

PART I - GENERAL INFORMATION

1. PURPOSE

The Commonwealth of Pennsylvania (Commonwealth) is issuing this Invitation for Bids (IFB) to meet the needs of GENERAL SERVICES to satisfy a need for Drug and Alcohol Testing Services.

2. TYPE OF CONTRACT

If the Issuing Office enters into a contract as a result of this IFB, it will be an established price contract containing the Contract Terms and Conditions as shown in Part V of this IFB.

3. NO PRE-BID CONFERENCE

There will be no pre-bid conference for this IFB. If there are any questions, please forward them to the Issuing Office prior to the bid opening date and time.

4. QUESTIONS

All questions regarding the IFB must be submitted in writing to the email address of the Issuing Officer provided in the solicitation. While there is no set timeline for the submittal of questions, questions received within 48 hours prior to the bid due date and time will be answered at the discretion of the Commonwealth. All questions received will be answered, in writing, and such responses shall be posted to eMarketplace as an addendum to the IFB. The Issuing Officer shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the IFB or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation.

5. ADDENDA TO THE IFB

If the Issuing Office deems it necessary to revise any part of this IFB before the bid response date, the Issuing Office will post an addendum to its website at [HTTPS://WWW.DGS.PA.GOV/PAGES/DEFAULT.ASPX](https://www.dgs.pa.gov/pages/default.aspx) it is the Bidder's responsibility to periodically check the website for any new information or addenda to the IFB.

6. SUBMISSION OF BIDS

- a. Bids are requested for the item(s) described in the Invitation For Bids and all the documents referenced in the form (collectively called the IFB). Bidders must submit their bids as specified in the IFB documents.

- b. It is the responsibility of each bidder to ensure that its Bid is received through the electronic system prior to the date and time set for the opening of bids ("Bid Opening Time"). No Bid shall be considered if it arrives after the Bid Opening Time, regardless of reason for the late arrival. Bids that are timely received prior to the Bid Opening Time shall be opened publicly in the presence of one or more witnesses at the time and place designated in this IFB for the Bid opening.
- c. Bids must be firm. If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the IFB Form, it shall be rejected. The Bid shall also be rejected if the items offered by the Bidder are not in conformance with the specifications as determined by the Commonwealth.
- d. The Bidder, intending to be legally bound hereby, offers and agrees, if this Bid is accepted, to provide the awarded items at the price(s) set forth in this Bid at the time(s) and place(s) specified.

7. BID PROTEST PROCEDURE

The Bid Protest Procedure is on the DGS website at <http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf>

8. ELECTRONIC VERSION OF THIS IFB

This IFB is being made available by electronic means. If a Bidder electronically accepts the IFB, the Bidder acknowledges and accepts full responsibility to ensure that no changes are made to the IFB. In the event of a conflict between a version of the IFB in the Bidder's possession and the Issuing Office's version of the IFB, the Issuing Office's version shall govern.

9. PRICES

The bid submitted by the successful Bidder will be incorporated into any resulting Contract and the Bidder will be required to provide the awarded item(s) at the prices quoted in its Bid.

10. ALTERNATES

A Bidder who wants to offer an alternate must notify the Issuing Office in writing, at least five (5) days prior to the scheduled Bid opening, that the Bidder intends to offer an alternate in its Bid. An "alternate" is a product that deviates from the requirements of the specifications in its composition, qualities, performance, size dimension, etc. The written notification from the Bidder must include a complete description of the alternate and must identify the product's deviations from the specifications. Upon receipt of the notification, the Issuing Office will determine whether the alternate is acceptable. If the Issuing Office, in its discretion, determines that the alternate is acceptable, the Issuing Office will issue a change notice to the invitation for bids that revises the specifications. If no change notice is issued revising the specification, a Bid offering the alternate will not be considered for

award. If an item or items in the IFB are designated “no substitute,” this provision does not apply and no alternate may be proposed by a bidder nor will any alternate be considered by the Issuing Office.

11. NEW EQUIPMENT

Unless otherwise specified in this invitation for bids, all products offered by Bidders must be new or remanufactured. A 'new' product is one that will be used first by the Commonwealth after it is manufactured or produced. A 'remanufactured' product is one which: 1) has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item; 2) does not, in the opinion of the Issuing Office, differ in appearance from a new item; and 3) has the same warranty as a new item. Unless otherwise specified in this invitation for bids, used or reconditioned products are not acceptable. This clause shall not be construed to prohibit Bidders from offering products with recycled content, provided the product is new or remanufactured.

12. MODIFICATION OR WITHDRAWAL OF BID

Bid Modification Prior to Bid Opening. Bids may be modified only by written notice or in person prior to the exact hour and date specified for Bid opening.

(1) If a Bidder intends to modify its Bid by written notice, the notice must specifically identify the Bid to be modified and must be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the modification to modify the Bid on behalf of the Bidder. The Bid modification must be received in a sealed envelope. The sealed envelope must identify the assigned Collective Number and the Bid Opening Time, and should state that enclosed in the envelope is a Bid modification.

(2) If a Bidder intends to modify its Bid in person, the individual who will modify the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to modify the Bid on behalf of the Bidder. If a Bidder intends to modify its Bid in person, the Bidder may do so only in the presence of an agency employee. (The agency employee will observe the actions taken by the individual to modify the Bid, but will not read the Bid or the modification).

a. **Bid Withdrawal Prior to Bid Opening.** Bids may be withdrawn only by written notice or in person prior to the exact hour and date specified for Bid opening.

1) If a Bidder intends to withdraw its Bid by written notice, the notice shall specifically identify the Bid to be withdrawn and shall be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the bid withdrawal to withdraw the bid on behalf of the Bidder. Except as provided in Subparagraph c, below, bid withdrawals received after the exact hour and date specified for the receipt of Bids shall not be accepted.

2) If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a

picture identification and provide evidence of his/her authorization to withdraw the Bid on behalf of the Bidder.

- b. Bid Withdrawal After Bid Opening. Bidders are permitted to withdraw erroneous Bids after Bid opening only if the following conditions are met:
 - 1) The Bidder submits a written request for withdrawal.
 - 2) The Bidder presents credible evidence with the request that the reason for the lower Bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the Bid.
 - 3) The request for relief and supporting evidence must be received by the Issuing Office within three (3) business days after Bid opening, but before award of the contract.
 - 4) The Issuing Office shall not permit a Bid withdrawal if the Bid withdrawal would result in the award of the contract on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the bidder has a substantial interest.
 - 5) If a Bidder is permitted to withdraw its Bid, the Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.
- c. Firm Bid. Except as provided above, a Bid may not be modified, withdrawn, or cancelled by any Bidder for a period of sixty (60) days following the time and date designated for Bid opening, unless otherwise specified by the Bidder in its Bid. If the lowest responsible Bidder, as determined by the Issuing Office, withdraws its Bid prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the Bidder shall be liable to the Commonwealth for all costs and damages associated with the re-award or re-bid including the difference between the Bidder's price and the actual cost that the Commonwealth pays for the awarded items.
- d. Clarification and Additional Information. After the receipt of Bids, the Issuing Office shall have the right to contact Bidders for the purpose of seeking:
 - 1) Clarification of the Bid which confirms the Issuing Office's understanding of statements or information in the Bid or;
 - 2) Additional information on the items offered; provided the IFB does not require the rejection of the Bid for failure to include such information.

