project Manager will have day-to-day responsibility for the direction of the project and will be the Contractor's primary liaison in working with other DPW staff. The MMIS Project Manager will maintain ongoing responsibility for contract monitoring and Contractor compliance with the terms and conditions of the contract. The MMIS Project Manager will receive, prior to general distribution, all Contractor progress reports and deliverables, oversee scheduling of meetings with Commonwealth staff, and have administrative responsibility for the contract. In no instance shall the Contractor refer any matter to any other DPW official unless initial contact, both verbal and in writing, regarding the matter has been presented to the MMIS Project Manager. The MMIS Project Manager will chair weekly status meetings.

The Contractor shall designate an Executive or Manager who shall have the authority to enter into any amendments on behalf of the Contractor and otherwise commit the Contractor to any course of action, undertaking, obligation or responsibility in connection with the Contractor's performance of this Contract. The Contractor shall also designate a Project Manager/Account Manager will also have day to day responsibility for supervising the performance of the Contractor's obligations under the contract. The Contractor shall not change the designation of its Project Manager/Account Manager without the DPW's prior written approval, which approval shall not be unreasonably delayed or withheld.

A-2.5 Changes to Contract (Form STD-180)

At any time during the performance of the Contract, the Commonwealth or the Contractor may request a change to the Contract within the scope of the Contract. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If the Commonwealth is the

requestor of the change, the Contractor will inform the Commonwealth if there will be any charges for the Contractor's services in investigating the change request prior to incurring such charges. If the Commonwealth and the Contractor agree on the results of the investigation and any necessary amendments to the Contract, the Contract will be modified to take into account the agreed changes and the change 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 A-8.13 (CONTRACT CONTROVERSIES) of this Contract. The change request will be evidenced by a writing issued by the Commonwealth. No work may begin on the change request until the Contractor has received the writing.

Changes outside the scope of this Contract shall be accomplished through the Commonwealth's normal procurement procedures, and may result in an amended Contract or a new contract. Where no amendment has been executed in advance for such services, no payment will be made for services outside of the scope of the Contract.

The Commonwealth may issue Contract Change Orders at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such Contract Change Order shall be in writing signed by the Contracting Officer. The Contract Change Order shall be effective as of the date appearing on the Contract Change Order, unless the Contract Change Order specifies a later effective date. Contract Change Orders will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required under any Contract Change Order shall be handled through Section A-8.13, (CONTRACT CONTROVERSIES).

For purposes of this Contract, "Contract Change Order" is defined as a written order signed by the Contracting Officer directing the Contractor to make changes authorized under this clause.

A-3 Notices

Any written notice to any party under the Contract shall be deemed sufficient if delivered personally; or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed); or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.), with confirmed receipt; or by certified or registered United States mail, postage prepaid, return receipt requested; sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Whenever the terms of the Contract require DPW to provide written notice to the Contractor, such notice shall be signed by the MMIS Project Manager. All notices regarding the failure to meet performance requirements and any assessments of damages under the provisions set forth in the MMIS contract shall be issued by the DPW Project Manager.

Notice mailed shall be addressed to:

If to DPW:

Sandra K. Patterson
DPW Project Manager
Office of Medical Assistance Programs
Department of Public Welfare
Willow Oak Building
P.O. Box 2675
Harrisburg, PA 17105

If to the CONTRACTOR:

Karen Gage
Pennsylvania MMIS Project/Account Manager
Mail Stop No. B-100
225 Grandview Avenue
Camp Hill, PA 17011

With a copy to:

Deputy General Counsel
EDS
5400 Legacy Drive
Plano, Texas 75024

Said notices shall become effective on the date of receipt or the date specified within the notice, whichever comes later. Either party may change its contact information for notification purposes by mailing a notice stating the change and setting forth the new address.

A-4 Reserved

- A-4.1 Reserved**
- A-4.2 Reserved**
- A-4.3 Reserved**
- A-4.4 Reserved**
- A-4.5 Reserved**
- A-4.6 Reserved**
- A-4.7 Inspection and Acceptance**

A-4.7.1 *Inspection and Acceptance of Deliverables*

- A. Acceptance of Deliverables will occur in accordance with the Deliverable Approval Plan submitted by the Contactor and approved by the Commonwealth. Upon approval of the plan by the Commonwealth, 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 Developed Materials conform to the functional specification for the Developed Materials, if any, and/or the requirements of this Contract. Contractor shall notify the Commonwealth when the Deliverable is completed and ready for acceptance testing. The Commonwealth will not unreasonably delay commencement of acceptance testing. The Acceptance Test may be conducted by the Contractor or the Commonwealth. If the Acceptance Test is conducted by the Contractor, the Acceptance Test Plan must be approved by the Commonwealth prior to the Contractor commencing the Acceptance Test. Additionally, after the Acceptance Test is conducted, the test results must be documented and approved by the Commonwealth prior to implementation. If the Acceptance test is conducted by the Commonwealth, the Commonwealth will not unreasonably delay commencement of acceptance testing.

- B. Contractor shall certify, in writing, to the Commonwealth when a particular Deliverable milestone, interim or final, is completed and ready for acceptance (hereinafter Acceptance). Unless otherwise agreed to by the Commonwealth, the Acceptance period shall be ten (10) business days for interim milestones and thirty (30) days for final milestones. On or before the 10th business day for interim milestones or 30th business day for the final milestone, following receipt by the Commonwealth of Contractor's certification of completion of a particular milestone, the Commonwealth shall either: (1) provide the Contractor with Commonwealth's written conditional acceptance of the Developed Materials in the completed milestone, subject to the Commonwealth's final acceptance of the Developed Materials or (2) identify to Contractor, in writing, the failure of the Developed Materials to comply with the specifications, listing all such errors and omissions with reasonable detail.

- C. If the Deliverables are in compliance with the specifications, the Commonwealth will provide the Contractor with Commonwealth's written conditional acceptance of the Deliverables in the completed milestone. If the Deliverables are not in compliance with the specifications, then the Commonwealth will provide the Contractor with Commonwealth's written rejection of the Deliverables in the completed milestone. If the Commonwealth fails to notify the Contractor in writing of any failures in the Acceptance period within the applicable Acceptance period, the time for acceptance will be automatically extended for ten (10) business days and the DPW Project Manager will be notified of the failure. If the DPW Project Manager fails to provide either written notice of conditional acceptance or rejection, the deliverable will be deemed accepted. Payment for Deliverables will only be made if the Commonwealth has accepted the Deliverable, either through written conditional acceptance or through deemed acceptance.

- D. If the Deliverable 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 Commonwealth may either waive the requirement as not applicable to the Commonwealth's business requirements or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.
- E. Upon Contractor's receipt of the Commonwealth's written notice of rejection, which must identify the reasons for the failure of the Deliverable in a completed milestone to comply with the specifications, the Contractor shall have fifteen (15) business days, or such other time as the Commonwealth and Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected Deliverable, certifying to the Commonwealth, in writing, that the failures have been corrected, and that the Deliverable have been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted Deliverable and certification, the Commonwealth shall have thirty (30) business days to test the corrected Deliverables or to verify the Contractor's test results to confirm that the Deliverables are in compliance with the specifications. If the corrected Deliverables are in compliance with the specifications, then the Commonwealth shall provide the Contractor with Commonwealth's conditional acceptance of the Deliverables in the completed milestone. If the Commonwealth fails to notify the Contractor in writing of any failures in the thirty (30) day period, the time for acceptance will be automatically extended for ten (10) business days and the DPW Project Manager will be notified of the failure. If the DPW Project Manager fails to provide either written notice of conditional acceptance or rejection, the deliverable will be deemed accepted.
- F. If, in the opinion of the Commonwealth, the corrected Deliverables still contain material failures, the Commonwealth may either:
- (1) Repeat the procedure set forth above; or
 - (2) Terminate the Contract in accordance with Section A-8.7 (TERMINATION).

A-4.7.2 Inspection and Acceptance of System Change Orders

The MMIS Project Manager or a delegate will review and approve each system change order, or other required change order, as in A-2.5 (referred to as "contract change orders") for implementation. The Contractor will provide test results and/or a testing walk through (for all large projects and those agreed upon by Contractor and DPW) within fifteen (15) days prior to the implementation date of the change order unless otherwise approved by the Commonwealth. The Commonwealth will have seven (7) days to review and approve the test results prior to implementation of the change order. If review of the testing results will take longer than seven (7) days, the MMIS Project Manager will submit a written notice of an extension of time and the timeline for the Contractor's workplan will be extended for the same amount of time as the extension for DPW. If the MMIS Project Manager fails to notify the Contractor of the results of its review or to request an extension for its review, the time for review will be automatically extended for five (5) business days and the DPW Project Manager will be notified of the failure.

If the DPW Project Manager fails to provide either written notice of conditional acceptance or rejection, the change order will be deemed accepted.

Unless otherwise approved by the MMIS Project Manager acceptance of change orders for implementation will occur in accordance with this section. Upon completion of each change order by presentation of the testing results to DPW, Contractor represents to DPW that the work performed conforms with the DPW approved functional specifications for the change order and/or the requirements of this Contract. Contractor shall notify the MMIS Project Manager when the change order is completed and ready for inspection and acceptance. The MMIS Project Manager or delegate will not unreasonably delay commencement of inspection and acceptance.

If the change order is not accepted, the MMIS Project Manager or delegate will provide Notice of Non-Acceptance, including a Statement of Corrections required to qualify the work for acceptance. Acceptance or non-acceptance of a change order, or portion thereof, will be at the reasonable discretion of the MMIS Project Manager or a delegate.

If the resubmission results in non-acceptance of the change order, Contractor will have five (5) days or such other time as agreed to by the parties to correct the deficiencies at no charge to DPW and resubmit the work. If the second submission results in non-acceptance, the DPW MMRS Contract Administrator may return the work to Contractor for remediation at no additional cost and apply liquidated damages equal to \$250 per day until the change order is accepted.

By submitting a change order for inspection and acceptance, Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Contract specifications and objectives. By giving acceptance for a change order, DPW represents only that it has reviewed the work and detected no deficiencies of sufficient gravity to defeat or substantially threaten the attainment of the objectives, to warrant the withholding of acceptance, and to warrant withholding of payment to Contractor. DPW's acceptance of a change order does not discharge the Contractor's responsibilities for comprehensiveness, functionality, effectiveness or validity of the work except in cases where written notice is provided advising of a specific exception and the exception is formally acknowledged and agreed to by the MMIS Project Manager in his or her sole discretion. If DPW accepts a change order for implementation and DPW subsequently determines, at any point in the Contract, that the functionality does not meet the approved requirements defined through the business design process, then the Contractor must repair the deficiency at no additional cost to DPW.

A-5 Ownership

The following subsections address the ownership of the system, data files, and other aspects of the Pennsylvania MMIS. The obligations of this Section A-5 (OWNERSHIP) shall survive any termination of this Contract.

A-5.1 Ownership of the System

The software, procedures, files, and other documentation constituting the Pennsylvania MMIS are Commonwealth owned according to these terms. The MMIS includes, but is not limited to, the following, in their most current version, as licensed to the Contractor during the Transition Phase:

- All Pennsylvania MMIS and supporting programs, including the source and object codes
- All system instructions and scripts for operating the Pennsylvania MMIS
- All data files
- User and operational manuals, as well as other documentation
- System and program documentation
- Training programs for DPW staff and other designated Commonwealth employees for the operation and use of the system
- Any and all performance-enhancing operational plans and products
- Training programs for providers and other billing agents for claims submission (both paper and EMC) and use of the EVS and Pharmacy POS/ProDUR
- All specialized or specially modified operating system software and specially developed programs, including utilities, software, electronic claims submission packages, and documentation, which are required for, or used in the operation of, the Pennsylvania MMIS except for that software listed in Exhibits A-4 and A-5.

The Contractor will convey, upon request and without limitation, copies of all system documentation, operating instructions, and procedures and all data processing programs, or portions thereof, which are part, or become a part, of the Pennsylvania MMIS, whether they are developed by the employees of the Contractor or any subcontractor as part of this contract or transferred from another MMIS or contract.

A-5.2 Ownership of Properties

- A. All “Developed Works” shall be owned according to the provisions set forth in this Section A-5.2.
- B. All software owned by the Commonwealth or its licensors (“Commonwealth Software”) as of the Effective Date, shall be and shall remain the exclusive property of the Commonwealth or its licensors, and Contractor shall acquire no rights or interests in the Commonwealth Software or Tools or that of its licensors except as described in this Section or in another provision set forth in this Contract. The Contractor shall not use any Commonwealth Software, Commonwealth Tools or software or tools of its licensors for any purpose other than for completion of work under this Contract.

A-5.2.1 Commonwealth Property – Non-Exclusive, License Grant and Restrictions

During the term of this Contract, Commonwealth grants to Contractor for the limited purpose of providing the Services covered under this Contract, a limited, nonexclusive, nontransferable, royalty-free right (subject to the terms of any third party agreement to which the Commonwealth is a party) to do the following:

- A. Obtain access to and use of the Commonwealth Software in accordance with the terms of this Contract.
- B. Reproduce the Commonwealth Software for archival purposes or for other purposes expressly provided for under this Contract.
- C. Modify the Commonwealth Software consistent with the terms and conditions of this Contract. Derivative works resulting from Contractor's modification of the Commonwealth Software shall be considered "Developed Works" under the terms of the Contract.
- D. Allow the Contractor's subcontractors approved by the Commonwealth to obtain access to the Commonwealth Software for the purposes of complying with the terms and conditions of this Contract; provided, however, that neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Software. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this Section.
- E. To the extent that Contractor uses Commonwealth Software, Commonwealth Tools or software or tools of its licensor, Contractor agrees to protect the confidentiality of these works and maintain these proprietary works with the strictest confidence.

A-5.2.1.1 Impact of Third Party Agreements

Subject to the terms of any third party agreement to which the Commonwealth is a party, (i) the Commonwealth shall, at no cost to Contractor, provide Contractor with access to the Commonwealth Software in the form in use by Commonwealth as of the Effective Date of this Contract and, (ii) Contractor, as part of the Services to be rendered under this Contract, shall compile and, as changes are made, update a list of all of the Commonwealth Software then in use by Contractor or any of its subcontractors in connection with Contractor's performance of the Services required by this Contract. This list will be attached as Appendix A-3 to these Terms, and shall be incorporated into these Terms upon its update by the Contractor.

A-5.2.1.2 Reservation of Rights

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

A-5.2.1.3 Termination of Commonwealth License Grant

Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, all rights granted to Contractor in this Section A-5 (OWNERSHIP) shall immediately cease. Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Software and Tools (including any related source code then in Contractor's possession or under its control) in the form in use as of the Effective Date of such expiration or termination. Within fifteen (15) calendar days after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Software in use as of the date of such expiration or termination. No sooner than sixty (60) days after expiration or termination, Contractor shall destroy or erase all other copies of any of the Commonwealth Software then in Contractor's possession or under its control unless otherwise instructed by Commonwealth, in writing; provided, however, that Contractor may retain one archival copy of such Commonwealth Software and Tools, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.

A-5.2.1.4 Effect of License Grant Termination

Consistent with the provisions of this Section, Contractor shall refrain from manufacturing, copying, marketing, distributing, or use of any Commonwealth Software or any other work which incorporates the Commonwealth Software.

A-5.2.2 Use of Contractor-Owned Software and Third Party 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 Commonwealth shall acquire no rights or interests in the Contractor Software or the Contractor Tools by virtue of this Contract except as set forth in this Section.

A-5.2.2.1 Definition of Contractor Tools

Contractor Tools is defined as any tools, both in object code and source code form, which Contractor has previously developed, or which Contractor independently develops or licenses from a third party, excluding any tools that Contractor creates pursuant to this Contract. Contractor Tools includes but is not limited to, methodologies, information, concepts, toolbars for maneuvering between pages, search engines, JAVA applets, and ActiveX controls.

Third Party Tools is defined as any tolls, both in object code and source code form, which a third party has previously developed, or which Contractor independently license from a third party, excluding any tools that the Contractor or third party creates pursuant to this Contract. Third Party Tools includes but is not limited to, methodologies, information, concepts, toolbars for maneuvering between pages, search engines, JAVA applets and ActiveX controls.

A-5.2.2.2 Required Approvals, Reports, Records and Inventory of Certain Tools and Contractor Software

- A. (1) Contractor must provide, as part of the Contractor's proposal and prior to the award of the Contract, a list of all Contractor Tools and, Contractor Software to be delivered in connection with the services, deliverables or Developed Materials. This list is recorded in Appendix A-4 to these terms, an updated version of which shall be incorporated into these terms upon its creation after approval and acceptance by DPW according to these terms. Contractor may only update the list of Contractor Tools and Contractor Software intended to be used by Contractor to provide the services under this Contract by receipt of written Department approval through the change control process. All Contractor Tools and Contractor Software necessary to provide services, or use deliverables or Developed Materials shall be noted as such on Appendix A-4, and shall be delivered to the Commonwealth upon request, according to these terms. Unless the Software or Tools are exempted from this requirement in whole or in part by receipt of DPW written approval through the change control process, upon the initial use of the necessary Contractor Tools or Contractor Software in this project, the Commonwealth hereby accepts, a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works, display, and perform the software, and to grant to third parties engaged by Commonwealth the right to use, modify, and prepare derivative works based upon all or any portion of the Software and the Tools . All exempt Contractor Tools or Contractor Software, and the specific nature and extent of their exemption shall be noted as such in Appendix A-4. Any Contractor Tools or Contractor Software not included on Appendix A-4 will be deemed to have been created under this Contract.
- (2) Contractor must provide, as part of the Contractor's proposal, prior to award of this Contract, a list of all Third Party Software or Tools to be delivered in connection with the service, deliverables or Developed Materials. This list is recorded in Appendix A-5 to these terms, an updated version of which shall be incorporated into these terms upon its creation. Contractor may only update the list of Third Party Software or Tools intended to be used by Contractor to provide the services under this Contract by receipt of written DPW approval through the change control process. All Third Party Software or Tools necessary to provide the service or use deliverables or Developed Materials shall be noted as such in Appendix A-5, and must be delivered to the Commonwealth, along with the transfer of a license containing terms acceptable to the Commonwealth (as pre-approved by the Commonwealth), unless exempted from this delivery and license transfer requirement in whole or in part by receipt of written DPW approval through the change control process. (A sample of third-party license terms acceptable to the Commonwealth is included in Appendix A-6, though DPW reserves the right to require different rights in any particular case via the change control process) All Third Party Software or Tools thus exempted, and the specific nature and extent of the exemption, shall be recorded in an updated version of Appendix A-5. Any Third Party Software not included and listed as such on Appendix A-5, but necessary to provide the service or use deliverables or Developed Materials shall be replaced (according to terms acceptable to the Commonwealth) at the expense of the Contractor.

- (3) In all cases, the Contractor shall be required to provide sufficient information regarding the objectives and specifications of any Contractor Tools and Contractor Software and Third Party Software so as to allow its functions to be duplicated by other commercial products or replaced with custom-developed solutions. Any software that will be integrated into the Pennsylvania MMIS shall be identified as to its source.
- B. During the term of this Contract, Contractor shall maintain at its principal office books of account and records showing its actions under this Contract. Upon reasonable notice by Commonwealth, Contractor shall allow Commonwealth to inspect these records and accounts for purposes of verifying the accuracy of such accounts and records.
- C. In the event that Contractor fails to list a Contractor Tool or Contractor Software, but is able to demonstrate that such tool or software was independently developed by Contractor prior to the Effective Date of this Contract, Contractor shall retain complete ownership of such Contractor Tool or Contractor Software that is necessary to use the deliverables or Developed Works, provided that notice is given to the Commonwealth, and approval receive through the change control process, prior to use on the Contract.

A-5.2.2.3 Expiration or Termination Non-exclusive License Grant – Tools and Software

Subject to the provisions of the Contract, upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, and at the request of Commonwealth, Contractor shall, and, upon the happening of the aforementioned contingency, hereby does, (i) grant to Commonwealth a paid-up, nonexclusive, nontransferable perpetual license to use, modify, prepare derivative works, display, and perform, unless Commonwealth terminates this Contract without cause, grant to Contractors engaged by Commonwealth the right to use, modify, and prepare derivative works based upon all or any portion of the Contractor Software and the Contractor Tools owned by Contractor (as listed in Appendix A-4) and used by Contractor in connection with the Services, the foregoing rights being granted to the extent reasonably necessary to facilitate Commonwealth's or such third party's completion of and maintenance of the Services to be provided by Contractor under this Contract immediately prior to such expiration or termination and (ii) deliver to Commonwealth the source code version of such Contractor Software and such Contractor Tools in the form used by Contractor in connection with the Services immediately prior to such expiration or termination to allow the Commonwealth to complete and maintain such work. Upon this transfer of rights, the Contractor shall have no obligation to provide updates, enhancements, releases or support for such Contractor Software or Contractor Tools to the Commonwealth. If Commonwealth enters into a contract that allows for the use of the Contractor Software or Contractor Tools for which a license is granted under this Section A-5 (OWNERSHIP), the Commonwealth will include a provision in that contract that limits the use of the Contractor Software or Contractor Tools as delineated in this Section.

A-5.2.3 Rule of Usage for Developed Works

- A. If Developed Works modify, improve, or enhance application software programs or other materials generally licensed by the Contractor, then such Developed Works shall be the

property of the Contractor, and Contractor hereby grants Commonwealth an irrevocable, nonexclusive, worldwide, fully paid-up license (to include source code and relevant documentation) in perpetuity to use, modify, execute, reproduce, display, perform, prepare derivative works from, and distribute, within the Commonwealth, such Developed Works, and to allow a third party to exercise all these rights on its behalf. For purposes of distribution under the license grant created by this section, Commonwealth includes any government agency, department, instrumentality, division, unit or other office that is part of the Commonwealth of Pennsylvania, together with the State System of Higher Education (including any of its universities), any county, borough, commonwealth, city, municipality, town, township special purpose district, or other similar type of governmental instrumentality located within the geographical boundaries of the Commonwealth of Pennsylvania. If federal funds are used in creation of the Developed Works, the Commonwealth also includes any other state government as well as the federal government, and the limit to in-state distribution does not apply.

- B. If Developed Works modify, improve, or enhance application software or other materials not licensed to the Commonwealth by the Contractor, then such modifications, improvements and enhancements shall be the property of the Commonwealth or its licensor. To the extent Commonwealth owns or has a license to the software or other materials, and to the extent that it, in its sole discretion determines it is able to do so the Commonwealth will grant to Contractor in writing an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform and distribute copies of such Developed Works.
- C. If Developed Works have been funded by Commonwealth, to any extent, with either Commonwealth or federal funds, and the Developed Works do not include pre-existing materials generally licensed by the Contractor, then the Commonwealth shall have all right, title, and interest (including ownership of copyright and trademark) to such Developed Works and the Commonwealth grants to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform and distribute copies of such Developed Works to other governmental entities. 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.
- D. Notwithstanding any other term in this Contract, any Contractor rights to Developed Works are subject to the limitation that the Contractor may not charge a development, licensing or user fee to any State, federal, or local governmental entity when distributing copies of, and transferring/sublicensing rights to, the Developed Works to such entity. The Contractor's exercise of its right to transfer/sublicense according to these terms shall be considered an activity performed by the Contractor under this Contract for purposes of Section A-8.15.

A-5.2.4 *Copyright Ownership*

Works Developed as Part of the Scope of Work for the Project, including Developed Works developed by Subcontractors, are the sole and exclusive property of the Commonwealth and shall be considered “works made for hire” under the United States Copyright Act of 1976, as amended, 17 United States Code. In the event that the Developed Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, Contractor agrees to assign and, upon their authorship or creation, expressly and automatically assigns, all copyright interests, proprietary rights, trade secrets, and other right, title, and interest in and to such Developed Works to Commonwealth. Contractor further agrees that it will have its Subcontractors assign, and upon their authorship or creation, expressly and automatically assign all copyright interest, proprietary rights, trade secrets, and other right, title, and interest in and to the Developed Works to the Commonwealth. Commonwealth shall have all rights accorded an owner of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Developed Works in multiple copies, the right to distribute, copies by sales or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the Creative 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, all working papers, files and other documentation shall immediately be delivered by Contractor to the Commonwealth. Contractor warrants that the Developed Works are original and do not infringe any copyright, patent, trademark, or other intellectual property right of any third party and are in conformance with the intellectual property laws of the United States.

A-5.2.5 *Patent Ownership*

- (1) Contractor and its subcontractors shall retain ownership to patentable items, patents, processes, inventions or discoveries (collectively, the Patentable Items) made by the Contractor during the performance of this Contract. Notwithstanding the foregoing, the Commonwealth shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. Commonwealth may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. Commonwealth understands and agrees that any third party disclosure will not confer any license to such Patentable Items.
- (2) Contractor shall not use any computer program, code, or any works developed by or for Contractor independently of this Contract (“Pre-Existing Materials”) in the performance of the Services under this Contract, without the express written consent of the Commonwealth. Any Pre-Existing Materials used by Contractor for performance of Services under this Contract without Commonwealth consent shall be deemed to be Developed Works as that term is used in this Section. In the event that Commonwealth provides such consent, Contractor shall retain any and all rights in such Pre-Existing Materials.

A-5.2.6 *Federal Government Interests*

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

A-5.2.7 *Usage Rights for Know-How and Technical Information*

Either Party, in the ordinary course of conducting business, may use any ideas, concepts, know-how, methodologies, processes, components, technologies, algorithms, designs, modules or techniques not otherwise covered by this Section relating to the Services which Contractor or Commonwealth (alone or jointly with the Commonwealth) develops or learns in connection with Contractor's provision of Services to Commonwealth under this Contract.

A-5.2.8 *Commonwealth Intellectual Property Protection*

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

A-5.2.9 *Contractor Intellectual Property Protection*

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

A-5.2.10 *Source Code Obligation*

Simultaneously with delivery of the Developed Works to Commonwealth, Contractor shall deliver a true, accurate and complete copy of all source codes relating to the Developed Works. In accordance with an agreed upon process, the Contractor will provide the Commonwealth with a backup copy, including source codes of application software that are included in the Developed Works for this Contract. The Contractor will provide this information upon each scheduled release of its software. The Contractor is providing these copies for backup purposes and retains all proprietary rights to its software.

A-5.2.11 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.

A-5.3 Ownership of Data

All data acquired by the Contractor from DPW or from third parties in the performance of the Contract or data developed, derived, documented stored, or furnished by the Contractor in the performance of the Contract, in all its forms, whether or not it is recipient data, shall be and will remain the property of the Commonwealth. The Contractor will use DPW-owned data, software and related documentation, before and after the expiration or termination of this Agreement, only as required for the performance of this Agreement. It will not otherwise use, copy or reproduce the same in any form, except pursuant to the express written instructions of the DPW or CMS.

The Contractor will deliver all data to DPW promptly upon request, or upon expiration or termination of this Agreement, in whatever form it is maintained by the Contractor, and to destroy all copies remaining in its possession. The Contractor will take all reasonable steps during the MMIS Transition, Operations and Maintenance, Modifications and Turnover Phases to assure the physical security of DPW-owned data, software and related documentation in its possession including, but not limited to, protection against damage from fire, smoke and water, and security violations.

A-5.4 Ownership of Information

DPW shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by the Contractor under the contract. This includes all of the data captured and maintained in both electronic and hard copy files.

A-6 Recordkeeping and Audit Requirements

A-6.1 Financial Accounting Requirements

The Contractor and all subcontractors shall maintain accounting records relating to the performance of the Contract. These accounting records shall be maintained in accordance with generally accepted accounting principles. Further, they shall be maintained separate and apart from other corporate accounting records. The Contractor shall maintain, document, and submit

operations cost data in accordance with the Commonwealth Medicaid Manual, Section 11276.10. Documentation shall support and differentiate between contract operations costs for MMIS and any identified non-Medicaid services provided by the Contractor that are not reimbursable at the seventy-five percent (75%) matching rate. Authorized representatives or agents of the Commonwealth and CMS shall have access to the accounting records upon notice for purposes of review, analysis, inspection, audit, and/or reproduction. The Contractor shall make copies of any accounting records pertaining to the contract available to Commonwealth and/or federal personnel upon request. If such original documentation is not made available as requested, the Contractor agrees to provide transportation, lodging, and subsistence at no cost, for DPW and other Commonwealth and/or federal representatives to carry out their audit function at the principal offices of the Contractor or other locations of such records. DPW and other Commonwealth and federal agencies and their respective authorized representatives or agents shall have access to all accounting and financial records of any individual, partnership, firm, or corporation insofar as they relate to transactions with any department, board, commission, institution, or other Commonwealth or federal agency connected with the contract.

A-6.2 Examination and Retention of Records and Information

- A. The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under this Contract to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.
- B. The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in this Section below, any of the records for inspection, audit, or reproduction by any authorized federal or Commonwealth representative.
- C. Except for documentary evidence retained pursuant to this section, the Contractor may in fulfillment of its obligation to retain its records as required by this Section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two (2) years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth with the concurrence of its auditors.
- D. Notwithstanding the foregoing provisions, during the period of this Contract, all information obtained by the Contractor through work on the project which does not pertain to charges under this Contract will be made available to the Department or to the federal government immediately upon demand. If requested, the Contractor shall deliver to the Department or the federal government background material prepared or obtained by the Contractor incident to the performance of this agreement. Background material is defined as original work, papers, notes and drafts prepared by the Contractor to support the data and conclusions in final reports, and includes completed questionnaires, materials in electronic data processing form, computer programs, other printed materials, pamphlets, maps, drawings and all data directly related to the services being rendered.

- E. In accordance with 45 C.F.R §95.615, the Contractor will provide access to the MMIS system, in all its aspects, including but not limited to any design development, operation and cost records of the Contractor and its subcontractors at such intervals as are deemed necessary by the Department or the federal government to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system.
- F. Notwithstanding the foregoing provisions, and to the extent that services are furnished by contractors, subcontractors, or organizations related to the contractor/subcontractor and such services may in whole or in part be claimed by the Commonwealth for Medicare/Medicaid reimbursements, contractor/subcontractor agrees to comply with 42 C.F.R. Part 420, including:
 - (1) Preservation of books, documents and records until the expiration of four (4) years after the services are furnished under the contract.
 - (2) Full and free access to (i) the Commonwealth, (ii) the U.S. Comptroller General, (iii) the U.S. Department of Health and Human Services, and their authorized representatives.
- G. The provisions of this Section shall be applicable to and included in each subcontract.

A-6.3 Audit Clauses

- 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., as amended* and all rules and regulations promulgated pursuant to the Act and the attached applicable Audit Clause.
- C. The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
- D. The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984, as amended*.

A-6.4 Retention of Records

Records pertaining to this contract will be maintained for a minimum of five (5) years following the end of the federal fiscal year during which the final payment under the Contract is made or Commonwealth and federal audits of the contract have been completed, whichever is later, or

except when a longer period is required by law. However, accounting records pertaining to the contract shall be retained until final resolution of all pending audit questions and for one (1) year following the termination of any litigation relating to the contract if the litigation has not terminated within the above five-year (5) period. Accounting records and procedures shall be subject to Commonwealth and federal approval.

A-7 Other Contract Terms and Conditions

The following subsections address other contract terms and conditions regarding the Pennsylvania MMIS.