13. REJECTION OF BIDS

The Issuing Office reserves the right to reject any and all Bids, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid if the best interests of the Commonwealth are thereby served.

14. REPRESENTATIONS AND AUTHORIZATIONS

By submitting its bid, each bidder understands, represents, and acknowledges that:

- A. All of the Bidder's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the bid in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the bid submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Bidder has arrived at the price(s) and amounts in its bid independently and without consultation, communication, or agreement with any other bidder or potential bidder.
- C. The Bidder has not disclosed the price(s), the amount of the bid, nor the approximate price(s) or amount(s) of its bid to any other firm or person who is an Bidder or potential bidder for this IFB, and the Bidder shall not disclose any of these items on or before the bid submission deadline specified in the Calendar of Events of this IFB.
- D. The Bidder has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a bid on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- E. The Bidder makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- F. To the best knowledge of the person signing the proposal for the Bidder, the Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Bidder has disclosed in its proposal.
- G. To the best of the knowledge of the person signing the proposal for the Bidder and except as the Bidder has otherwise disclosed in its bid, the Bidder has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Bidder that is owed to the Commonwealth.
- H. The Bidder is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Bidder cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I. The Bidder has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its bid or the specifications for the services described in the bid.
- J. Each Bidder, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Bidder's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Bidder receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Bidder shall not begin to perform.

- L. The Bidder is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

15. LOBBYING CERTIFICATION AND DISCLOSURE

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. Bidders must complete and return the Lobbying Certification Form and the Disclosure of Lobbying Activities Form, which are attached to and made a part of this IFB. The completed and signed Lobbying Certification Form and the Disclosure of Lobbying Activities Form should be submitted with the Bid Response. Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.

16. POST-SUBMISSION DESCRIPTIVE LITERATURE

The Commonwealth may, during its evaluation of the bids, require any bidder to submit cuts, illustrations, drawings, prints, test data sheets, specification sheets and brochures which detail construction features, design, components, materials used, applicable dimensions and any other pertinent information which the Issuing Office may require in order to evaluate the product(s) offered. The required information must be submitted within two (2) business days after notification from the Issuing Office. Failure to submit the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid as non-responsive.

17. RECIPROCAL LIMITATIONS ACT

This procurement is subject to the Reciprocal Limitations Act. Bidders must complete and submit with the Bid Response the State of Manufacture Chart, which is contained in GSPUR-89 ("Reciprocal Limitations Act Requirements") which is attached to and made part of this IFB. The completed State of Manufacture Chart should be submitted as part of the Bid Response.

18. IRAN FREE PROCUREMENT CERTIFICATION AND DISCLOSURE

Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, a bidder must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

All bidders must complete and return the Iran Free Procurement Certification form, which is attached hereto and made part of this IFB. The completed and signed Iran Free Procurement Certification form must be submitted with the Bid Response. See the following web page for current Iran Free Procurement list:
<http://www.dgs.pa.gov/businesses/materials%20and%20services%20procurement/procurement-resources/pages/default.aspx#.WDNfJJgo6Ht>

PART II- SELECTION CRITERIA

1. MANDATORY RESPONSIVENESS REQUIREMENTS

To be eligible for selection, a bid must be:

- a. Timely received from a Bidder;
- b. Properly signed by the Bidder.

2. METHOD OF AWARD

Award will be made on a multiple award basis to all responsible and responsive bidders who comply with the "Eligibility Requirements" set forth in this IFB. The Commonwealth reserves the right to award by line item if it determines that it is in the best interest of the Commonwealth to do so.

3. AWARDS

Unless all Bids are rejected, and except as otherwise provided by law, award will be made through the issuance of a contract/purchase order in accordance with the method of award. Unless otherwise specified by the Issuing Office in the IFB form the Commonwealth reserves the right to award by item or on a total Bid basis, whichever is deemed more advantageous to the Commonwealth. In cases of discrepancies in prices, the unit price will be binding unless the unit price is obviously in error and the extended price is obviously correct, in which case the erroneous unit price will be corrected. As a condition for receipt of award of a contract/purchase order, the Bidder must be registered in the Commonwealth of Pennsylvania's Vendor Master file. In order to register, bidders must visit the Pa Supplier Portal at <https://www.pasupplierportal.state.pa.us/> or call the Customer Support Center at 877-435-7363 or 717-346-2676.

4. TIE BIDS

All tie bids will be broken by the Issuing Office.

5. PROMPT PAYMENT DISCOUNTS

Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Bidder, however, the Issuing Office will take advantage of such offer.

6. OPTION FOR SEPARATE COMPETITIVE BIDDING PROCEDURE

The Commonwealth reserves the right to purchase products or services covered under this Contract through a separate competitive bidding procedure, whenever Commonwealth deems it in the best interest of the Commonwealth. The right will generally be exercised only when a specific need for a large quantity of the product or service exists or when the price offered is significantly lower than the Contract price.

PART III- CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS.

- (a) Agency. The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this Contract, that entity shall also be identified as “Agency.”
- (b) Commonwealth. The Commonwealth of Pennsylvania.
- (c) Contract. The integrated documents as defined in **Section 12, Order of Precedence**.
- (d) Contracting Officer. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- (e) Data. Any recorded information, regardless of the form, the media on which it is recorded or the method of recording.
- (f) Days. Calendar days, unless specifically indicated otherwise.
- (g) Documentation. All materials required to support and convey information about the Services or Supplies required by this Contract, including, but not limited to: written reports and analyses; diagrams maps, logical and physical designs; system designs; computer programs; flow charts; and disks and/or other machine-readable storage media.
- (h) Expiration Date. The last valid date of the Contract, as indicated in the Contract documents to which these IT Contract Terms and Conditions are attached.
- (i) Purchase Order. Written authorization for Contractor to proceed to furnish Supplies or Services.
- (j) Services. All Contractor activity necessary to satisfy the Contract.

- (k) Software. A collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).
- (l) Supplies. All tangible and intangible property including, but not limited to, materials and equipment provided by the Contractor to satisfy the Contract.

2. TERM OF CONTRACT.

The initial term of the Contract shall be 03 year(s) and 00 month(s).

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

The Effective Date shall be: a) the Effective Date printed on the Contract after the Contract has been fully executed by the Commonwealth (signed and approved as required by the Commonwealth contracting procedures) or b) the "Valid from" date printed on the Contract, whichever is later.