A-7.1 Inspection of Work Performed

DPW or any authorized representative of the Commonwealth of Pennsylvania, the U.S. Department of Health and Human Services, the U.S. Comptroller General, the U.S. General Accounting Office, or their authorized representatives, shall have the right to enter the Contractor's premises or such other places where duties under this contract are being performed to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor and all subcontractors must provide access to all facilities and assistance to the Commonwealth and federal representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay work. Failure to resolve substantial problems identified in the monitoring process may be cause for termination of the contract.

A-7.2 Information Technology Standards

The Contractor shall review the information technology standards set out in IT Bulletins unless otherwise directed in writing by the DPW Project Manager or her designee. The Contractor shall ensure that Services procured under this Contract comply with the applicable standards. These standards can be found on the Office of Information Security website at www.oit.state.pa.us. In the event that the Contractor cannot locate information on these standards at this location, the Contractor shall contact the DPW Project Manager or her designee to determine the correct location of this information. 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.

A-7.3 Confidentiality of Information

The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Contract for any purpose not connected with the parties' Contract responsibilities except with the written consent of such recipient, recipient's attorney, or recipient's parent or guardian pursuant to applicable state and federal law and regulations, including but not limited to 42 C.F.R. Part 431, Subpart F and 55 Pa. Code Chapter 105.

Contractor will comply with the most stringent of all applicable federal or state laws, and Contract terms, related to the use and disclosure of information, including information that constitutes protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA). Further, by signing this Contract, the Contractor agrees to the terms of the Business Associate Agreement, which is incorporated into this Contract as Appendix A-1.

Contractor will be responsible to remediate any improper disclosure of information. Such remediation may include, but may not be limited to, credit monitoring for individuals for whom information has been released and reimbursement of any costs incurred by individuals for whom information has been released and the reimbursement of direct and reasonable costs incurred by the Department which costs would not have otherwise been incurred but for the improper disclosure by the Contractor.

The Contractor agrees to guard the confidentiality of the Commonwealth with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section.

A-7.4 Publicity

The Contractor shall at all times obtain the prior written approval from the DPW Project Manager before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the Contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this Agreement. The Contractor may disclose information concerning the work performed or data collected without prior written approval of the DPW Project Manager as long as:

1. No confidential information is disclosed; and
2. The disclosure is either part of a response to a request for proposal (RFP) process or is required as part of a required public filing.

If the Contractor or any of its subcontractors publishes a work dealing with any aspect of performance under the Contract, or of the results and accomplishments attained in such performance, the Commonwealth shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

Except as otherwise provided in Section A-5 (OWNERSHIP) and the confidentiality provisions of Section A-7.3 (CONFIDENTIALITY OF INFORMATION), the Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

A-7.5 Award of Related Contracts

DPW may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its 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 Commonwealth employees. The Contractor, however, may request that nongovernmental third parties execute reasonable confidentiality agreements. In the event that the Contractor and a nongovernmental third party are unable to reach an agreement, DPW will provide such assistance as may be necessary in order to arrive at a reasonable confidentiality agreement. If despite the efforts of DPW, Contractor and the nongovernmental third party are still unable to reach a reasonable confidentiality agreement, Contractor is relieved of its obligation to provide information that DPW agrees is proprietary or constitutes a trade secret; however, in all other respects, the Contractor's obligation to cooperate remains. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. DPW shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

A-7.6 Compliance with Federal Clean Air, Water Pollution, and Energy Acts

In carrying out this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including the *Clean Streams Law*, Act of June 22, 1937 (P.L. 1987, No. 394), as amended; the *Pennsylvania Solid Waste Management Act*, Act of July 7, 1980 (P.L. 380, No. 97), as amended; and the *Dam Safety and Encroachment Act*, Act of November 26, 1978 (P.L. 1375, No. 325), as amended.

A-8 Performance Standards and Damages

A-8.1 Consequential Damages

A-8.1.1 System Certification

A-8.1.1.1 System Certification – Requirements

The Contractor shall ensure that the Pennsylvania MMIS remains certified by CMS and that the Commonwealth is eligible for federal funding at the maximum allowable level. Should decertification of the MMIS, or any component part of it, occur prior to contract termination or expiration, the Contractor shall be liable for resulting damages that are incurred as a result of the failure of the Contractor to comply with the requirements of the contract.

A-8.1.1.2 System Certification – Damages

The Contractor shall be liable for the difference between the maximum allowable enhanced federal financial participation and that actually received by DPW, including any losses due to loss of certification. The Contractor shall be accountable only for those damages that arise from its acts or omissions that are inconsistent with its contractual commitments. All federal financial participation penalty claims assessed by CMS shall be withheld from monies payable to the Contractor until all such damages are satisfied.

A-8.1.2 Consequential Damages for DPW Sanctions

If during Operations Phase, CMS imposes fiscal sanctions against the Commonwealth as a result of the Contractor's or any subcontractor's action or inaction, the Contractor shall compensate the Department the amount lost by the Commonwealth by application of the sanctions.

A-8.1.3 Correctness of Payments

A-8.1.3.1 Correctness of Payments – Performance Requirement

All payments, adjustments, and other financial transactions made through the MMIS must be made on behalf of eligible clients, to enrolled providers, for approved services, and in accordance with the payment rules and other policies of the Commonwealth of Pennsylvania. The Contractor shall be liable for the actual amount of any detected overpayments, underpayments, or duplicate payments identified as a result of Commonwealth or federal claims reviews or as reported by providers or from other referrals, which are a result of incorrect Contractor action or Contractor caused inaccurate processing. In the event that the Contractor is seeking recovery and cannot receive recovery within six (6) months of Commonwealth approval of the initiation of the recovery, the Commonwealth may recoup that amount from the Contractor invoice, pending a status report from the Contractor of recovered payments. Any amount not recouped within six (6) months can be recovered from invoices. The Contractor must process an adjustment to correct payment history at no additional charge to the Commonwealth.

The Contractor shall notify the Commonwealth immediately upon discovery of any overpayments, underpayment or duplicate payments, irrespective of cause. The Contractor shall notify the Commonwealth, using the defect reporting process, of any system errors that result in a potential provider overpayment.

A-8.1.3.2 Correctness of Payments - Damages

If an overpayment or duplicate payment is made to a provider and that payment is the result of a failure of the Contractor to process correctly, then the Contractor shall be liable for the overpayment or duplicate payment for which full recovery is not be made. In the event that the Contractor is liable and the Commonwealth has recouped the overpayment or duplicate payment

from the Contractor, the Department will continue to seek recovery from the provider in accordance with its standard practices. In the event that the Commonwealth subsequently is reimbursed for the overpayment or duplicate payment by the provider, the Commonwealth will refund the amount of repayment to the Contractor. The Contractor shall notify the Commonwealth in writing immediately upon discovery of any overpayments or duplicate payments, irrespective of cause.

A-8.2 Liquidated Damages

DPW and the Contractor agree that, in the event of a failure to meet performance requirements, damage shall be sustained by the Commonwealth, and that it may be impractical and extremely difficult to ascertain and determine the actual damages which the Commonwealth will sustain in the event of, and by reason of such failure; and it is agreed that the Contractor will pay the Commonwealth for such failures, at the sole discretion of the Commonwealth, as liquidated damages and not as a penalty. Damage assessments are linked to performance of system transition or operational responsibilities. Where an assessment is defined as an "up to" amount, the dollar value will be set at the discretion of the Commonwealth. Liquidated damages assessed against the Contractor will not cumulatively exceed ten percent (10%) of the fixed monthly operational payment. If a single event causes the potential for multiple liquidated damages, the Commonwealth shall select no more than one applicable liquidated damage assessment.

Written notification of each failure to meet a performance requirement will be given to the Contractor by the MMIS Project Manager. The Contractor shall have five (5) business days from the date of receipt of written notification of a failure to perform to specifications to cure the failure or to submit a Corrective Action Plan to cure the failure. Additional business days can be approved if deemed necessary by the Commonwealth. If the failure is not resolved within this prescribed time period, liquidated damages may be imposed retroactively to the date of failure to perform. If DPW elects to not exercise a damage clause in a particular instance, this decision shall not be construed as a waiver of the Commonwealth's right to pursue future assessment of that performance requirement and associated damages.

The Contractor's performance will be reviewed and assessed on a quarterly basis by the MMIS Administrative staff, Status reports, and by direct measurement by DPW.

Payment of liquidated damages will not relieve the Contractor from its obligation to meet the requirements established by the Contractor's response to the RFP in regard to the MMIS Maintenance Phase.

A-8.2.1 Reserved

A-8.2.2 Timeliness of Claims Processing

A-8.2.2.1 *Timeliness of Claims Processing – Performance Requirement*

The Contractor shall meet the following claims, including adjustments, processing timeliness standards:

- Retrieve and deliver all mail twice each business day
- Screen and return all paper claim records missing data within two (2) business days
- Assign Internal Control Number (ICN) within twenty-four (24) business hours of receipt within PROMIS^eTM (every claim and encounter including adjustments along with all the corresponding attachments)
- Image every paper claim and attachment within one (1) business day of receipt and paper adjustments within five (5) business days
- Retain hard-copy documents and claims in a secured location for forty-five (45) calendar days after which documents are to be shredded
- Monitor provider activity in the mailroom by manually keeping track of the number of provider returns with the reason for return
- Enter all electronic claim records, including encounters, within one business day of receipt within the PROMIS^eTM application
- Adjudicate 90% of clean claim records within eleven (11) calendar days of receipt. Clean claim records are defined as claims or adjustments that can be processed without obtaining additional information from the provider of services or a third party. It includes a claim with errors originating in the State's claim system. It does not include a claim from a provider who is under investigation for fraud or abuse or a claim under review for medical necessity.
- Adjudicate 99% of all clean claims within seventy (71) calendar days of the date of receipt of the claim
- Adjudicate all claims (100%) within three hundred forty five (345) calendar days of the date of receipt of the claim, except those exempted by the Commonwealth
- Send the provider payment file to the State Treasurer's Office within twenty-four (24) hours after notification from the Office of Comptroller Operations, Bureau of Payable Services
- Begin MCO payment (capitation) process on the 1st day of the month and complete by the 5th day of the month. Provide treasury file to Office of Comptroller Operations, Bureau of Payable Services and/or Department of Treasury by COB on the 5th day of the month. (These requirements may be superseded by other arrangements for special cycles or in the case where the Contractor does not receive the capitation file from BIS on the 1st of the month.)
- Process claims and encounter cycles every business day
- Process edits and audits daily

Those circumstances when claim adjudication is being handled directly by Commonwealth staff in accordance with Commonwealth guidelines or held by the Contractor under Commonwealth written directive shall not be counted in determining Contractor compliance with performance requirements for timeliness of claims processing.

A-8.2.2.2 Timeliness of Claims Processing – Liquidated Damages

At the Commonwealth's discretion, the Contractor may be assessed up to a maximum ten percent (10%) of the contracted monthly operational payment for services for each month of its failure to meet any of the above requirements. For each successive month that a failure to meet the requirement(s) continues, the assessment may be increased up to ten percent (10%) of the monthly operational payment amount and the limit in Section A-8.2 does not apply.

A-8.2.3 Quality of Claims Processing

A-8.2.3.1 Quality of Claims Processing – Performance Requirement

The Contractor shall meet the following claims processing quality standards.

- ❑ For paper claims, the quality of the data input and data entry keying accuracy standard is 99.5 %, as determined by Commonwealth reviews in accordance with contract requirements.
- ❑ Contractor shall maintain a suspended claims resolution accuracy rate of 99.5%. To measure the Contractor's suspended resolution accuracy, on a quarterly basis, the Department will use a randomly statistical valid method to determine a sample of no fewer than one hundred fifty (150) suspended claims covering at least five (5) working days and compare the data correction(s) to the then current suspense resolution procedures. Suspense resolution errors are defined as those resolution errors that result in an incorrect payment amount, a payment made to an incorrect provider/payee, a payment when the claim should have rejected, a rejection when the claim should have paid, a payment made for an incorrect recipient, a payment for incorrect procedure, and/or an incorrect value in a critical suspense field. Those circumstances when claim resolution is being handled directly by Commonwealth staff in accordance with Commonwealth guidelines or held by the Contractor under Commonwealth written directive shall not be counted in the Department samples; and
- ❑ All claims and encounters must correctly process through edit/audit and pricing logic. To measure accurate claim and encounter processing, the Department on a monthly basis may sample, using a randomly valid and statistical method to select, no fewer than thirty (30) adjudicated claims/encounters selected from at least five randomly selected days and compare the edit/audit and pricing fields to the then current Pricing Appendix and agreed upon edit/audit pseudo-code. The Department recognizes that this damage applies only to those areas within the control and responsibility of the Contractor and does not apply to documented defects being resolved by the Contractor.

A-8.2.3.2 Quality of Claims Processing – Liquidated Damages

The Department may assess quarterly liquidated damages for Contractor’s failure to meet the previously defined quality of claims processing standards as follows:

Quality Percentage Based on Sample	Maximum Liquidated Damages Assessed to Contractor
99.5% to 100%	No damage assessment
98.0% to 99.4%	\$1,000.00
95.0% to 97.9%	\$2,500.00
90.0% to 94.9%	\$5,000.00
85.0% to 89.9%	\$7,500.00
80.0% to 84.9%	\$12,000.00
Below 80.0%	\$20,000.00

The Contractor must also prepare and process, at no additional charge, claim adjustments or reprocess the claims to correct any errors found in the quality samples.

A-8.2.4 System Availability and Response Time

A-8.2.4.1 System Availability and Response Time – Performance Requirement System

Where on-line access to the system is specified, the Contractor must ensure that the average response time is no greater than the requirements set forth in the RFP, at least ninety percent (90%) of the available production time between 6:00 A.M. and 6:00 P.M., Eastern Time, Monday through Friday (except state holidays) for workstations; and twenty-four (24) hours a day, seven (7) days a week except for agreed upon downtime for updating and preventive maintenance for Eligibility Verification System (EVS), Automated Voice Response System (AVRS), Pharmacy Point-of-Sale (POS)/ Prospective Drug Utilization Review (ProDUR) and Internet applications. Average response time per terminal per available production hour per day shall be reported weekly. Response time is defined in the RFP.

The Contractor must ensure that on-line access to all MMIS applications, including FADS is available for all Commonwealth users between the hours of 6:00 A.M. to 6:00 P.M., Eastern Time, Monday through Friday except state holidays. EVS, Pharmacy POS/ProDUR and Internet applications must be available twenty-four (24) hours per day/seven (7) days per week, except for scheduled downtime. An application is considered unavailable when a user does not get the complete, correct full-screen response to an input transaction within ten (10) seconds after depressing the “Enter” or other function key. The Commonwealth will notify the Contractor when it has been determined that the system is unavailable. The Contractor will provide monthly reports showing system availability and unavailability by number of minutes per hour of the day. Cumulative system downtime must not exceed one (1) hour per terminal or Pharmacy POS/ProDUR during any continuous five (5) business day period. The Contractor shall provide access to the on-line system during off-hours and on weekends at no extra charge whenever

requested by DPW at least forty-eight (48) hours in advance. Downtime may not exceed twelve (12) hours in any given week, with the exception of Pharmacy POS/ProDUR, unless otherwise specified.

A-8.2.4.2 System Availability– Liquidated Damages

DPW may assess liquidated damages in the following amounts if in any continuous five (5) business day period, unscheduled downtime exceeds one (1) hour:

- Greater than one (1) hour up to four (4) hours cumulative – up to \$125 for each 30 minutes or portions thereof
- Greater than four (4) hours up to twelve (12) hours cumulative – up to \$250 for each thirty (30) minutes or portions thereof
- Greater than twelve (12) hours cumulative – up to \$500 for each thirty (30) minutes or portions thereof, up to a maximum of \$25,000 per occurrence

A-8.2.4.3 Response Time – Liquidated Damages

DPW may assess liquidated damages in the following amounts if in any unscheduled downtime exceeds one (1) hour:

- Greater than one (1) hour up to four (4) hours cumulative – up to \$125 for each 30 minutes or portions thereof
- Greater than four (4) hours up to twelve (12) hours cumulative – up to \$250 for each thirty (30) minutes or portions thereof
- Greater than twelve (12) hours cumulative – up to \$500 for each thirty (30) minutes or portions thereof, up to a maximum of \$25,000 per occurrence

A-8.2.5 Minimum File Update Processing Cycles

A-8.2.5.1 Minimum File Update Processing Cycles – Performance Requirement

The Contractor shall provide the following minimum number of file update and claims processing cycles:

- One (1) payment cycle per week
- On-line, real-time entry of data and updates of Reference files
- Update pricing changes to the drug file at least once per month
- One capitation cycle per month
- Daily and monthly 834 enrollment files
- Update FADS on a weekly basis or as otherwise agreed to by BPI
- TPL weekly claims processing files provided to the TPL contractor via eGov within two days of the scheduled production job.

- ❑ Claims exports to TPL Casualty Workbench are received daily 9 A.M. following the date of request.
- ❑ Patient Pay Update file exported to BIS daily by 6 AM. If the file is late, the internal patient pay table must be maintained in PROMIS^e™ until the next business day or claims will process incorrectly.

These requirements will also be reviewed for the quality of the data input and data entry keying accuracy standards of 99.5 %, as determined by Commonwealth reviews. Unless otherwise specified, each file update process must be completed and the file available on-line by 6:00 A.M. Eastern Time, on the first business morning following scheduled update and maintenance.

A-8.2.5.2 Minimum File Update Processing Cycles – Liquidated Damages

Up to two hundred fifty dollars (\$250) per hour liquidated damages may be assessed for each hour of delay in completing the file update process for system master files by 6:00 A.M. of the next business morning or as otherwise specified. Up to five thousand dollars (\$5,000) per incident may be claimed as damages for weekly payment cycle that is not completed by 6:00 A.M. of the next business morning after its scheduled processing or as otherwise specified, unless prior written approval is authorized by the Commonwealth.

A-8.2.6 Timeliness and Accuracy of Report Production

A-8.2.6.1 Timeliness and Accuracy of Report Production – Performance Requirement

MMIS reports must be produced in the format and type of media approved by DPW. The Contractor shall be responsible for the accuracy of all reports, including calculations and completeness of data used as input. The Commonwealth shall notify the Contractor, in writing, of any inaccuracies or discrepancies.

The Contractor shall deliver each MMIS report to the personnel and the location specified by DPW. The report distribution list, including delivery location, number of copies, and media will be defined by the Commonwealth and updated from time to time during the Operations, Maintenance, and Modification Phases. The Contractor shall be required to update and maintain the report distribution list during the Operations and Maintenance Phases to incorporate any changes to existing reports at no additional cost to DPW.

At a minimum, the Contractor will be required to furnish reports on the following schedule:

- ❑ Daily reports must be available in COLD by 10:00 A.M. of the following business day
- ❑ Weekly reports and cycle processing reports must be available in COLD by 10:00 AM of the next working day after the scheduled run
- ❑ Monthly reports must be available in COLD by 10:00 AM of the fifth working day after the end of the month

- ❑ Quarterly reports must be available in COLD by 10:00 AM of the fifth day after the end of the quarter
- ❑ Annual reports must be available in COLD by 10:00 AM of the tenth working day following the end of the year (whether federal fiscal year, Commonwealth fiscal year, waiver year, or other annual period)
- ❑ Ad-hoc and on-request reports on the date specified in the report request or as agreed upon by the Change Control Board

A-8.2.6.2 Timeliness and Accuracy of Report Production –Liquidated Damages

Up to fifty dollars (\$50) liquidated damages may be assessed for each business day that any MMIS report is delivered to the correct location five (5) business days after the date when it is due, or includes less than the required number of copies, or is not in the approved medium. If a report is not corrected within ten (10) business days of the Commonwealth's notice of failure to meet the reporting accuracy requirements, then up to fifty dollars (\$50) per day damages may be assessed for each report that has been identified as inaccurate from the date of the notification until the date the corrected report is delivered.

A-8.2.7 Electronic Verification System (EVS) and Pharmacy Point-of-Sale (POS) Availability

A-8.2.7.1 Electronic Verification System (EVS) and Pharmacy POS Availability – Performance Requirement

The EVS, the PRO-DUR, and Pharmacy POS, must be available twenty-four (24) hours per day seven (7) days a week for provider inquiry, input, and response purposes. The availability must include all forms of entry as required in the RFP.

A-8.2.7.2 Electronic Verification System (EVS) and Pharmacy POS Availability – Liquidated Damages

In any calendar week, liquidated damages may be assessed as follows for downtime of any component of the EVS and Pharmacy POS systems within the control of the Contractor (such as the voice response system, the PC software response, direct line use) excluding any authorized or excused times. System downtime shall be coordinated and approved by the Commonwealth; such approval shall not be unreasonable withheld. Downtime for schedule maintenance requested by the Contractor for non-Departmental maintenance and enhancement activities shall be limited to a total of eight (8) hours in any calendar week. If more than eight (8) hours are required, the Department reserves the right to request that the Contractor make provision for providers to have an alternative access to recipient eligibility information.

Liquidated damages may be assessed in the following amounts if based on the amount of downtime:

- ❑ Greater than one (1) hour up to four (4) hours cumulative – up to \$125 for each 30 minutes or portions thereof
- ❑ Greater than four (4) hours up to twelve (12) hours cumulative – up to \$250 for each thirty (30) minutes or portions thereof
- ❑ Greater than twelve (12) hours cumulative – up to \$500 for each thirty (30) minutes or portions thereof, up to a maximum of \$25,000 per occurrence

A-8.2.8 *Data Extracts To Enterprise Data Warehouse*

A-8.2.8.1 *Data Extracts To Enterprise Data Warehouse – Performance Requirement*

Provide weekly validated extracts and balancing files within 24 hours of the financial cycle being posted to PROMISe™, but no later than 9:00 A.M. Eastern Time, Wednesday.

A-8.2.8.2 *Data Extracts To Enterprise Data Warehouse – Liquidated Damages*

For failure to provide up to five hundred dollars (\$500) per day may be assessed for a verified period.

A-8.2.9 *Reserved.*

A-8.2.10 *Waivers*

A-8.2.10.1 *Waivers – Performance Requirements*

The Contractor must create the required 372 reports on a schedule based on the close of the individual waiver fiscal year (WFY) for each waiver as approved by CMS or as otherwise directed by the Commonwealth.

A-8.2.10.2 *Waivers – Liquidated Damages*

The Commonwealth may assess liquidated damages for failure to meet the approved schedule of \$1,000 per month per waiver.

A-8.2.11 *Provider and User Assistance Center and Defect Resolution*

A-8.2.11.1 Provider and User Assistance Center and Defect Resolution – Performance Requirement

Callers must be provided an answer or response indicating that an answer is forthcoming or being researched within twenty-four (24) hours. If the call is not resolved an update on progress must be provided to caller within five (5) days of the initial call. The call ticket must be resolved with a Corrective Action Plan or resolution within fifteen (15) days of the update.

Correct emergency defects within twenty-four (24) hours or other mutually agreed upon time frame and provide a root-cause analysis within five (5) days. The actual reconciliation must occur within thirty (30) working days, unless otherwise directed by the Commonwealth or unless the Project Manager or delegate has granted an extension of the period of time necessary to cure the deficiency.

For nonemergency payment-related defects, provide Commonwealth with CAP within two (2) working days for approval. Correct all nonemergency payment-related defects within five (5) working days from CAP approval unless otherwise agreed. The CAP shall also include a plan for the reconciliation of underpayments, overpayments and data that are a result of the defect. The actual reconciliation must occur within thirty (30) working days, unless otherwise directed by the Commonwealth or unless the Project Manager or delegate has granted an extension of the period of time necessary to cure the deficiency.

For all other defects, provide Commonwealth with CAP within five (5) working days for approval. Correct all other defects within thirty (30) days of CAP approval unless otherwise agreed. The CAP shall include a plan for the reconciliation of data that is a result of the defect. The actual reconciliation must occur within sixty (60) working days, unless otherwise directed by the Commonwealth.

A-8.2.11.2 Provider and User Assistance Center and Defect Resolution – Liquidated Damages

The Commonwealth may assess the Contractor liquidated damages for failure to meet the timeframes noted in the Performance Requirement, where the failure to complete was due to the Contractor, Subcontractor or Contractor's agent. In the event that the failure to complete was due to the Commonwealth, no damages will be assessed. However, in the event that the failure to complete was partially due to the Commonwealth and partially due to the Contractor, the Commonwealth may assess a percentage of the damages. The following schedules will be used to assess liquidated damages and shall be cumulative:

- ❑ Greater than 1 calendar day up to thirty (30) calendar days late, two hundred and fifty dollars (\$250) per calendar day
- ❑ Greater than thirty (30) calendar days up to sixty (60) calendar days late, five hundred dollars (\$500) per calendar day
- ❑ Greater than sixty (60) calendar days late, one thousand (\$1,000) dollars per calendar day

A-8.2.12 MMIS Operations and Maintenance

A-8.2.12.1 MMIS Operations and Maintenance – Performance Requirements

The Contractor will perform all duties required to operate and maintain support of the MMIS. The production operations and maintenance support is detailed in Part IV of this RFP and includes the managerial and technical services required to manage and operate the MMIS and perform the related business operations functions. Specific requirements include scheduling and monitoring batch production runs, including actively participating in the scheduled production meetings; facilitating LAN and WAN connectivity for the MMIS; administering the database; performance tuning and operating the MMIS Provider and User Assistance Center.

A-8.2.12.2 MMIS Operations and Maintenance – Liquidated Damages

Non-compliance with MMIS operations and maintenance performance requirements, as described in Part IV of the RFP, may require assessment of liquidated damages up to the amount of five hundred dollars (\$500.00) per business day.

A-8.2.13 Disaster Recovery and Periodic Testing

Liquidated damages as set forth in the following payment reduction factor will be assessed against the Contractor for not implementing its disaster recovery plan within the allotted timeframes as agreed to by the Commonwealth. The following schedule will be used to assess liquidated damages:

- Implementation of the disaster recovery plan exceeds the proposed time by < 2 calendar days, five thousand dollars (\$5,000)
- Implementation of the disaster recovery plan exceeds the proposed time by > 2 < 5 calendar days, ten thousand dollars (\$10,000)
- Implementation of the disaster recovery plan exceeds the proposed time by > 5 < 10 calendar days, twenty-five thousand dollars (\$25,000)
- Implementation of the disaster recovery plan exceeds the proposed time by > 10 < 21 calendar days, fifty thousand dollars (\$50,000)
- Implementation of the disaster recovery plan exceeds the proposed time by > 21 calendar days, one hundred thousand dollars (\$100,000)

The Contractor's performance will be measured by the ability of the backup facility(ies) to perform one hundred percent (100%) of the appropriate MMIS functions as measured by DPW personnel. Payment of any liquidated damages will not relieve the Contractor from its obligation to meet the requirements established by the Contractor's approved disaster recovery plan.

A-8.2.14 Compliance with Key Personnel Requirements

The Contractor shall establish and document hourly, daily, and monthly pay rates for all key staff members working on the Pennsylvania MMIS. In the event that a key staff position as identified in the RFP becomes temporarily or permanently vacant for any reason, including the Contractor's choice to reassign a staff member, DPW may direct that the Contractor deduct from its invoice a prorated portion of \$7,000 per vacant position per month for the time period the position is vacant. DPW may choose to waive its right to reduce payments if the MMIS Project Manager approves, in writing, a replacement staff member with equivalent experience and the replacement staff member assumes the vacated position immediately upon its vacancy. DPW may choose to reverse its decision to waive payment reductions should a temporary reassignment extend longer than an agreed upon time period or a replacement staff member proves not to be adequate. If the MMIS Project Manager is not reasonably satisfied that the proposed replacement has comparable ability and experience, he shall so notify the Contractor within ten (10) business days after receiving the resume and completing any interview, whereupon the Contractor shall propose another replacement and the MMIS Project Manager shall have the same right of approval. Such process shall be repeated until the MMIS Project Manager approves a proposed replacement. If after thirty (30) calendar days from said individual's notice, a qualified replacement is not approved, the above damages may be imposed.

A-8.2.15 Compliance with Other Material Contract Provisions including Submission of Deliverables

A-8.2.15.1 Compliance with Other Material Contract Provisions including Submission of Deliverables – Performance Requirements

The objective of this standard is to provide the Commonwealth with an administrative procedure to address general contract compliance issues which are not specifically defined as performance requirements listed above, but are Contractor responsibilities.

The Contractor is responsible for the timely submission of all deliverables in the Transition Phase as defined in the approved work plan. The Contractor is also responsible for correcting and resubmitting said deliverables in a manner so as to obtain the Commonwealth's approval in a reasonable period of time. The Commonwealth will not unreasonably withhold approval or delay the process.

Additionally, DPW staff may identify other contract compliance issues resulting from the Contractor's performance of its responsibilities through routine contract monitoring activities.

DPW will notify the Contractor in writing of the nature of the performance issue. The Commonwealth will also designate a period of time in which the Contractor must provide a written response to the notification and will recommend, when appropriate, a reasonable period of time in which the Contractor should remedy the noncompliance.

A-8.2.15.2 Compliance with Other Material Contract Provisions including Submission of Deliverables – Liquidated Damages

If the noncompliance is not corrected by the specified date, DPW may assess liquidated damages up to the amount of five hundred dollars (\$500.00) per working day after the due date until the noncompliance is corrected.

A-8.3 Deduction of Damages from Payments and Limitations on Liability and Remedies

A-8.3.1 Deduction of Damages

All damages shall be paid by the Contractor and collected by DPW by deducting them from the invoices submitted under this Contract or any other contract Contractor has with the Commonwealth, or by billing the Contractor as a separate item.

The DPW Project Manager shall notify the Contractor in writing of any claim for liquidated or consequential damages at least fifteen (15) calendar days prior to the date the Commonwealth deducts such sums from money payable to the Contractor. Such amounts as they relate to certification requirements may be deducted during the entire period that MMIS certification is lacking. Should certification subsequently be granted retroactively, the Commonwealth will reimburse the Contractor for amounts withheld back to the date of certification. The Contractor shall be reimbursed the amount of a recovery from a provider for an overpayment or duplicate payment up to the amount of the consequential damage assessed and collected for that overpayment or duplicate payment. The Commonwealth may, at its sole discretion, return a portion or all of any liquidated damages collected as an incentive payment to the Contractor for prompt and lasting correction of performance deficiencies.

A-8.3.2 Limitation of Liability

a. Except to the extent that the required Contractor insurance coverage under Section A-8.10 (INSURANCE) exceeds the Contract value; the Contractor's liability to the Commonwealth under this Contract shall be limited to the maximum 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, or
- (5) The contractor's indemnity of the commonwealth for patent, Copyright, trade secret, or trademark protection

- b. In no event will the Contractor be liable for lost profits, lost revenue or lost savings. Except as set out in Section A-8.16 (VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING) the Contractor will not be liable for damages due to lost records or data, unless otherwise specified in the RFP. Notwithstanding the foregoing, the Contractor shall provide reasonable assistance to the Commonwealth in restoring such lost records or data to their most recent backup copy.

A-8.4 Recovery

If, in the reasonable judgment of DPW, a default by the Contractor is not so substantial as to require termination but reasonable efforts to induce the Contractor to cure the default are unavailing, and the default is capable of being cured by DPW or by another resource without unduly interfering with continued performance by the Contractor, DPW may provide or procure the services reasonably necessary to cure the default, in which event the Contractor shall reimburse DPW for the reasonable cost of the services. In addition, the Contractor must cooperate with these resources in allowing access to the computer facility, documentation, software, utilities and equipment. The Contractor shall remain liable for all system performance criteria, maintenance of and further enhancements to any applications developed by these resources to the extent that it constitutes the Contractor's work product whether impacted by the work of the other resource or not.