3. RENEWAL OF CONTRACT TERM

The Contract may be mutually renewed for a maximum of 2 additional 1 year term(s), so long as the Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter dated not less than 090 days prior to the expiration of the term of the agreement, or any extension thereof, and the Contractor consents to the renewal not less than 060 days prior to the expiration of the term of the agreement or any extension thereof. The renewal may be exercised as individual or multiple year terms(s). Any renewal will be under the same terms, covenants and conditions. No further document is required to be executed to renew the term of the contract.

4. COMMENCEMENT OF PERFORMANCE.

- (a) General. The Contractor shall not commence performance and the Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred, until both of the following have occurred:
 - (i) the Effective Date has occurred; and
 - (ii) the Contractor has received a Purchase Order or other written notice to proceed signed by the Contracting Officer.
- (b) Prohibition Prior to Effective Date. No Commonwealth employee has the authority to verbally direct the commencement of any Service or delivery of any Supply under

this Contract prior to the date performance may commence. The Contractor hereby waives any claim or cause of action for any Service performed or Supply delivered prior to the date performance may commence.

5. EXTENSION OF CONTRACT TERM.

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.

6. ELECTRONIC SIGNATURES.

- (a) The Contract and/or Purchase Orders may be electronically signed by the Commonwealth.
 - (i) *Contract.* “Fully Executed” at the top of the first page of the Contract output indicates that the signatures of all the individuals required to bind the Commonwealth to the terms of the Contract have been obtained. If the Contract output form does not have “Fully Executed” at the top of the first page, the Contract has not been fully executed.
 - (ii) *Purchase Orders.* The electronically-printed name of the Purchasing Agent on the Purchase Order indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- (b) The Commonwealth and the Contractor specifically agree as follows:
 - (i) *Written signature not required.* No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
 - (ii) *Validity; admissibility.* The parties agree that no writing shall be required in order to make the Contract or Purchase Order legally binding, notwithstanding contrary requirements in any law or regulation. The parties hereby agree not to contest the validity or enforceability of the Contract executed electronically, or acknowledgement issued electronically, under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement executed or issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract

or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

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

7. PURCHASE ORDERS.

- (a) Purchase Orders. The Commonwealth may issue Purchase Orders against the Contract or issue a Purchase Order as the Contract. These Purchase Orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to, and including, the Expiration Date of the Contract are acceptable and must be performed in accordance with the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.
- (b) Electronic transmission. Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a Purchase Order shall require acknowledgement of receipt of the transmission by the Contractor.
- (c) Receipt. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of a Purchase Order.
- (d) Received next business day. Purchase Orders received by the Contractor after 4 p.m. will be considered received the following business day.
- (e) Commonwealth Purchasing Card. Purchase Orders under \$10,000 in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number and expiration date of the card. The Contractor agrees to accept payment through the use of a Commonwealth Purchasing card.

8. CONTRACT SCOPE.

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

9. ACCESS TO COMMONWEALTH FACILITIES.

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

10. NON-EXCLUSIVE CONTRACT.

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

11. INFORMATION TECHNOLOGY POLICIES.

- (a) General. The Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (located at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Policy ACC001, Accessibility Policy. The Contractor shall ensure that Services and Supplies procured under the Contract comply with the applicable standards. In the event such standards change during the Contractor's performance, and the Commonwealth requests that the Contractor comply with the changed standard, then any incremental costs incurred by the Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.
- (b) Waiver. The Contractor may request a waiver from an Information Technology Policy (ITP) by providing detailed written justification as to why the ITP cannot be met. The Commonwealth may waive the ITP in whole, in part or conditionally, or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.

12. ORDER OF PRECEDENCE

In the event there is a conflict among the documents comprising this Contract, the Commonwealth and the Contractor agree on the following order of precedence: the Contract; the IFB; and the Contractor's Bid in Response to the IFB.

13. CONTRACT INTEGRATION.

- (a) Final contract. This Contract constitutes the final, complete, and exclusive Contract between the parties, containing all the terms and conditions agreed to by the parties.
- (b) Prior representations. All representations, understandings, promises, and agreements pertaining to the subject matter of this Contract made prior to or at the time this Contract is executed are superseded by this Contract.
- (c) Conditions precedent. There are no conditions precedent to the performance of this Contract except as expressly set forth herein.
- (d) Sole applicable terms. No contract terms or conditions are applicable to this Contract except as they are expressly set forth herein.

- (e) Other terms unenforceable. The Contractor may not require the Commonwealth or any user of the Services or Supplies acquired within the scope of this Contract to sign, click through, or in any other way agree to any terms associated with use of or interaction with those Services and/or Supplies, unless the Commonwealth has approved the terms in writing in advance under this Contract, and the terms are consistent with this Contract. Further, changes to terms may be accomplished only by processes set out in this Contract; no quotations, invoices, business forms or other documentation, or terms referred to therein, shall become part of this Contract merely by their submission to the Commonwealth or their ordinary use in meeting the requirements of this Contract. Any terms imposed upon the Commonwealth or a user in contravention of this subsection (e) must be removed at the direction of the Commonwealth and shall not be enforced or enforceable against the Commonwealth or the user.

14. PERIOD OF PERFORMANCE.

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

15. INDEPENDENT PRIME CONTRACTOR.

Independent contractor. In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.

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

16. WARRANTIES

The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.

17. ESTIMATED QUANTITIES

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

18. SUBCONTRACTS.

The Contractor may subcontract any portion of the Services or Supplies described in this Contract to third parties selected by Contractor and approved in writing by the Commonwealth, whose approval shall not be unreasonably withheld. Notwithstanding the above, if Contractor has disclosed the identity of subcontractor(s) together with the scope of work to be subcontracted in its 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 an un-redacted copy of the subcontract agreement between the Contractor and the subcontractor. The Commonwealth reserves the right, for good cause, to require that the Contractor remove a subcontractor from the project. The Commonwealth will not be responsible for any costs incurred by the Contractor in replacing the subcontractor if good cause exists.

19. ACCEPTANCE

No item(s) received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the item(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Commonwealth within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Commonwealth's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to the Commonwealth.

20. OTHER CONTRACTORS.

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

21. **ENHANCED MINIMUM WAGE.**

- a. **Enhanced Minimum Wage.** Contractor shall pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this contract/lease, and for an employee's hours performing ancillary services necessary for the performance of the services or lease when the employee spends at least 20% of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate will be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions do not apply to employees
 - i. Exempt from minimum wage under the Minimum Wage Act of 1968;
 - ii. covered by a collective bargaining agreement;
 - iii. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - iv. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** The Contractor shall: (1) post this Enhanced Minimum Wage Provision for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.

- e. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.
- g. **Subcontractors.** The Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contract or lease to ensure that these provisions are binding on its subcontractors.