A-8.5 Warranty

The Contractor warrants that the Services and Developed Works will conform in all material respects to the functional specifications for the Developed Works and/or the requirements of the Contract. The warranty period for the Services and Developed Works shall be one hundred eighty (180) calendar days from final acceptance.

- A. The Contractor hereby represents and warrants to the Commonwealth that the Contractor will not cause, or take any action that may directly or indirectly cause a disruption of the Commonwealth's operations.
- B. In the event of any nonconformity with the foregoing warranties, the Commonwealth will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the Commonwealth, shall within ten (10) calendar days notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the Commonwealth, until such time as the deliverable or service conforms, in all material respects, to the functional specifications of the Developed Works and/or the requirements set forth in the Contract.
- C. Contractor warrants that it has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Developed Materials under this Contract.
- D. THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

E. All warranties shall survive final acceptance.

A-8.6 Default

A. The Commonwealth may, subject to the provisions of Section A-8.8.1 (NOTICE OF DELAYS), 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 A-8.7 (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 or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory
- (5) Discontinuance of work without approval
- (6) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so
- (7) Insolvency or bankruptcy
- (8) Assignment made for the benefit of creditors;
- (9) Failure or refusal within 10 calendar 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
- (10) Failure to protect, to repair, or to make good any damage or injury to property; or
- (11) Breach of any provision of this Contract

B. In the event that the Commonwealth terminates this Contract in whole or in part as provided in Subsection A. above, the Commonwealth may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.

C. If the Contract is terminated as provided in Subsection A. above, the Commonwealth, in addition to any other rights provided in this Section, may require the Contractor to transfer title and deliver immediately to the Commonwealth 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 Commonwealth 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 Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed work,

such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

- D. The rights and remedies of the Commonwealth provided in this 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 A-8.13 (CONTRACT CONTROVERSIES), the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

A-8.7 Termination

A. For Convenience

- (1) The Commonwealth may terminate this Contract without cause by giving Contractor one hundred eighty (180) calendar days prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective.

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

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

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

Failure to agree on any termination costs shall be a dispute handled in accordance with Section A-8.13 (CONTRACT CONTROVERSIES) of this Contract.

- (2) The Contractor shall cease work as of the date set forth in the Notice of Termination, and shall be paid only for such services as have already been satisfactorily rendered up to and including the cease work date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for

such services performed thereafter in the thirty (30) calendar day period of termination, if such services are requested by the Commonwealth, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, computer programs, 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 Commonwealth's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.

B. Non-Appropriation

Any payment obligation or portion thereof of the Commonwealth created by this Contract is conditioned upon the availability and appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract. The Contractor shall be reimbursed in the same manner as that described in this section related to Termination for Convenience to the extent that appropriated funds are available.

C. Default

A party 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) calendar 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 Section A-8.3 (LIMITATION OF LIABILITY) of this Contract, in the event the Commonwealth terminates this Contract in whole or in part as provided in this Subsection A-8.7 C, the Commonwealth may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth, as the Commonwealth's sole and exclusive remedy 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 A-8.8.1 C shall abridge the Commonwealth's right to suspend, debar, or take other administrative action against the Contractor.
- (4) If it is later determined that the Commonwealth erred in terminating the Contract for default, then the Contract shall be deemed to have been terminated for convenience under Subsection A.
- (5) If this Contract is terminated as provided by this Subsection A-8.8.1 C, the Commonwealth may, in addition to any other rights provided in this Subsection, and subject to Section A-5 (OWNERSHIP) of this Contract, require the Contractor to deliver to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such reports and other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Payment for such reports and documentation will be made consistent with the Contract.

A-8.8 Force Majeure

A-8.8.1 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 provide prompt written notice not to exceed forty eight (48) hours of encountering the difficulty to the Commonwealth stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of time for completion or be construed as a waiver by the Commonwealth of any rights or remedies to which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with Section A-2.5 (CHANGES TO CONTRACT).

A-8.8.2 Force Majeure

Neither party will incur any liability to the other if its performance of any obligation under the Contract is prevented or delayed by causes beyond its control and without the fault of 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 Commonwealth orally within five (5) calendar days and in writing within ten (10) calendar days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect either to cancel the Contract or 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 government authorities, the Commonwealth, by notice to the Contractor, may suspend all or a portion of the Contract.

A-8.9 Background Checks

- A. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Commonwealth IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure <https://epatch.state.pa.us/Home.jsp>. The background check must be conducted prior to initial access by a Contractor/Subcontractor *employee* and annually thereafter.
- B. Before the Commonwealth will permit access to Commonwealth facilities, the Contractor 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 a Contractor/Subcontractor employee has a criminal record that includes a felony or misdemeanor involving terroristic threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access 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 the Contractor to comply with the terms of this paragraph may result in default of the Contractor under its contract with the Commonwealth.
- C. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.

A-8.10 Insurance

- A. The Contractor shall procure and maintain at its expense and require its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:
- (1) Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act* (77 e.s.1 et set).
 - (2) Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all Subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any Subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence 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 Commonwealth as an additional insured against the insurance coverages in regard to the work performed for the Commonwealth.
 - (3) As required by law, an independent contractor is responsible for Malpractice Insurance for health care personnel. Contractor shall provide insurance Policy Number and Provider Name, or a copy of the policy with all renewals for the entire contract period
- B. Prior to commencing work under the Contract, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least thirty (30) calendar days prior written notice has been given to the Commonwealth.
- C. The Contractor agrees to maintain such insurance for the life of the Contract.
- D. Upon request to and approval by the Commonwealth, contractor's self-insurance of the types and amounts of insurance set for above shall satisfy the requirements of this Section A-8.10 (INSURANCE), provided the Commonwealth may request from Contractor evidence each year during the term of the contract that Contractor has sufficient assets to cover such losses.

A-8.11 Subcontracts

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

All third party agreements between the Prime Contractor and third parties, including those with Contractor's subsidiaries and related entities, are considered subcontracts if they are used for services under the Contract.

A-8.12 Assignability

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

- F. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, is not considered to be an assignment. The Contractor shall give the Commonwealth written notice of any such change of name.
- G. Change of Ownership or Insolvency. 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.

A-8.13 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 or such other time as provided by amendment of Pennsylvania law, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- B. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 calendar days of the receipt of the claim or such other time as provided by amendment of Pennsylvania law, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 calendar days or such other time as provided by amendment of Pennsylvania law (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) calendar days of the mailing date of the determination denying a claim or within 135 calendar days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, or such other times as provided by amendment of Pennsylvania law, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

A-8.14 Contractor Responsibility Program

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

- B. The Contractor also certifies that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.
- C. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 calendar days of the date of suspension or debarment.
- D. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- E. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- F. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us> or contacting the:

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

A-8.15 Commonwealth Held Harmless

- A. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. § 732-101, *et seq.*), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the

Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. If OAG fails to delegate the defense of this matter, in whole or in part, the Contractor's obligation to indemnify ceases as to those portions of the defense which have not been delegated. The Contractor will, at its expense, cooperate with the OAG in its defense of the suit.

- 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.

A-8.16 Virus, Malicious, Mischievous or Destructive Programming

- A. Notwithstanding any other provision in this Contract to the contrary, the Contractor shall be liable for any damage to any data and/or software owned or licensed by the Commonwealth if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Commonwealth's software or computer networks and has failed to comply with the Commonwealth software security standards. The Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.
- B. The Contractor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that result from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).
- C. In the event of destruction or modification of software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages.
- D. The Contractor shall be responsible for reviewing Commonwealth software security standards and complying with those standards unless otherwise directed in writing by the DPW Project Manager or her designee. The security software security standards can be found on the Office of Information Security website at www.oit.state.pa.us. In the event that the Contractor cannot locate information on these standards at this location, the Contractor shall contact the MMIS Project Manager or her designee to determine the correct location of this information.
- E. The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the Contractor to provide services to the Commonwealth for the sole purpose of determining whether

those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made.

- F. The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing services to the Commonwealth. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contract.
- G. The Commonwealth will not be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

A-8.17 Patent, Copyright, Trademark and Trade Secret Protection

- A. The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act, 71 P.S. § 732-101, et seq., the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement which prevents the Commonwealth from continuing to use the Developed Materials as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth to provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor will, at its expense, provide whatever cooperation OAG requests in the defense of the suit.

- B. The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all works produced under this Contract do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that work produced for the Commonwealth under this contract shall be free and clear from all claims of any nature.
- C. If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.
- D. If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at the Contractor's option and expense, obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.
- E. If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- F. If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
- (1) Any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
 - (2) Any license fee less an amount for the period of usage of any software; and
 - (3) The prorated portion of any service fees representing the time remaining in any period of service for which payment was made
- G. The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.
- H. Notwithstanding the above, the Contractor shall have no obligation for:

- (1) Modification of any product, service, or deliverable provided by the Commonwealth
- (2) Any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable
- (3) Use of the product, service, or deliverable in other than its specified operating environment
- (4) The combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide
- (5) Infringement of a non-Contractor product alone
- (6) The Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or
- (7) The Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge

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

A-8.18 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.

A-8.19 Officials Not to Benefit

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

A-8.20 Independent Capacity of Contractor

- A. The parties to this Contract agree that the services performed by the Contractor under the terms of this Contract are performed as an independent Contractor. The services performed by the Contractor are performed neither as an employee of the Commonwealth of Pennsylvania nor as a partnership or joint venture between the Commonwealth and the Contractor.
- B. Except as otherwise provided by the terms of this Contract, the Commonwealth shall have no control over the manner in which the contractual services are performed by the Contractor, or any subcontractor. Any job specifications or standards of work attached to or incorporated into this Contract or any subcontracting restrictions contained in this Contract shall not be construed as the Commonwealth's direction or control over the manner of the performance of services provided by the Contractor.

A-8.21 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 its 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.

A-8.22 The Americans with Disabilities Act

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

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

A-8.23 Nondiscrimination Clause/Sexual Harassment Clause

Each contract entered into by a governmental agency shall contain the following provisions by which the contractor agrees:

- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate 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 against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
- C. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- D. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
- E. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.
- F. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- G. 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.

A-8.24 Contractor Integrity

A-8.24.1 Contractor Integrity Provisions

A. Definitions.

Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

- (1) 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 execution of this Contract.
 - (2) Contractor means the individual or entity that has entered into this Contract with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a five percent (5%) interest.
 - (3) Financial Interest means:
 - (a) Ownership of more than a 5% interest in any business; or
 - (b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management
 - (4) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- B. The Contractor shall maintain the highest standards of integrity in the performance of this Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- C. The Contractor shall not disclose to others any confidential information gained by virtue of this Contract.
- D. The Contractor shall not, in connection with this or any other Contract with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
- E. The Contractor shall not, in connection with this or any other Contract with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone

any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

- F. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Contract except as provided therein.
- G. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material on this project.
- H. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- I. The Contractor, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
- J. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form which refer to or concern this contract. Such information shall be retained by the Contractor for a period of three (3) years beyond the termination of the Contract unless otherwise provided by law.
- K. For violation of any of the above provisions, the Commonwealth may terminate this and any other Contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse 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.

A-8.24.2 Contractor's Conflict of Interest

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

A-8.24.3 *Lobbying Certification and Disclosure*

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

A-8.24.4 *Covenant Against Contingent Fees*

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business). For breach or violation of this warranty, the Commonwealth may annul this contract without liability or, in its discretion, deduct from the consideration otherwise due under the Contract, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

A-8.25 *Assignment of Rights Under the Antitrust Laws*

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

A-8.26 *Right to Know*

The Pennsylvania Right to Know Law, 65 P.S. §§67.101-3104 applies to this Contract and Contractor agrees to comply with its obligation under this law.

**COMMONWEALTH OF PENNSYLVANIA
BUSINESS ASSOCIATE APPENDIX LANGUAGE**

Health Insurance Portability and Accountability Act (HIPAA) Compliance

WHEREAS, the Department (hereinafter the “Covered Entity”) will make available and/or transfer to Contractor (hereinafter the “Business Associate”) certain Protected Health Information (PHI), in conjunction with goods or services that are being provided by Business Associate to or on behalf of [name of program and department], that is confidential and must be afforded special treatment and protection in accordance with the Health Insurance Portability and Accountability Act (“HIPAA”) Privacy Regulations at 45 CFR Part.160-164.

WHEREAS, Business Associate will have access to and/or receive from Covered Entity, PHI that can be used or disclosed only in accordance with this Appendix and the HIPAA Privacy Regulations at 45 CFR Part 160-164.

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

1. Definitions.

- a. “Business Associate” shall have the meaning given to such term under the HIPAA Regulations, including but not limited to, 45 CFR §160.103.
- b. “Covered Entity” shall have the meaning given to such term under HIPAA and the HIPAA Privacy Regulations, including, but not limited to, 45 CFR §160.103.
- c. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Privacy Regulations, including, but not limited to 45 CFR §164.501.
- d. In accordance with 45 CFR Parts 160-164, **the Department** is the **Covered Entity** and EDS is the **Business Associate**.
- e. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160-164.

2. Limits On Use And Disclosure Established By Terms Of Appendix. Business Associate hereby agrees that it shall be prohibited from using or disclosing the PHI provided or made available by Covered Entity for any purpose other than as expressly permitted or required by this Appendix, in accordance with 45 CFR §164.504(e)(2)(i).

3. Stated Purposes For Which Business Associate May Use Or Disclose PHI. The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided or made available from Covered Entity for the following stated purposes:

The operation and maintenance, modification and turnover of the Pennsylvania MMIS, known as PROMIS^e™ as provided in the Contract.

4. **Additional Purposes For Which Business Associate May Use Or Disclose Information.** In addition to the Stated Purposes, Business Associate may use or disclose PHI provided or made available from Covered Entity for the following additional purposes(s):
- a) **Use Of Information For Management, Administration And Legal Responsibilities.** Business Associate is permitted to use PHI if necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of the Business Associate. 45 CFR §164.504(e)(4)(ii).
 - b) **Disclosure Of Information For Management, Administration And Legal Responsibilities.** Business Associate is permitted to disclose PHI received from Covered Entity for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, provided:
 - i) The disclosure is required by law: or
 - ii) The Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached. 45 CFR §164.504(e)(4)(ii).
 - c) **Data Aggregation Services.** Business Associate is also permitted to use or disclose PHI to provide data aggregation services, as that term is defined by 45 CFR §164.501, relating to the health care operations of Covered Entity. 45 CFR §164.504(e)(2)(i)(B).

5. **BUSINESS ASSOCIATE OBLIGATIONS:**

- a) **Limits On Use And Further Disclosure Established By Appendix And Law.** Business Associate hereby agrees that the PHI provided or made available by Covered Entity shall not be further used or disclosed other than as permitted or required by the Appendix or as required by law. 45 CFR §165.404(e)(2)(ii)(A).
- b) **Appropriate Safeguards.** Business Associate will establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Appendix. 45 CFR §164.504(e)(2)(ii)(B).
- c) **Reports Of Improper Use Or Disclosure.** Business Associate hereby agrees that it shall report to the MMIS Project Officer **within two (2) calendar days of discovery** any use or disclosure of PHI not provided for or allowed by this Appendix. 45 CFR §164.504(e)(2)(ii)(C).
- d) **Subcontractors And Agents.** Business Associate hereby agrees that anytime PHI is provided or made available to any subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and must enter into a subcontract or contract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Appendix. 45 CFR §164.504(e)(2)(ii)(D).