22. COMPENSATION.

General. The Contractor shall be required to perform at the price(s) quoted in the Contract. All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and Services performed to the satisfaction of the Commonwealth.

Travel. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract. If not otherwise specified in the Contract, travel and related expenses shall be reimbursed in accordance with [Management Directive 230.10 Amended](#), *Commonwealth Travel Policy*, and [Manual 230.1](#), *Commonwealth Travel Procedures Manual*.

23. BILLING REQUIREMENTS.

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

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

24. PAYMENT.

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

25. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS.

Payment Method. The Commonwealth shall make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the contract or purchase order, the Contractor must submit or must have submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).

Unique Identifier. The Contractor must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Contractor's unique invoice number on its ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.

ACH Information in SRM. The Contractor shall ensure that the ACH information contained in SRM is accurate and complete. The Contractor's failure to maintain accurate and complete information may result in delays in payments.

26. 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.

27. DEFAULT.

The Commonwealth may, subject to the provisions of **Section 61, Force Majeure**, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in **Section 29, Termination**) the whole or any part of this Contract for any of the following reasons:

- (i) Failure to begin Services within the time specified in the Contract or as otherwise specified;
- (ii) Failure to perform the Services with sufficient labor, equipment, or material to insure the completion of the specified Services in accordance with the Contract terms;
- (iii) Unsatisfactory performance of the Services;
- (iv) Failure to meet requirements within the time periods(s) specified in the Contract;
- (v) Multiple failures over time of a single service level agreement or a pattern of failure over time of multiple service level agreements;
- (vi) Failure to provide a Supply or Service that conforms with the specifications referenced in the Contract;
- (vii) Failure or refusal to remove material, or remove, replace or correct any Supply rejected as defective or noncompliant;
- (viii) Discontinuance of Services without approval;
- (ix) Failure to resume a Service, which has been discontinued, within a reasonable time after notice to do so;
- (x) Insolvency;
- (xi) Assignment made for the benefit of creditors;
- (xii) Failure or refusal, within **10 days** after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due subcontractors for materials furnished, labor supplied or performed, for equipment rentals or for utility services rendered;
- (xiii) Failure to protect, repair or make good any damage or injury to property;

- (xiv) Breach of any provision of this Contract;
- (xv) Any breach by Contractor of the security standards or procedures of this Contract;
- (xvi) Failure to comply with representations made in the Contractor's Proposal;
or
- (xvii) Failure to comply with applicable industry standards, customs and practice.

28. CHANGES.

- (a) At any time during the performance of the Contract, the Commonwealth or the Contractor may request a change to the Contract. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If the Commonwealth is the requestor of the change, the Contractor will inform the Commonwealth of any charges for investigating the change request prior to incurring such charges. If the Commonwealth and the Contractor agree on the results of the investigation and any necessary changes to the Contract, the parties must complete and execute a change order to modify the Contract and implement the change. The change order will be evidenced by a writing in accordance with the Commonwealth's change order procedures. No work may begin on the change order until the Contractor has received the executed change order. If the parties are not able to agree upon the results of the investigation or the necessary changes to the Contract, a Commonwealth-initiated change request will be implemented at Commonwealth's option and the Contractor shall perform the Services; and either party may elect to have the matter treated as a dispute between the parties under **Section 30, Contract Controversies**. During the pendency of any such dispute, Commonwealth shall pay to Contractor any undisputed amounts.
- (b) Changes outside the scope of this Contract shall be accomplished through the Commonwealth's procurement procedures, and may result in an amended Contract or a new contract. No payment will be made for services outside of the scope of the Contract for which no amendment has been executed.

29. TERMINATION.

- (a) For Convenience.
 - (i) The Commonwealth may terminate the Contract, or a Purchase Order issued against the Contract, in whole or in part, without cause by giving Contractor **30 days'** prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such

termination shall be 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:

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

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

Failure to agree on any termination costs shall be a dispute handled in accordance with [Section 30, Contract Controversies](#), of this Contract.

- (ii) The Contractor shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such Services performed during the **30-day** notice period, if such Services are requested by the Commonwealth, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under this Contract.
 - (iii) The above shall not be deemed to limit the Commonwealth's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.
- (b) Non-Appropriation. Any payment obligation or portion thereof of the Commonwealth created by this Contract is conditioned upon the availability and appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance or full performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract in whole or in part. The Contractor shall be reimbursed in the same manner as that described in [subsection \(a\)](#) to the extent that appropriated funds are available.

- (c) Default. The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within **30 days**, or if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.
- (i) Subject to **Section 39, Limitation of Liability**, in the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection (c), the Commonwealth may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the Services and the actual and reasonable cost (but in no event greater than the fair market value) of prod
 - (ii) using 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.
 - (iii) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism and unusually severe weather. The Contractor shall notify the Contracting Officer promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.
 - (iv) Nothing in this subsection (c) shall abridge the Commonwealth's right to suspend, debar or take other administrative action against the Contractor.
 - (v) 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)**.
 - (vi) If this Contract is terminated as provided by this subsection (c), the Commonwealth may, in addition to any other rights provided in this subsection (c), and subject law and to other applicable provisions of this Contract, require the Contractor to deliver to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such Software, Data, Developed Works, Documentation and other materials as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated.

- (d) The rights and remedies of the Commonwealth provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- (e) The Commonwealth's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- (f) Following exhaustion of the Contractor's administrative remedies as set forth in **Section 30, Contract Controversies**, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

30. BACKGROUND CHECKS.

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

31. CONTRACT CONTROVERSIES.

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

32. CONFIDENTIALITY

1. The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under

this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration of this Contract). Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to the DEFAULT provision of this Contract, in addition to other remedies available to the non-breaching party.

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

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

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

(f) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

4. Submit the two documents along with the signed written statement to the Commonwealth.

33. SENSITIVE INFORMATION

The Contractor shall not publish or otherwise disclose, except to the Commonwealth and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any particular person or establishment can be identified, except with the consent of such person or establishment. 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.

Contractor will be responsible to remediate any improper disclosure of information. Such remediation may include, but 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. Costs for which Contractor is responsible under this paragraph are not subject to any limitation of liability set out in this Contract or Purchase Order.

34. DATA BREACH OR LOSS.

- (a) The Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the *Breach of Personal Information Notification Act*, as amended November 22, 2022, P.L. 2139, No. 151, 73 P.S. §§ 2301—2330. Further, to the extent the Contractor maintains, stores, or manages computerized data on behalf of the Commonwealth that constitutes personal information, as defined in the *Breach of Personal Information Notification Act*, the Contractor shall comply with the then current version of the following IT Policies (ITPs): *ITP-SEC019, Policy and Procedures for Protecting Commonwealth Electronic Data*; *ITP-SEC024, IT Security Incident Reporting Policy*; *ITP-SEC025, Proper Use and Disclosure of Personally Identifiable Information (PII)*; and *ITP-SEC031, Encryption Standards*.
- (b) For Data and Confidential Information in the possession, custody, and control of the Contractor or its employees, agents, and/or subcontractors:
- (i) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information (“Incident”) to the Commonwealth within **one (1) hour** of when the Contractor knows

of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such Data or Confidential Information.