- e) **Right Of Access To PHI.** Business Associate hereby agrees to make available to an individual who is the subject of the PHI the right to access and copy that individual's PHI, at the request of the individual or of the Covered Entity, in the time and manner designated by the Covered Entity. This right of access shall conform with and meet all of the requirements of 45 CFR §164.524 and 45 CFR §164.504(e)(2)(ii)(E). The Covered Entity will respond to such requests from individuals who are the subject of PHI except for those limited situations in which it needs assistance from the Business Associate.
- f) **Amendment And Incorporation Of Amendments.** Business Associate agrees to make any amendments to PHI that have been agreed to by the Covered Entity, at the request of Covered Entity or of the individual, in the time and manner designated by Covered Entity, in accordance with 45 CFR 164.526 and 45 CFR §164.504(e)(2)(ii)(F).
- g) **Provide Accounting.** Business Associate agrees to document and make available to Covered Entity or to the individual, any information necessary to provide an accounting of disclosures in accordance with 45 CFR §164.528 and 45 CFR §164.504 (e)(2)(ii)(G), within 30 calendar days of receipt of a request for an accounting, in the manner designated by the Covered Entity.
- h) **Access To Books And Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary of Health and Human Services or delegate for purposes of determining compliance with the HIPAA Privacy Regulations. 45 CFR §164.504(e)(2)(ii)(H).
- i) **Return Or Destruction Of PHI.** At termination of this Appendix, Business Associate hereby agrees to return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Appendix. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Appendix to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed. 45 CFR §164.504(e)(2)(ii)(I).
- j) **Mitigation Procedures.** Business Associate agrees to establish and to provide to the Program and Department upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Appendix or the HIPAA Privacy Regulations. 45 CFR §164.530(f). Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Appendix.
- k) **Sanction Procedures.** Business Associate agrees that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Appendix or the HIPAA Privacy Regulations. 45 CFR §164.530(e)(1).
- l) **Property Rights.** The PHI shall be and remain the property of Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of its relationship with the program or department.
- m) **Grounds For Breach.** Any non-compliance by Business Associate with this Appendix or the HIPAA Privacy Regulations will automatically be considered to be grounds for

breach pursuant to the underlying agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

- n) **Termination by Commonwealth.** Business Associate authorizes termination of the underlying contract by the Commonwealth if the Commonwealth determines, in its sole discretion, that the Business Associate has violated a material term of this Appendix.
 - o) **Privacy Practices.** The Program or Department shall provide and Business Associate shall immediately begin using, any form, including but not limited to, any for used for Consent, Notice of Privacy Practices, Accounting for Disclosures, or Authorization, designated as effective by the Program or Department at any given time. The Program and Department retain the right to change the applicable privacy practices and documents. The Business Associate must implement changes as soon as practicable, but not later than 45 calendar days from the date of notice of the change.
- 6) **OBLIGATIONS OF COVERED ENTITY:**
- a) **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as changes to such notice.
 - b) **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such change affect Business Associate's permitted or required uses and disclosures.
 - c) **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522.

Appendix A-2a
Pennsylvania MMIS Terms and Conditions
Glossary of Definitions

Term	Definition
Adjudicated Claim	A claim that is completely processed by MMIS and is approved or rejected to the provider. The claim will be deemed adjudicated at the conclusion of the MMIS payment cycle during which it is so approved or rejected.
ACCESS Card	The Medical Assistance plastic ID card issued to recipients to use when accessing health care services from MA providers. The magnetic strip card is used to verify MA eligibility and conforms to the American National Standards Institute (ANSI) standards.
Adjustment	A transaction that changes any data element of the most recent paid claim, encounter record, or MMIS generated capitation payment. An adjustment can not be used to change recipient or provider information.
Business or Working Day	Any weekday on which the state's employees are expected to report to work.
Calendar Day	Days in a week without regard to whether or not work is scheduled.
Certification	The approval process by which the Centers for Medicare and Medicaid Services determines if a State satisfies the approved Advance Planning Document, and/or the State's Title XIX mechanized claims processing and information retrieval system is operational and continuously meets the requirements for Federal financial participation, as defined in Part 11 of the State Medicaid Manual.
System Change Order	Any item that requires effort (work) to enhance functionality to existing programs, processes or data within PROMISe, or to create new programs, processes or data. Change orders are initiated by DPW and the MMIS Contractor
Client Information System (CIS)	The DPW recipient eligibility system used by PROMISe™ for eligibility verification and determination of benefits.
Claim	An initial request for payment, or a request for an adjustment for one or more procedures performed by a provider for a person claiming eligibility for benefits under the program. With respect to a request for payment other than an adjustment. A transaction for billing purposes is defined in Appendix A-2b.
Claim-Date of Receipt	Date the Contractor receives the claim, as indicated by the Julian date in the claim number.
Clean Claim	Clean claim are defined as claims or adjustments that can be processed without obtaining additional information from the provider or from a third party. It includes a claim with errors originating in the State's claims system. It does not include a claim from a provider who is under investigation for fraud or abuse or a claim under review for medical necessity.
Clearinghouse	Any entity responsible for passing electronic data from a provider to Contractor and from the Contractor to the provider.

Term	Definition
Contractor	Offeror with whom the State has successfully negotiated a contract under this RFP.
Contract(ual) Change Order	A written order (form STD-180) signed by the Contracting Officer directing the Contractor to make changes authorized under section A-2.5 of Appendix A, Pennsylvania MMIS Terms and Conditions.
Data	Any recorded information, regardless of form, the media on which it may be recorded, or the method of recording.
Day	A working or business day unless specifically stated otherwise.
Day 1	Day 1 is defined as the first day that the Contractor processes data through the MMIS. This is also referred to as the “operational start date,” “the start of production operations,” and the “go-live date.”
Defect	A situation that must be resolved immediately when normal business operations and processing is interrupted or stopped, claims payments or capitation payments are incorrect, or there are other significant errors in processing. This includes EVS, PROMIS ^e ™ system, Pharmacy POS, Internet claims entry, or internal interfaces unavailability.
Developed Works or Developed Materials	All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material authored or prepared by Contractor as the work product covered in the scope of work for the Project, without limitation.
Documentation	A term used to refer to all materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, other electronic format and/or other machine-readable storage media.
Dual Eligible	An individual who is eligible to receive services through Medicare and Medicaid.
Encounters or Encounter Transactions	HIPAA 837 or NCPDP transaction modified to meet the needs of encounter data submissions by managed care organizations to PROMIS ^e ™.
Pharmacy Point-of-Service (POS)	A point-of-sale based on-line claims capture and adjudication system incorporating eligibility verification, Pro/DUR, and interactive editing, for outpatient pharmacy claims. The system will accept transactions from hardware including point-of-sale devices, personal computers, mainframe computers and the Internet.
Electronic Media Claim (EMC)	An Electronic Media Claim (EMC) is defined as a claim submitted electronically.
Eligibility Verification System (EVS)	An electronic query initiated by a provider using devices such as touch-tone telephone equipment, personal computers, point-of-sale devices, mainframe computers, and batch processing, to which the Contractor supported system responds electronically with eligibility verification information including recipient medical assistance identification (MAID) number, date specific eligibility, managed care organization information, third party coverage, and recipient restriction information and benefit limit information.

Term	Definition
Gross Adjustment	A debit or credit transaction outside of the claims/capitation payment process.
Includes	The word “includes” (or “including,” or any other form of the word) is meant to convey that a list is not exhaustive. The word, or any form thereof, is to be construed to mean “includes (or “including”), but not limited to.”
Invoice	A request from a provider, formatted on paper forms, or other EMC media and Pharmacy POS, including Internet, for payment for services provided to an individual recipient. An invoice may include one or more claims. Attached supporting documentation, such as sterilization consent forms and explanation of Medicare benefits, are considered to be part of an invoice.
Key Date	A specified date which, if not met, may jeopardize the operations start date.
Lock-In	Restriction of a recipient to a particular provider and/or pharmacy, as determined necessary by the state.
Medicaid Management Information System (MMIS)	The Pennsylvania Medicaid Management Information System (MMIS) is a claims processing system that supports various programs administered by the Department. The core of the current MMIS system, known as PROMIS ^e [™] , was designed and developed for Pennsylvania and has been operational since 2004. Additionally, the Pennsylvania MMIS includes many other components including the Fraud and Abuse Detection System (FADS), the Eligibility Verification System (EVS), Drug Point-Of-Service (POS)/ Prospective Drug Utilization Review (ProDUR), Drug Rebate System, various Web applications, a provider billing system, internal and external provider training, user and provider assistance, and numerous internal and external interfaces.
Pend (also referred to as Suspend)	A claim transaction that is held for manual review and resolution by the invoice processing system for some reason; must be reviewed prior to further processing. For encounter system, the Managed Care Organization (MCO) is responsible for corrective action.
Prior Authorization	A request for approval to render services before services are provided when such approval is a prerequisite to payment for services as specified in Department regulations.
Program Exception	Approval to pay for a service that is not normally covered by the MA program.
Prospective Drug Utilization Review (Pro/DUR)	An interactive, table driven system including alert messages designed to meet specified Department DUR requirements. The system allows for the pharmacist to override alert messages based on his/her judgment or respond to the alert and cancel the medical assistance claim billing.
Provider	An entity enrolled in the PA Medical Assistance Program or other entity registered in MMIS that provides services or supplies to Department program recipients.
Recipient	A person eligible to receive services under PA’s Public Assistance Programs.
Reject	An invoice or a claim not approved for payment or an encounter record not accepted due to missing or invalid information, a conflict with existing policy or lack of medical necessity for the service provided.

Term	Definition
Services	All Contractor activity necessary to satisfy the Contract.
Software	For 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).
Subcontractor	All third party agreements between the Prime Contractor and third parties, including those with Contractor’s subsidiaries and related entities are considered subcontractors if they are used for services under the Contract.
Technical Data	Any specific information necessary for the development, production or use of the Commonwealth Software.

Appendix A-2b
GLOSSARY OF CLAIM DEFINITIONS
(In Relation to Invoicing/Threshold Count Definition of a Claim Transaction)

Claim Type/Transactions	Definition
EVS	Provider eligibility inquiries submitted. EVS Inquiries are not included in the threshold total except for those months in which the EVS Inquiries exceed eleven million inquiries for the month. For those months in which the EVS inquiries exceed eleven million, the inquiries in excess of eleven million will be counted as one transaction and will be included in the threshold total.
Inpatient (UB-04) Claims*	Inbound claim or encounter submitted via paper, the 837 Institutional, or the Internet for inpatient services is counted as one transaction and is included in the threshold total.
LTC (UB-04) Claims*	Inbound claim or encounter submitted via paper, the 837 Institutional, or the Internet for long term care services is counted as one transaction and is equal to one claim and is included in the threshold total.
Institutional Medicare Crossover Claims (Inpatient, Outpatient and Nursing Home)*	Inbound Medicare Part A and Part B crossover claim submitted electronically or on paper is counted as one transaction and included in threshold total.
Pharmacy Claims*	Inbound drug claim or encounter submitted via the online Pharmacy Point-of-Sale system (Pharmacy POS/ProDUR) interactively, via batch or via the Internet. This includes rebill transactions and compounds. Each invoice is counted as one transaction and is included in the threshold total.
All Other Claim Types*	This includes ADA (submitted via paper, 837 Dental, or via the Internet), CMS 1500 (submitted via paper, 837 Professional, or via the Internet), Outpatient Hospital (submitted via a UB-04 form, 837 Institutional or via the Internet), and professional Medicare crossover Part B claims (submitted via paper or electronically). Also included in this category are any HIPAA compliant claim transaction not defined in other categories or other encounter claims. Each invoice is counted as one transaction and is included in the threshold total. Note the ADA claim form can be used as either a prior authorization or a claim. If the ADA comes in with PA marked, it is not counted as a transaction.
Managed Care Encounters*	One claim encounter is equal to one encounter record and will be counted as one transaction. All encounter records will be included in threshold totals.
Managed Care Enrollment*	Each 834 managed care enrollment transaction is counted as one transaction.
Managed Care Unsolicited Responses*	For each encounter record submitted via an 837 transaction, a corresponding unsolicited 277 transaction is sent. Each unsolicited 277 transaction is counted as one transaction.

Claim Type/Transactions	Definition
MMIS Generated Capitated Payments*	Each payment is counted as one transaction and included in the threshold totals.
Prior Authorizations	This category will include Prior Authorizations (PAs), Program Exceptions (PEs), Therapeutic Support Services (TSS) and Behavioral Health Reports attachments, and 1150 Waivers as prior authorizations. Also included in this category will be HIPAA compliant prior authorization transactions (278) and NCPDP prior authorization requests via the online pharmacy point of sale system. These transactions will not be included in threshold totals.
POS Rejections/Reversals	This category will include pharmacy Point-of-Sale rejected claims (receiving a valid NCPDP rejection code) and reversal transactions and will not be included in threshold totals.
Financial Transactions	This category will include payouts, recoupments, 1099 updates, outbound 835 Remittance Advices transactions, and liens. These transactions are not included in threshold totals.
Cost settlements	This category will include the recovery of dollars based on changes to the rate files. These transactions are not included in threshold totals.
Mass adjustments	This category will include the recovery of dollars or the additional payment of dollars based on changes to the rate files or system edit logic. These transactions will not be included in threshold totals.
Retroactive Rate Changes	This category includes reprocessing due to retrospective rate changes or errors caused by incorrect Contractor staff actions or inaccurate system data or processing related to Contractor errors. These transactions will not be included in threshold totals.

* Any transactions that were created/processed erroneously by the Contractor will not be counted toward the threshold totals.

Appendix A-3
List of Commonwealth Software and Tools in Use by Contractor

This page to be completed based on the Offeror's proposal.

Software/Tools Name	Function	Notation
Thomson Micromedex Redbook	Drug pricing data used for claims processing	Product licensed to the Department of Public Welfare with fee paid by Contractor as part of fixed fee.

Appendix A-4
List of Contractor Software and Tools in Use

This page to be completed based on the Offeror's proposal.

In accordance with section A-5.2.2.3, Expiration or Termination Non-exclusive License Grant – Tools and Software of Appendix A, the following Contractor software and tools will be provided to the Department at the end of the contract unless otherwise noted below.

Software/Tools Name	Function	Notation
Project Workbook	Document repository for system documentation, change orders, and project related information	
DSS Profiler	Fraud and Abuse Detection System (FADS) tool used to compare providers or recipients of the same peer group and detect potential fraud	
Provider Electronic Solutions (PES)	Software for providers to electronically submit claims and eligibility transactions to the Pennsylvania MMIS	
EDS Healthcare Provider Portal	EDS licensed product that provides Internet functions, specifically ePrescribing for Pennsylvania	Limited to provider portal components implemented by the Department at the end of the contract.
EDS Task Management System (TMS)	Internal application used by EDS staff to record and track work effort	EDS internal use only and will not be turned over to the Department at the end of the contract.
EDS Pennsylvania Account Wiki	Internal website used by EDS staff for information sharing	EDS internal use only and will not be turned over to the Department at the end of the contract.

Appendix A-5
List of Third-Party Software and Tools in Use

This page to be completed based on the Offeror's proposal.

The following is a list of the third-party software and tools used in support of the Pennsylvania MMIS and FADS. The vendor or manufacturer responsible for the software or the software license, its general function, version or model of the software, physical location, quantity, license owner, and comments explaining how it is used are shown below.

Because the vendor or manufacturer of this proprietary software is other than EDS, EDS will transfer the license when possible, in accordance with the license terms and conditions, or the Commonwealth will procure the necessary licenses to continue the full operation of the MMIS and FADS at the conclusion or termination of this contract.