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

35. INSURANCE.

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

insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for or Supplies provided to the Commonwealth.

- (b) Certificate of Insurance. Prior to commencing Services under the Contract, and annually thereafter, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been given to the Commonwealth. Such cancellation or change shall not relieve the Contractor of its continuing obligation to maintain insurance coverage in accordance with this section.
- (c) Insurance coverage length. The Contractor agrees to maintain such insurance for the latter of the life of the Contract, or the life of any Purchase Orders issued under the Contract.

36. CONTRACTOR RESPONSIBILITY.

- a. **Definition.** For the purpose of these provisions, the term “Contractor” means as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth. The term also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.
- b. **Contractor Representations.**
 - i. The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.
 - ii. The Contractor represents that as of the date of its execution of this contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

- c. **Notification.** The Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.
- d. **Default.** The Contractor's failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the contract with the Commonwealth.
- e. **Reimbursement.** The Contractor shall 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 contract or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not 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. **Suspension and Debarment List.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

37. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS.

The Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor, or its subsidiaries, owed to the Commonwealth against any payments due the Contractor under any contract between the Commonwealth and Contractor.

38. TAXES-FEDERAL, STATE AND LOCAL.

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

taxable services used or transferred in connection with the performance of a construction contract.

39. LIMITATION OF LIABILITY.

- (a) General. The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of **\$250,000** or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:
- (i) for bodily injury;
 - (ii) for death;
 - (iii) for gross negligence or intentional or willful misconduct;
 - (iv) for damage to real property or tangible personal property for which the Contractor is legally liable;
 - (v) under **Section 42, Patent, Copyright, Trademark and Trade Secret Protection**;
 - (vi) under **Section 33, Data Breach or Loss**; or
 - (vii) under **Section 41, Virus, Malicious, Mischievous or Destructive Programming**.
- (b) The Contractor will not be liable for consequential or incidental damages, except for damages as set forth in **paragraphs (a)(i)—(vii)** above, or as otherwise specified in the Contract.

40. INDEMNIFICATION

- g. **Contractor Obligations.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Contractor or its employees and agents that are related to this contract, as determined by the Commonwealth in its sole discretion.
- h. **Commonwealth Attorneys Act.** The Commonwealth shall provide the Contractor with prompt notice of any claim or suit of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 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 any 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.

- i. **Settlement.** Notwithstanding the above, neither party may enter into a settlement of any claim or suit without the other party's written consent, which will not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

41. SOVEREIGN IMMUNITY.

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

42. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING.

- (a) The Contractor shall be liable for any damages incurred by the Commonwealth if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Commonwealth's software or computer networks and has failed to comply with the Commonwealth software security standards. The Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.
- (b) The Contractor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).
- (c) In the event of destruction or modification of Software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages.
- (d) The Contractor shall be responsible for reviewing Commonwealth software security standards and complying with those standards.
- (e) The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the

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

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

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

- (a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, trademarks or trade dress, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG, however, in its sole discretion and under the terms it deems appropriate, may delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement that prevents the Commonwealth from continuing to use the Developed Works as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify

ceases. The Contractor, at its expense, will provide whatever cooperation OAG requests in the defense of the suit.

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

- (iii) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (g) Notwithstanding the above, the Contractor shall have no obligation for:
- (i) modification of any product, service, or deliverable provided by the Commonwealth;
 - (ii) any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
 - (iii) use of the product, service, or deliverable in other than its specified operating environment;
 - (iv) the combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
 - (v) infringement of a non-Contractor product alone;
 - (vi) the Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or
 - (vii) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.
- (h) The obligation to indemnify the Commonwealth, under the terms of this section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

44. CONTRACT CONSTRUCTION.

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

45. USE OF THIRD PARTY PROPERTY.

- (a) The Commonwealth acquires rights to the Contractor Property and Third Party Property as set forth in this Contract.
 - (i) Where the Contractor Property is integrated into the Supplies or Services which are not Developed Works), or the Contractor Property is otherwise

necessary for the Commonwealth to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor hereby grants to the Commonwealth a non-exclusive, fully-paid up, worldwide license to use the Contractor Property as necessary to meet the requirements of the Contract, including the rights to reproduce, distribute, publicly perform, display and create derivative works of the Contractor Property. These rights are granted for a duration and to an extent necessary to meet the requirements under this Contract. If the Contractor requires a separate license agreement, such license terms shall include the aforementioned rights, be acceptable to the Commonwealth and will be separately negotiated and executed between the Commonwealth and the Contractor.

- (ii) If Third Party Property is integrated into the Supplies or Services which are not Developed Works, or the Third Party Property is otherwise necessary for the Commonwealth to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor shall gain the written approval of the Commonwealth prior to the use of the Third Party Property or the integration of the Third Party Property into the Supplies or Services. Third Party Property approved by the Commonwealth is hereby licensed to the Commonwealth as necessary to meet the Contract requirements.
- (iii) If the Third Party requires a separate license agreement, the license terms shall be acceptable to the Commonwealth and will be separately negotiated and executed between the Commonwealth and the Third Party.
- (iv) If a Supply utilizes or includes third party software and other copyrighted material, any additional licensing terms, acknowledgements or disclaimers associated with the third-party software and materials shall not be applicable to the Commonwealth unless agreed to in writing. The parties agree that the Commonwealth, by acknowledging third-party software, does not agree to any terms and conditions of the third-party software agreements.

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

Unless the Solicitation specifies otherwise:

- (i) All Data must be stored within the United States;
- (ii) The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor's or its subcontractors' possession;

- (iii) All Data shall be provided to the Commonwealth upon request, in a form acceptable to the Commonwealth and at no cost;
- (iv) Any Data shall be destroyed by the Contractor at the Commonwealth's request;
- (v) Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy and accessibility requirements of this Contract; and
- (vi) The Contractor shall comply with the provisions set forth in **Exhibit B, Requirements for Non-Commonwealth Hosted Applications/Services**.

47. PUBLICATION RIGHTS AND/OR COPYRIGHTS.

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

48. CHANGE IN CONTRACTOR'S OWNERSHIP.

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

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

49. OFFICIALS NOT TO BENEFIT.

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

50. COMPLIANCE WITH LAWS.

- (a) The Contractor shall comply with all federal, state and local laws, regulations and policies applicable to its Services or Supplies, including, but not limited to, all statutes, regulations and rules that are in effect as of the Effective Date of the Contract and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation.
- (b) If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the Services or Supplies provided under this Contract, the Parties shall modify this Contract, via **Section 28, Changes**, to the extent reasonably necessary to:
 - (i) Ensure that such Services or Supplies will be in full compliance with such laws, regulations and policies; and
 - (ii) Modify the rates applicable to such Services or Supplies, unless otherwise indicated in the Solicitation.

51. THE AMERICANS WITH DISABILITIES ACT.

- a. **No Exclusion.** Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract.
- b. **Compliance.** For all goods and services provided pursuant to this contract, the Contractor shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.
- c. **Indemnification.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

52. EXAMINATION OF RECORDS.

- (a) The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under this Contract to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.
- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in [subsection \(c\)](#) below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by applicable laws or regulations, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in [Section 31, Confidentiality, Privacy and Compliance](#).
- (c) The Contractor shall preserve and make available its records for a period of **three (3) years** from the date of final payment under this Contract.
 - (i) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of **three (3) years** from the date of any resulting final settlement.
 - (ii) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.
- (d) Except for documentary evidence retained pursuant to [paragraph \(c\)\(ii\)](#) above, the Contractor may in fulfillment of its obligation to retain its records as required by this section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of **two (2) years** following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth with the concurrence of its auditors.
- (e) The provisions of this section shall be applicable to and included in each subcontract hereunder.

53. SINGLE AUDIT ACT OF 1984.

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

- (a) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in the most current version of *Government Auditing Standards* (Yellow Book).
- (b) The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, as amended, 31 U.S.C. § 7501, *et seq.*, and all rules and regulations promulgated pursuant to the Act.
- (c) The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
- (d) The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984*, as amended.

54. ADDITIONAL FEDERAL PROVISIONS.

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

55. ENVIRONMENTAL PROTECTION.

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

56. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE.

- (a) **Representations.** The Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the contract. The Contractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- (b) **Nondiscrimination/Sexual Harassment Obligations.** The Contractor shall not:

- (i) in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (“PHRA”) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
 - (ii) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this contract.
 - (iii) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this contract.
 - (iv) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which this contract relates.
 - (v) in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts’ enforcement and shall comply with any provision of law establishing organizations as employees’ exclusive representatives.
- (c) **Establishment of Contractor Policy.** The Contractor shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of the contract, the Contractor shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.
- (d) **Notification of Violations.** The Contractor’s obligations pursuant to these provisions are ongoing from the effective date and through the termination date of

the contract. Accordingly, the Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

- (e) **Cancellation or Termination of Contract.** The Commonwealth may cancel or terminate this contract and all money due or to become due under this contract may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.
- (f) **Subcontracts.** The Contractor shall include these Nondiscrimination/Sexual Harassment provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of these provisions in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by those provisions. If the Contractor becomes aware of a subcontractor's violation of this clause, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

57. CONTRACTOR INTEGRITY PROVISIONS.

- a. **Definitions.** For purposes of these Contractor Integrity Provisions, the following definitions apply:
 - i. "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - ii. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
 - iii. "Contractor Related Parties" means any Affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
 - iv. "Financial Interest" means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - v. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The

exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), as may be amended, 4 Pa. Code §7.153(b), apply.

- vi. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

b. Representations and Warranties.

- i. **Contractor Representation and Warranties.** The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:
 - 1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - 2. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 - 3. had any business license or professional license suspended or revoked;
 - 4. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - 5. been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.
- ii. **Contractor Explanation.** If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the contract.
- iii. **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
- iv. **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the

certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.

- b. **Contractor Responsibilities.** During the term of this contract, the Contractor shall:
- i. maintain the highest standards of honesty and integrity.
 - ii. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.
 - iii. establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
 - iv. not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable to the provision of goods or services under this contract.
 - v. not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest. The Contractor must disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.
 - vi. comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
 - vii. comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.
 - viii. immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the Contractor has reason to believe that any breach of ethical standards as set forth in law, the

Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.

- c. **Investigations.** If a State Inspector General investigation is initiated, the Contractor shall:
- i. reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
 - ii. cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions and make identified Contractor employees available for interviews at reasonable times and places.
 - iii. upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. This information may include, but is not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.
- d. **Termination.** For violation of any of these Contractor Integrity 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 Contractor Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does 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 contract.
- e. **Subcontracts.** The Contractor shall include these Contractor Integrity Provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of this provision in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Contractor becomes aware of a subcontractor's violation of these provisions,

the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

58. 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.

59. FORCE MAJEURE.

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

60. PUBLICITY/ADVERTISEMENT.

The Contractor shall not issue news releases, internet postings, advertisements, endorsements, or any other public communication without prior written approval of the Commonwealth, and then only in coordination with the Commonwealth. This includes the use of any trademark or logo.

61. NOTICE.

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

62. *RIGHT-TO-KNOW LAW.*

- (a) **Applicability.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this contract.
- (b) **Contractor Assistance.** If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Contractor that it requires the Contractor’s assistance, and the Contractor shall provide to the Commonwealth:
 - (i) access to, and copies of, any document or information in the Contractor’s possession (Requested Information) arising out of this contract that the Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and
 - (ii) any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this contract.
- (c) **Trade Secret or Confidential Proprietary Information.** If the Contractor considers the Requested Information to include a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Contractor, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth’s determination.
- (d) **Reimbursement.**
 - (i) **Commonwealth Reimbursement.** If the Contractor fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Contractor shall reimburse the Commonwealth

for any damages, penalties, or costs that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

- (ii) **Contractor Reimbursement.** The Commonwealth will reimburse the Contractor for any costs that the Contractor incurs as a direct result of complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL.
- (e) **Challenges of Commonwealth Release.** The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Contractor's legal challenge, regardless of the outcome.
- (f) **Waiver.** As between the parties, the Contractor waives all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- (g) **Survival.** The Contractor's obligations contained in this Section survive the termination or expiration of this contract.

63. APPLICABLE LAW AND FORUM

This contract is governed by and must be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in personam jurisdiction over the Contractor, and the Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the Commonwealth's rights or defenses.

64. CONTROLLING TERMS AND CONDITIONS.

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

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

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

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

66. WORKER PROTECTION AND INVESTMENT.

- A. The Contractor shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:
- B. Construction Workplace Misclassification Act;
- C. Employment of Minors Child Labor Act;
- D. Minimum Wage Act;
- E. Prevailing Wage Act;
- F. Equal Pay Law;
- G. Employer to Pay Employment Medical Examination Fee Act;
- H. Seasonal Farm Labor Act;
- I. Wage Payment and Collection Law;
- J. Industrial Homework Law;
- K. Construction Industry Employee Verification Act;
- L. Act 102: Prohibition on Excessive Overtime in Healthcare;
- M. Apprenticeship and Training Act; and
- N. Inspection of Employment Records Law.