Legend: DC=data center, DPH=Data Power House

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
Open Source							
	Programming language	PERL	Unisys DPH	3	EDS	None	Free Open Source license
	HTTP/SOAP server	Apache 2	Unisys DPH	1	EDS	None	Free Open Source license
Adobe							
	File conversion to PDF	Acrobat Distiller 7	Camp Hill DC	1	EDS	None	Used to create Provider letters for mailing
	PDF file viewer	Acrobat Reader 5	Camp Hill DC	999	N/A	None	Free Adobe license
Business Objects	Fraud and Abuse System (FADS)						
	Database Analysis and Reporting Application	Business Objects V 6.5	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
	Designer	Business Objects V 6.5	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
	Web interface	Web Intellegence V	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
		6.5					maintenance fees
	Reporting Application	Crystal Reports 9.2	Unisys DPH	1	Unisys	Annual	Used with Unisys Drug Rebate application One-time license purchase, annual maintenance fees
Checkpoint							
	Firewall software Intranet Firewall	NG-AI, R54, CPES-SS	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
	Firewall software Internet Firewall	NG-AI, R65, CPES-SS	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
	Firewall software	NG-AI, R54, SU-SM DF-1	Camp Hill DC	1	EDS	Annual	Smart Defense Subscription
	Firewall software	NG-AI, R65, SU-SM DF-1	Camp Hill DC	1	EDS	Annual	Smart Defense Subscription
Computer Associates							
	Server and Virus protection	eTRUST 7.1	Camp Hill DC	999	EDS	None	EDS Corporate license
	Data Modeling	Erwin 4.1.4.4033	Camp Hill DC	1	EDS	None	EDS Corporate license
	Problem tracking and Reporting	CA Unicenter Service Desk Build GA6022	Camp Hill DC	1	EDS	None	EDS Corporate license
	Backup and Recovery	BrightStor ArcServ Rlse 11.1	Camp Hill DC	1	EDS	None	EDS Corporate license
	Backup Agent for MS SQL Server	BrightStor ArcServ Rlse 11.1	Camp Hill DC	1	EDS	None	EDS Corporate license
	Backup Agent for Open Files	BrightStor ArcServ Rlse 11.1	Camp Hill DC	1	EDS	None	EDS Corporate license
	Disaster	BrightStor	Camp Hill	1	EDS	None	EDS Corporate license

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
	Recovery Option	ArcServ Rlse 11.1	DC				
	Client	BrightStor ArcServ Rlse 11.1	Camp Hill DC	50	EDS	None	EDS Corporate license
	Unix Job Scheduling	Autosys Rlse 3.5	Unisys DPH	2	EDS	None	EDS Corporate license
	Unix Job Scheduling	Autosys Rlse 3.5	Camp Hill DC	1	EDS	None	EDS Corporate license
	Unix Job Scheduling	Autosys Rlse 4.51	Camp Hill DC	1	EDS	None	EDS Corporate license
	Internet Management Software	Wily	Camp Hill DC	1	EDS	None	EDS Corporate license
EMC-Acartus							
	Report archival and retrieval (COLD) Application	ApertureONE Rlse 1.2	Unisys DPH	1	Unisys	Annual	One-time license purchase, annual maintenance fees
	Internet portal license for ApertureOne Report archival and retrieval (COLD) Application	ApertureONE Rlse 1.4	Unisys DPH	1	Unisys	Annual	One-time license purchase, annual maintenance fees
EMC-Legato							
	Backup software, promise001, promise002	Networker 7.2 module for Oracle client, Oracle 8, UNIX, Library slot mgt for 480 slots	Unisys DPH	2	EDS	Annual	One-time license purchase, annual maintenance fees
	Archive	Networker 7.2 module for Archiving	Unisys DPH	2	EDS	Annual	One-time license purchase, annual maintenance fees
EMC-Captiva	PEAP document scanning						

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
	Scanner Management	PixTools EZtoolkit 5.0	Camp Hill DC	1	EDS	None	
	Scanner Management	PixTools Image processor 5.0	Camp Hill DC	1	EDS	None	
	Electronic Form definition for OCR	FormWare	Camp Hill DC	1	EDS	None	
First DataBank							
	Drug Pricing	Drug pricing information	Camp Hill DC	1	EDS	Annual	
HSS							
	Diagnosis Related Grouping Data	Grouper and Pricing data	Camp Hill DC	1	EDS	Annual	
Impressions Technology							
	Scanning and OCR	ICapture IEditor V2.0	Camp Hill DC	80	EDS	Annual	One-time license purchase, annual maintenance fees
	Scanning application management	ICapture IQ Monitor V2.0	Camp Hill DC	2	EDS	Annual	One-time license purchase, annual maintenance fees
	Data entry reporting	ICapture ISTAT Viewer V2.0	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
Intervoice Brite							
	AVRS system	Intervoice AVR system V3.2.1	Camp Hill DC	3	EDS	Annual	One-time license purchase, annual maintenance fees
	AVRS system reporting	Intervoice AVR reporting V3.2.1	Camp Hill DC	3	EDS	Annual	One-time license purchase, annual maintenance fees
LISTSERV							

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
	Listsrv	eBulletin application	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
McKesson							
	Claim Check server software	MIM – McKesson Integration Module	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
	Claim Check GUI	Voyager 2000 Wizard	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
	Claim Check	ClaimCheck 8.5	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
Medispan (Wolters Kluwer Health)							
	Drug Pricing	Drug pricing information	Camp Hill DC	1	EDS	Annual	
Microsoft							
	Server Operating System	Windows 2000 Server, SP4	Camp Hill DC	15	EDS	Annual	EDS Corporate License
	Server Operating System	Windows 2000 Server, SP4	Unisys DPH	8	Unisys	None	
	Server Operating System	Windows Server 2003, SP1	Camp Hill DC	22	EDS	Annual	EDS Corporate License
	Desktop Operating System	Windows 2000 SP4	Camp Hill DC	3	EDS	Annual	EDS Corporate License
	Desktop Operating System	Windows XP SP2	Camp Hill DC	172	EDS	Annual	EDS Corporate License
	Application Database	Microsoft SQL Server 2000	Camp Hill DC	10	EDS	Annual	EDS Corporate License
	Application Database	Microsoft SQL Server 2000	Unisys DPH	4	Unisys	None	
	Application	Microsoft SQL	Camp Hill	2	EDS	Annual	EDS Corporate License

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
	Database	Server 2005 for Workgroups	DC				
	Application Development	Visual Studio .NET Version 7	Camp Hill DC	10	EDS	None	EDS Corporate License
	Small-scale Database	Microsoft Access database, Rles 2000, 2002, 2003	Camp Hill DC	60	EDS	None	EDS Corporate License
	General Project Support	Microsoft Office 2003	Camp Hill DC	175	EDS	None	EDS Corporate License
	Email	Microsoft Outlook 2003	Camp Hill DC	150	EDS	None	EDS Corporate License
	Project Management	Microsoft Project 2003	Camp Hill DC	20	EDS	None	EDS Corporate License
	Technical Drawings	Microsoft Visio 2003	Camp Hill DC	10	EDS	None	EDS Corporate License
Nokia							
	Network firewall OS	Nokia IOS 4.1	Camp Hill DC	4	EDS	Annual	One-time license purchase, annual maintenance fees
Open Source							
	Secure communications	CURL	Unisys DPH	1	EDS	none	Open Source license agreement
OptiTech							
	Data Sort program	OT-Sort Rlse 1	Unisys DPH	2	EDS	None	
Oracle							
	Oracle 10.2 DB Enterprise edition	CPU-based licenses for 16 Sun SPARC-IV CPU's on Sun 6900 Sunfire server	Unisys DPH	24	EDS	Annual	One-time license purchase, annual maintenance fees
	Oracle 10.2	CPU-based	Unisys	24	EDS	Annual	One-time license

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
	Partitioning	licenses for 16 Sun SPARC-IV CPU's on Sun 6900 Sunfire server	DPH				purchase, annual maintenance fees
	Oracle 10.2 DB Enterprise edition	CPU-based licenses for 4 Sun SPARC-IV CPU's on Sun 4900 Sunfire server	Unisys DPH	12	EDS	Annual	One-time license purchase, annual maintenance fees
	Oracle 10.2 Partitioning	CPU-based licenses for 4 Sun SPARC-IV CPU's on Sun 4900 Sunfire server	Unisys DPH	12	EDS	Annual	One-time license purchase, annual maintenance fees
	Oracle 10.2 DB Enterprise edition	CPU-based licenses for 2 Sun SPARC-III CPU's on Sun 4910 Sunfire server	Camp Hill DC	6	EDS	Annual	One-time license purchase, annual maintenance fees
	Oracle 10.2 Partitioning	CPU-based licenses for 2 Sun SPARC-III CPU's on Sun 4910 Sunfire server	Camp Hill DC	6	EDS	Annual	One-time license purchase, annual maintenance fees
	Oracle 10.2 Developer license	Package of 10 Oracle Programmer Developer licenses	Camp Hill DC	2	EDS	Annual	One-time license purchase, annual maintenance fees
	Oracle 1.0 database Query	Oracle SQL Developer	Camp Hill DC	999	N/A	None	
	Oracle 10.2 database Query	Oracle SQL PLUS	Camp Hill DC	999	N/A	None	
	Oracle 10.2 database performance tuning	Oracle Diagnostic Tools	Unisys DPH	24	EDS	Annual	One-time license purchase, annual maintenance fees
	Oracle 10.2 full client application	Oracle Diagnostic Tools	Unisys DPH	6	EDS	Annual	One-time license purchase, annual maintenance fees

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
PDFLIB							
	TIF to PDF conversion for PEAP	PDFLIB V3.02	Camp Hill DC	UNL	EDS	None	
Quest							
	DB tool	TOAD std, rlse 8.5	Camp Hill DC	8	EDS	Annual	One-time license purchase, annual maintenance fees
	DB tool	TOAD-DBA upgrade, rlse 8.5	Camp Hill DC	2	EDS	Annual	One-time license purchase, annual maintenance fees
Sony							
	Audio Studio	Sonic Forge 4.5	Camp Hill DC	1	EDS	None	
SUN							
	Unix Operating system	Solaris 10	Camp Hill DC	2	EDS	Annual	No cost license, annual maintenance fees
	Unix Operating system	Solaris 10	Unisys DPH	3	EDS	Annual	No cost license, annual maintenance fees
	Unix Operating system	Solaris 8	Unisys DPH	1	EDS	Annual	No cost license, annual maintenance fees
	Unix backup	Solstice Backup Rlse 6.0, with Oracle backup option and library slot mat for 20 slots.	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
	SUN System Management	Storage Component Manager Rlse 2.1	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
	Unix C program Development	SUN Forte C Rlse 6.1	Camp Hill DC	1	EDS	None	
	Common Array	CAM Version 6.x	Unisys DPH	1	EDS	None	

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
	Manager						
	Developer Software Tools	Studio 11	Camp Hill DC	2	EDS	None	
SwishZone							
	Web-based training development	SWISHmax Build 2006.06.29	Camp Hill DC	1	EDS	None	
Sybase							
	Desktop Application Development application	PowerBuilder Enterprise Version 7	Camp Hill DC	2	EDS	Annual	One-time license purchase, annual maintenance fees
TechSmith							
	Web-based training development	SnagIT 8.2	Camp Hill DC	1	EDS	None	Shareware
Unisys							
	Drug Rebate Application Suite	PRIMS V 1.0 for PA Medicaid	Unisys DPH	1	Unisys	None	Proprietary to Unisys
	Paper imaging and Workflow Application	UeWI (Unisys Infolimage e-Workflow & Imaging	Unisys DPH	1	Unisys	None	Proprietary to Unisys
Verisign							
	Web Server Security for Business Objects web server	Verisign SSL certificate	Camp Hill DC	1	EDS	Annual	One-time license purchase, annual maintenance fees
	PROMISe Internet web server	Verisign SSL certificate	Camp Hill DC	1	DPW	None	Certificate provided to EDS under DPW/Commonwealth license with Verisign

Software Vendor	Function	Model or Type	Physical Location	Qty	License Owner	License Expire Date	Comments
VMWare							
	Virtual Machine Operating environment	VI3 Enterprise Edition	Camp Hill DC, Unisys DPH	8	EDS	Annual	One-time license purchase, annual maintenance fees
	Virtual Machine Management software	Virtual Center Server 2	Camp Hill DC, Unisys DPH	1	EDS	Annual	One-time license purchase, annual maintenance fees
	Converter for machine to virtual machine	VMWare Converter 3.0 Enterprise	Camp Hill DC	1	EDS	None	Included in the Enterprise Edition
	Virtual Machine host to host transfer	VMotion	Camp Hill DC	1	EDS	None	Included in the Enterprise Edition
	VMWare Backup	Consolidated Backup	Camp Hill DC	1	EDS	None	Included in the Enterprise Edition
	Dynamic Resource Scheduling	DRS	Camp Hill DC	1	EDS	None	Included in the Enterprise Edition
WebTrends							
	Web reporting	WebTrends 8.1	Camp Hill DC	1	EDS	None	
WinZip							
	Data compression and Encryption	WinZip Rlse 9.0	Camp Hill DC	150	EDS	None	EDS Corporate license
Wizard							
	Data compression and Encryption	IIS Real Secure Server Sensors	Camp Hill DC	1	EDS	None	

Appendix A-6
SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT (the "*Agreement*") is made on [insert date] (the "*Execution Date*"), by and between _____, a _____ authorized to do business in _____, with its principal offices located at _____ ("*Licensor*"), and The Commonwealth of Pennsylvania, acting by and through _____ ("*Licensee*");

TERMS AND CONDITIONS

A. Definitions.

All capitalized terms used in this Agreement or in Attachments or Appendixes to this Agreement shall have the respective meanings ascribed to them in this Agreement or in the glossary set forth in Paragraph M. All capitalized terms used in this Agreement, unless indicated otherwise, include all derivative forms and variations of the terms.

B. Grant and Scope of License

1. *The parties agree that more than one agency of Licensee 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. For purposes of this Agreement, Licensee includes any public procurement unit as defined by the Commonwealth Procurement Code, 62 Pa.C.S. §1901. 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 Licensee, when the purchase document issued by Licensee includes a reference to this Agreement, 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 supersedes and take precedence over the terms included in any purchase order, terms of any shrink wrap agreement included with the Licensed Product, terms of any click through agreement included with the Licensed Product, or any other terms purported to apply to the Licensed Product. If the Licensee is a public procurement unit as defined by the Commonwealth Procurement Code, 62 Pa.C.S. §1901 that is not a Commonwealth Agency, the fees set out in this Agreement apply to the purchase, but the Licensor must enter into a separate agreement with Licensee, which includes the same terms and conditions and this Agreement.*

2. Subject to the terms and conditions of this Agreement, Licensor hereby grants Licensee a non-exclusive, non-transferable license to (i) Run the software product(s) identified in Appendix A, (the "*Product*") as well as any Updates provided by Licensor on Licensee's server, and (ii) use the related documentation in connection with Licensee's authorized use of the Product. (The Product, any Updates thereto, and the related documentation are collectively referred to in this Agreement as the "*Licensed Product*").

3. **Authorized Use.** In consideration of the License Fees payable hereunder, Licensee may _____.

4. As between the parties, all rights, title and interest in and to the Licensed Product (and any derivative works thereto) and all underlying Intellectual Property Rights thereto, are and at all times will be, the sole and exclusive property of Licensor or its licensors, as the case may be. The Licensed Product may not be used for the benefit of any third parties not authorized herein, including without limitation, in an outsourcing, timesharing, or Application Service Provider (ASP) arrangement, or in the operation of a service bureau.

5. Licensee may make a reasonable number of copies of the Licensed Product for bona fide back up purposes only. All such copies are subject to the terms and conditions of this Agreement.

6. Licensee shall not (and shall not permit any other party to) translate, decompile, reverse engineer, merge, adapt or modify the Licensed Product or any Updates in any way, and no derivative work may be created therefrom, unless otherwise permitted under the terms of this Agreement. In addition, Licensee shall not (and shall not permit any other party to) avoid, circumvent, or disable any security

device, procedure, protocol, or mechanism that Licensor may include, require or establish with respect to the Licensed Product.

7. Licensee shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice placed by Licensor on or in the Licensed Product, and shall ensure that all such notices are reproduced on all copies of the Licensed Product.

8. All rights not expressly granted in this Agreement are reserved to Licensor.

C. Fees

1. When applicable, Licensee agrees to pay Licensor or the contractor or reseller supplying the Licensed Product the License Fees for the Licensed Product and fees for Support Services provided under **Section G**, below (the "*Support Fees*"), in the amounts and according to the schedule stated in Appendix A. All License Fees and Support Fees for the Licensed Product are due and payable within Thirty (30) days of the date of a proper invoice. Any additional and/or subsequent License Fees and Support Fees are due and payable within thirty (30) days of the date of Licensee's receipt of a proper invoice.

2. If the Licensee is making a purchase through its agent by way of a Purchase Order (PO), the PO shall control and take precedence over this Agreement in regards to payment amounts and provisions to the extent there is any conflict. The Licensee shall pay its agent in accordance with the PO and the agent will pay Licensor the amounts set forth in the PO.

3. It is hereby acknowledged that the Licensee is a government entity and thereby exempt from taxation.

D. Confidentiality

1. Each party agrees to secure and protect the Confidential Information of the other in a manner consistent with the maintenance of the other party's rights therein, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information of a similar nature, but in no event less than reasonable efforts. Each party agrees to hold the Confidential Information of the other party in confidence, not to disclose it to others or use it in any way, commercially or otherwise, except as authorized in writing by Licensee or in performance of its obligations under this Agreement.

2. Notwithstanding **Section D(1)**, Confidential Information of a party shall not include information which: (i) is, as of the time of its disclosure or thereafter becomes part of the public domain through a source other than the receiving party; (ii) was rightfully known to the receiving party as of the time of its disclosure; (iii) is independently developed by the receiving party; (iv) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; (v) is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority, or (vi) disclosure of the information is required under the Freedom of Information Act or other right to know type law, whereupon the party subject to same shall provide prompt written notice to the other party prior to such disclosure, so that such party may seek a protective order or other appropriate remedy.

E. Term and Termination

1. The term of this Agreement shall be deemed to have commenced on the Effective Date and shall continue from thereon until terminated by lawful means.

2. In accordance with applicable regulations, either party may terminate this Agreement with written notice if the other party fails to comply with any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days

of receipt of notice of such breach, provided, however, that Licensor may not terminate this agreement for reasons of nonpayment.

3. In addition to the foregoing, Licensee may terminate this Agreement if Licensor makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy law, or has liquidated its business voluntarily or otherwise, and the same has not been discharged or terminated within forty-five (45) days.

4. Notwithstanding any contrary provision in this Agreement, this Agreement may be terminated at the option of Licensee upon written notice to Licensor if Licensee determines that it is in the best interest of Licensee to terminate the Agreement. If Licensee elects to terminate this Agreement, Licensor shall be entitled to payment for satisfactory services rendered under the Agreement up to the effective date of termination

5. Any payment obligation or portion thereof of Licensee created by this Agreement is conditioned upon the availability of Commonwealth or Federal funds which are appropriated or allocated for the payment of such an obligation or portion thereof; provided, however, that Licensee will request such funds each year during the Term. If such funds are not allocated and available, this Agreement may be terminated by Licensee at the end of the period for which funds are available. No penalty shall accrue to Licensee in the event this provision is exercised, and Licensee shall not be obligated or liable for any future payments due for any damages as a result of termination under this Article.

6. Immediately upon termination of this Agreement, Licensee shall: (i) pay all amounts owed to Licensor, or; (ii) cease all use of the Licensed Product and; (iii) return to Licensor all copies of the Licensed Product and any other Confidential Information or proprietary materials of Licensor in its possession or in Escrow; and (iv) certify in writing Licensee's compliance with (ii) and (iii), above.

F. Warranties and Disclaimer; Limitation of Liability; Indemnification

1. Licensor warrants that it has the full authority to grant the rights granted to Licensee herein. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, AND EXCEPT AS MAY BE OTHERWISE SET OUT IN THIS AGREEMENT, LICENSOR DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE LICENSED PRODUCTS AND UPDATES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, THE LICENSED PRODUCTS AND UPDATES ARE PROVIDED "AS IS" AND WITH ALL FAULTS, AND LICENSEE UNDERSTANDS THAT IT ASSUMES ALL RISKS OF THEIR USE, QUALITY, AND PERFORMANCE.

2. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, LICENSOR'S TOTAL LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT FOR ANY REASON SHALL BE LIMITED TO DIRECT DAMAGES UP TO THE TOTAL AMOUNT OF FEES PAID HEREUNDER DURING THE INITIAL TERM OR THE THEN-CURRENT RENEWAL TERM, AS APPLICABLE. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS.

3. Licensor agrees to indemnify and defend Licensee and its elected and appointed officers, officials, employees and agents from and against any action, claim, demand, or liability, including reasonable attorney's fees and costs, arising from or relating to a claim the Licensed Product infringes upon any United States or foreign patents, copyrights, or trademarks of a third party and in any such suit or proceeding will satisfy any final award for such infringement, including costs. Licensee 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 Licensee in actions brought against Licensee. 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 Licensor, Licensee will cooperate with all reasonable requests of Licensor made in the defense of such suit. If OAG does not delegate its right of defense, Licensor may request that OAG seek to join Licensor as a third party. If OAG does not agree to seek to join Licensor as a third party, then Licensor may seek to intervene in the matter. If Licensor is not joined as a third party either through the

OAG's joinder or through Licensor's intervention, there will be no contractual obligation on the part of Licensor to indemnify. No settlement which imposes any liability or damages of any kind on Licensee shall be made without Licensee's prior written consent, which shall not be unreasonably withheld or delayed. In all events, Licensee shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by Licensor that, in the event it requests that Licensee provide support to Licensor in defending any such claim, Licensor shall reimburse Licensee for all expenses (including attorneys' fees, if such are made necessary by Licensor's request) incurred by Licensee for such support Licensor shall pay all damages and costs awarded therein against Licensee arising from Licensor's indemnification obligation under this paragraph. If information and assistance are furnished by Licensee at Licensor's written request, it shall be at Licensor's expense, but the responsibility for such expense shall be only that within Licensor's written authorization.

If, in Licensor's opinion, the Licensed Product, is likely to or does become subject to a claim of infringement, then without diminishing Licensor's obligation to satisfy any final award, Licensor may, at its option, substitute functional equivalents for the Licensed Product or, at Licensor's option and expense, obtain the rights for Licensee to continue the use of the Licensed Product. If the Licensed Product is in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, Licensor shall, at its own expense and at its option, either procure the right to publish or continue use of the Licensed Product, replace the Licensed Product with non-infringing items, or modify the Licensed Product so that it is no longer infringing.

If neither alternative (i) nor (ii) is reasonably available, then Licensee may terminate the license for the infringing Licensed Product and no further payment obligations shall be due from Licensee therefor, and Licensor agrees to pay Licensee: (1) any amounts paid by Licensee for any future period under this Agreement less a reasonable amount based on the acceptance and use of the Licensed Product; (2) any license fee less an amount for the period of usage of any software; and (3) the prorated portion of any prepaid service fees representing the time remaining for any future period under this Agreement..

The obligation to indemnify Licensee, under the terms of this **Section F(4)**, shall be Licensor's sole and exclusive obligation and Licensee's exclusive remedy for the infringement or misappropriation of intellectual property. The obligations of Licensor under this Section continue without time limit and survive the termination of this Agreement

4. Licensor shall have no liability or obligation under **Section F(4)** above, arising from or related to: (i) modification of the Licensed Product by Licensee; any material provided by Licensee to Licensor and incorporated into, or used to prepare, the Licensed Product; (ii) use of the Licensed Product in other than its specified operating environment; (iii) the combination, operation, or use of the Licensed Product with other products, services, or deliverables not provided by Licensor as a system or the combination, operation, or use of the Licensed Product with any products, data, or apparatus that Licensor did not provide; (iv) infringement of a non-Licensor product alone; (v) Licensee's distribution, marketing or use beyond the scope contemplated by this Agreement; (vi) Licensee's failure to use corrections or enhancements made available to Licensee by Licensor; (vii) the Running of the Licensed Product after Licensor has notified Licensee to discontinue Running due to an infringement claim (existing or prospective); or (viii) the use of a version of the Licensed Product that has been superseded by a newer version, if the infringement would have been avoided by use of a current version which Licensor has provided or made available to Licensee.

Licensee assumes all risks and liabilities for injury to or death of any person or damage to any property, in any manner arising out of possession, use, or operation of the Licensed Product by Licensee whether such injury or death be with respect to agents or employees of Licensee or of third parties, and whether such property damage be to Licensee's property or the property of others; provided, however that said damage or injury results from the negligence of Licensee, its agents or employees, and provided that judgment has been obtained against the Licensee in a court of competent jurisdiction. This provision shall not be construed to limit the sovereign immunity of the Licensee.

G. Maintenance and Support

1. During the Term of this Agreement, Licensor agrees to provide the maintenance and support services as set forth in Appendix A (collectively, the "**Support Services**") for the Licensed Product. The parties agree that Licensor shall have no obligations to provide any maintenance or support-related services under this Agreement except as expressly set forth herein.

2. Licensee will designate, in writing, no more than two persons who will be Licensee's primary support contacts for Support Services (the "**Support Contacts**") related to each PO. Licensee agrees that all Support Services inquiries from Licensee's individual users will be directed to a Support Contact and Licensee's communications with Licensor for Support Services will be through the Support Contacts.

3. *All Updates and all other deliverables and work product hereunder provided to Licensee shall be subject to the terms and conditions of this Agreement, unless otherwise expressly agreed in writing by Licensor. Support Services extend only to the Licensed Product free of any additions or modifications that have not been made or sold by Licensor or its agents.*

4. Licensee acknowledges and agrees that the Support Services, Updates, and all other results of Support Services hereunder, and all work product and deliverables thereof (collectively, the "**Licensor Materials**"), are the sole and exclusive property of Licensor, including all worldwide Intellectual Property Rights embodied in, related to, or represented by, the Licensor Materials.

H. Virus, Malicious, Mischievous or Destructive Programming

Notwithstanding any other provision in this Agreement to the contrary, Licensor shall be liable for any damage to any data and/or software owned or licensed by Licensee if Licensor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into Licensee's software or computer networks and has failed to comply with Licensee's software security standards. Licensee must demonstrate that Licensor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. Licensor's liability shall cease if Licensee has not fully complied with its own software security standards.

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

In the event of destruction or modification of software, Licensor shall eliminate the virus, malicious, mischievous or destructive programming, restore Licensee's software, and be liable to the Licensee for any resulting damages.

Licensor shall be responsible for reviewing Licensee software security standards and complying with those standards.

Licensee may, at any time, audit, by a means deemed appropriate by Licensee, any computing devices being used by representatives of Licensor to provide services to Licensee 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 Licensee's network until the proper installations have been made.

Licensor may use the anti-virus software used by Licensee to protect Licensor's computing devices used in the course of providing services to Licensee. It is understood that Licensor may not install the software on any computing device not being used to provide services to Licensee, and that all copies of the software will be removed from all devices upon termination of this Agreement.

Licensee will not be responsible for any damages to Licensor's computers, data, software, etc. caused as a result of the installation of Licensee's anti-virus software or monitoring software on Licensor's computers.

I. Background Checks

Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Licensee's IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psplib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.

Before Licensee will permit an IT Employee access to Licensee'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 IT 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 Licensee facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Licensee 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 Licensee.

J. Incorporation of Exhibits and Appendices

The following Appendices and Exhibits are attached hereto and incorporated into this Agreement by this reference (to be supplied as applicable):

- Appendix A – List of Licensed Product and Fees
- Appendix B – Maintenance and Support Services
- Appendix C – Hardware Specifications
- Appendix D – Service Level Agreements
- Appendix D – Pricing Tables
- Exhibit A – Non-Discrimination/Sexual Harassment
- Exhibit B – Contractor Integrity
- Exhibit C – Contractor Responsibility
- Exhibit D – Tax Setoff Clause
- Exhibit E – Provisions Regarding *The Americans with Disabilities Act*

K. Purchase Orders

1. The Licensee will issue this Agreement, and any subsequent changes to it, including any purchase from it by a Commonwealth Agency, electronically as an Outline Agreement and/or as a Purchase Order (hereinafter Document).

2. The Document will not include an "ink" signature by the Licensee. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Licensee, to authorize Licensor to proceed.

3. Documents may be issued electronically or through facsimile equipment. The electronic transmission of a Document shall require acknowledgement of receipt of the transmission by Licensor.

4. Receipt of the electronic or facsimile transmission of the Document shall constitute receipt of an order.

5. The Licensee and Licensor specifically agree as follows:

- i. No handwritten signature by Licensee shall be required in order for the Document to be legally enforceable.
- ii. Upon receipt of a Document, Licensor shall promptly and properly transmit an acknowledgement in return. Any order which is issued electronically shall not be considered accepted by Licensor, nor give rise to any obligation to deliver on the part of Licensor, or give rise to any obligation to receive and pay for delivered products on the part of the Licensee, unless and until the electronic order has been acknowledged.
- iii. The parties agree that no writing shall be required in order to make the order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Document or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any

genuine Document 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 genuine Documents or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement were not in writing or signed by the parties. A Document or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

L. General

The failure of either party to require performance of any part of this Agreement shall not be deemed a waiver of any present or future right. Modifications of this Agreement shall be binding only if in writing and signed by authorized representatives of both parties. This Agreement, the Licensee's PO, if any, and Licensor's Invoices contain the parties' entire agreement and understanding and they supersede all prior oral and written agreements and understandings. If any provision of this Agreement is held invalid, illegal or unenforceable, all other provisions contained in this Agreement will remain in effect. Neither party may not assign this Agreement without the other party's prior written consent. All notices required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by registered or certified mail, postage prepaid to the address set forth in this Agreement or to such other address as each party may designate from time to time. Licensor acknowledges that mail handling security procedures may delay actual delivery of such notices to the Licensee. The following Sections shall survive the termination or expiration of this Agreement: **B(4), D, E, F, and H**. 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.

M. Glossary

1. "**Rur**" means to copy, install, use, access, display, run, and otherwise interact with, in its intended manner.

2. "**Delivery Date**" shall mean the day agreed upon by the parties for Licensor to present the Licensed Product to Licensee for delivery and installation, provided Licensor makes a reasonable attempt to do so on that day.

3. "**Effective Date**" shall mean the Execution Date, whichever occurs first.

4. "**Source Code**" shall mean the human-readable version of the Licensed Product supplied to Licensee hereunder.

5. "**Intellectual Property Rights**" means, collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, including, without limitation, moral rights and similar rights.

6. "**Updates**" means any update, patch, bug fix or minor modification to the Licensed Products that Licensor provides to Licensee. Once provided, each Update shall be deemed to be included within the Licensed Product.

7. "**Confidential Information**" means information that the other party considers to be confidential, business and technical information, marketing plans, research, designs, plans, methods, techniques, processes and know-how, whether tangible or intangible and whether or not stored, compiled or memorialized physically, electronically, graphically or in writing, provided that the other party has notified the party receiving the confidential information that the information is confidential.

8. "**Travel Expenses**" means any costs incurred by Licensor associated with the transportation, storage or lodging of equipment, supplies, Licensor employees and other items necessary for business use from Licensor headquarters to Licensee's facilities. Travel expenses may include, but are not limited to airfare, hotel costs, and meals if applicable. Any travel expenses paid by the Licensee shall be paid at allowable government travel rates consistent with Management Directive 230.10, unless otherwise first approved by the Licensee's authorized representative.

9. "**Travel Time**" means the hours and minutes elapsing during transportation of Licensor personnel from Licensor headquarters to Licensee's facilities. Travel time shall not include the first hour of transportation from Licensor headquarters to Licensee's facilities or from Licensee's facilities to Licensor headquarter