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA SAMPLE BUSINESS ASSOCIATE AGREEMENT

Health Insurance Portability and Accountability Act (HIPAA) Compliance

WHEREAS, the [*name of program and/or Department*] (**Covered Entity**) and the **Contractor (Business Associate)**, intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191 (HIPAA), the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the *American Recovery and Reinvestment Act of 2009* (ARRA), as amended, Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, as amended, 42 C.F.R. §§ 431.301—431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), 35

P.S. § 7607, 50 Pa. C.S. § 7111, 71 P.S. § 1690.108(c), 62 P.S. § 404, 55 Pa. Code Chapter 105, 55 Pa. Code Chapter 5100, the Pennsylvania *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance; and

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

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

1. Definitions.

- (a) **“Business Associate”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.
- (b) **“Business Associate Agreement”** or **“BAA”** shall mean this Agreement.
- (c) **“Covered Entity”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.
- (d) **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, Pub. L. No. 104-191.
- (e) **“HITECH Act”** shall mean the Health Information Technology for Economic and Clinical Health (HITECH) Act, as amended, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).
- (f) **“Privacy Rule”** shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164, as amended, and related agency guidance.
- (g) **“Protected Health Information”** or **“PHI”** shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule (all as amended) and agency guidance.
- (h) **“Security Rule”** shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- (i) **“Underlying Agreement”** shall mean Contract/Purchase Order # _____.

- (j) **“Unsecured PHI”** shall mean PHI that is not secured through the use of a technology or methodology as specified in HITECH Act regulations, as amended, and agency guidance or as otherwise defined in the HITECH Act, as amended.

2. **Changes in Law.**

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

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

Except as otherwise limited in this BAA, Business Associate shall be permitted to use or disclose PHI provided by or obtained by or obtained on behalf of Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity which are specified in [Appendix A](#) to this BAA, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity. Business Associate agrees to make uses, disclosures and requests for PHI consistent with Covered Entity’s minimum policies and procedures.

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

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

5. **Business Associate Obligations.**

- (a) **Limits on Use and Further Disclosure Established by Business Associate Agreement and Law.** Business Associate hereby agrees that the PHI provided by, or created or obtained on behalf of, Covered Entity shall not be further used or disclosed other than as permitted or required by BAA or as required by law.
- (b) **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this BAA that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity as required by [Subpart C](#) of 45 CFR Part [164](#). Appropriate safeguards shall include but are not limited to implementing:
 - (i) administrative safeguards required by 45 CFR § [164.308](#);

- (ii) physical safeguards as required by 45 CFR § 164.310;
 - (iii) technical safeguards as required by 45 CFR § 164.312; and
 - (iv) policies and procedures and document requirements as required by 45 CFR § 164.316.
- (c) **Training and Guidance.** Business Associate shall provide annual training to relevant contractors, Subcontractors, employees, agents and representatives on how to prevent the improper use or disclosure of PHI. Business Associate shall also comply with annual guidance on the most effective and appropriate technical safeguards issued by the Secretary of Health and Human Services.
- (d) **Reports of Improper Use or Disclosure or Breach.** Business Associate hereby agrees that it shall notify the Covered Entity's Project Officer and the Covered Entity's Legal Office within **two (2) days** of discovery of any use or disclosure of PHI not provided for or allowed by this BAA, including breaches of unsecured PHI as required by 45 CFR § 164.410. Such notification shall be written and shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the improper use or disclosure or Breach. Business Associate shall furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 CFR § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. An improper use or disclosure or Breach shall be treated as discovered by the Business Associate on the **first day** on which it is known to the Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate to have occurred.
- (e) Business Associate agrees that if any of its employees, agents, contractors, subcontractors or representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information, Business Associate shall ensure that such employees, agents, contractors, subcontractors and representatives shall receive training on Business Associate's procedure for compliance with the HIPAA Rules. Business Associate Agrees that if any of its employees, agents, contractors, subcontractors or representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information in a manner not provided for in this BAA, Business Associate shall ensure that such employees, agents, contractors, subcontractors and representatives are sanctioned or prevented from accessing any PHI Business Associate receives from, or creates or receives on behalf of Covered Entity. Use or disclosure of PHI in a manner contrary to the terms of this BAA shall constitute a material breach of the Underlying Agreement.

- (f) **Contractors, Subcontractors, Agents and Representatives.** In accordance with 45 CFR § 164.502(e)(1)(ii) and 45 CFR § 164.308(b)(2), if applicable, ensure that any contractors, subcontractors, agents and representatives that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. The existence of any contractors, subcontractors, agents and representatives shall not change the obligations of Business Associate to the Covered Entity under this BAA.
- (g) **Reports of Security Incidents.** Business Associate hereby agrees that it shall notify, in writing, the Department's Project Officer within **two (2) days** of discovery of any Security Incident at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available.
- (h) **Right of Access to PHI.** Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within **10 business days** of receiving a written request from the Covered Entity or an authorized individual in accordance with the HIPAA Rules. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its contractors, subcontractors, agents or representatives, access to PHI, Business Associate shall notify Covered Entity of same within **five (5) business days**. Business Associate shall further conform with and meet all of the requirements of 45 CFR § 164.524.
- (i) **Amendment and Incorporation of Amendments.** Within **five (5) business days** of receiving a request from Covered Entity or from the individual for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available to the Covered Entity and incorporate the amendment to enable Covered Entity to comply with 45 CFR § 164.526. If any individual requests an amendment from Business Associate or its contractors, subcontractors, agents or representatives, Business Associate shall notify Covered Entity of same within **five (5) business days**.
- (j) **Provide Accounting of Disclosures.** Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 CFR § 164.528. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, the purpose of the disclosure, and shall include disclosures made on or after the date which is **six (6) years** prior to the request. Business Associate shall make such record available to the individual or the Covered Entity within **10 business days** of a request for an accounting of disclosures and in accordance with 45 CFR § 164.528.

- (k) **Access to Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, created or received by Business Associate on behalf of the Covered Entity, available to the Covered Entity and the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules.
- (l) **Return or Destruction of PHI.** At termination of this BAA, Business Associate hereby agrees to return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this BAA. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this BAA to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.
- (m) **Maintenance of PHI.** Notwithstanding [subsection 5\(l\)](#) of this BAA, Business Associate and its contractors, subcontractors, agents and representatives shall retain all PHI throughout the term of the Underlying Agreement and shall continue to maintain the information required under [subsection 5\(j\)](#) of this BAA for a period of **six (6) years** after termination of the Underlying Agreement, unless Covered Entity and Business Associate agree otherwise.
- (n) **Mitigation Procedures.** Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this BAA or the HIPAA Rules. Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this BAA or the Privacy Rule.
- (o) **Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any contractor, Subcontractor, employee, agent and representative who violates this BAA or the HIPAA Rules.
- (p) **Application of Civil and Criminal Penalties.** All Civil and Criminal Penalties under the HIPAA Rules shall apply to Business Associate's violation of any provision contained in the HIPAA Rules.
- (q) **Breach Notification.** Business Associate shall comply with the Breach notification requirements of 45 CFR [Part 164](#). In the event of a Breach requiring indemnification in accordance with [subsection 5\(v\)](#), below, Covered Entity may elect to directly comply with Breach notification requirements or require Business Associate to comply with all Breach notifications requirements of 45 CFR [Part 164](#) on behalf of Covered Entity. If Covered Entity requires Business Associate to comply with Breach notification requirements, Business Associate shall provide

Covered Entity with a detailed weekly, written report, starting one week following discovery of the Breach. The report shall include, at a minimum, Business Associate's progress regarding Breach notification and mitigation of the Breach. If Covered Entity elects to directly meet the requirements of 45 CFR [Part 164](#), Business Associate shall be financially responsible to Covered Entity for all resulting costs and fees incurred by Covered Entity, including, but not limited to, labor, materials, or supplies. Covered Entity may at its sole option:

- (i) Offset amounts otherwise due and payable to Business Associate under the Underlying Agreement; or
- (ii) Seek reimbursement of or direct payment to a third party of Covered Entity's costs and fees incurred under this subsection.

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

- (r) **Grounds for Breach.** Any non-compliance by Business Associate with this BAA or the HIPAA Rules will automatically be considered to be a breach of the Underlying Agreement.
- (s) **Termination by Commonwealth.** Business Associate authorizes termination of this BAA or Underlying Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion that the Business Associate has violated a material term of this BAA.
- (t) **Failure to Perform Obligations.** In the event Business Associate including its contractors, Subcontractors, agents and representatives fails, to perform its obligations under this BAA, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this BAA and applicable law.
- (u) **Privacy Practices.** The Covered Entity will provide, and Business Associate shall immediately begin using and/or distributing to clients, any applicable form, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date of this BAA, or as otherwise designated by the Program or Covered Entity. The Covered Entity retains the right to change the applicable privacy practices, documents and forms. The Business Associate shall implement changes as soon as practicable, but not later than **45 days** from the date of notice of the change.

- (v) **Indemnification.** Business Associate shall indemnify, defend and hold harmless Covered Entity from and all claims and actions, whether in law or equity, resulting from Business Associate's Breach or other violation of the HIPAA Rules (this includes but is not limited to Breach and violations by Business Associate's contractors, subcontractors, employees, agents and representatives). Additionally, Business Associate shall reimburse Covered Entity for any civil monetary penalties imposed on Covered Entity as a result of a Breach or violation cognizable under this [subsection 5\(v\)](#).

6. **Obligations of Covered Entity.**

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

7. **Survival.**

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

**Appendix A to Exhibit A,
Commonwealth of Pennsylvania Business Associate Agreement**

**Permitted Purposes for the Creation, Receipt, Maintenance, Transmission, Use and/or
Disclosure of Protected Health Information**

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

Requirements for Non-Commonwealth Hosted Applications and/or Services

The purpose of this Attachment is to define requirements for business or technology solutions and services procured by the Commonwealth that are hosted within the Service Organization (Licensor's) or its Subservice Organization(s) (subcontractors) managed infrastructure. Any reference to Licensor below applies to Licensor and its subcontractors.

A. Hosting Requirements

1. The Licensor shall supply and maintain all hosting equipment (hardware and software) required for the delivery of the computing services.
2. The Licensor shall provide secure access to users leveraging the principle of least privilege and delegating administration to the Commonwealth where possible.
3. The Licensor shall use commercially reasonable resources and efforts to maintain adequate network bandwidth and server capacity to meet expected service levels.
4. The Licensor shall maintain all components of the Licensor hosted solution with commercially reasonable support and replace as necessary to maintain compliance.
5. The Licensor shall monitor, prevent, and deter unauthorized system access. The Licensor shall use all commercially reasonable methods to confirm suspected breaches. In the event of any impermissible disclosure, unauthorized loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure of such Confidential Information. The Licensor shall provide the Commonwealth with any requested logs, reports, and other information concerning unauthorized access or disclosure of Commonwealth data, including any mitigation efforts by Licensor. Any such information provided by Licensor shall be treated as confidential. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the Licensor shall comply with state and federal data breach notification statutes and regulations, and shall report security incidents to the Commonwealth within **one (1) hour** of when the Licensor has reasonable confirmation of such unauthorized access, use, release, or disclosure of data.
6. In the event the Licensor is not in compliance with **Section B System and Organization Controls (SOC) Reporting Requirements** relating to the hosted system's data center locations and security architecture, the Licensor shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, and with at least **ten (10) business days'** notice, to review the hosted system's data center locations and security architecture.

7. The Licensor's employees or subcontractors, who are directly responsible for day-to-day monitoring and maintenance of the hosted system, shall have industry standard certifications applicable to the environment and system architecture used.
8. The Licensor shall house all servers and equipment in an operational environment that meets industry standards including, but not limited to, climate control, fire and security hazard detection and response, electrical needs, and physical security.
9. The Licensor shall examine applicable system and error logs, which should include, but not be limited to, security events. Such logs shall be examined on a continual basis, at least daily, to minimize and predict system problems and initiate appropriate action.
10. The Licensor shall update and patch all applicable systems and third-party software security configurations to reduce security risk in alignment with industry best practices beginning prior to service release and on an ongoing basis.
11. During the term of the contract, the Licensor shall provide or make available all Commonwealth data to the Commonwealth, at no cost and upon request in a format and method agreeable to both parties. If the parties are unable to reach an agreement regarding format or method, data shall be provided in an industry standard format and method.

B. System and Organization Controls (SOC) Reporting Requirements

1. Subject to this section and unless otherwise agreed to in writing by the Commonwealth, the Licensor shall, and shall require its subcontractors to, engage, on an annual basis, a CPA certified third-party auditing firm to conduct the following, as applicable:
 - (i) a SOC 1 Type II report with respect to controls used by the Licensor relevant to internal and external procedures and systems that process Commonwealth financial transactions; and
 - (ii) a SOC 2 Type II report with respect to controls used by the Licensor relevant to internal and external procedures and systems that access, process, host or contain Commonwealth Data designated as Class "C" Classified Records or Closed Records, as defined in ITP-SEC019, or in compliance with mandates by federal or state audit requirements and/or policy.

The Licensor shall receive and review their subcontractor's relevant SOC reports, and the Licensor shall provide the Commonwealth with a Letter of Attestation that includes an analysis of their subcontractor's SOC report.

2. Unless otherwise agreed to in writing by the Commonwealth, the Licensor's SOC Report(s) shall be provided upon contract execution and annually thereafter. While it is preferable that SOC Reports coincide with Pennsylvania's fiscal year (July 1 through June 30), SOC Reports, at the very least, must cover at least **6 consecutive months** of Pennsylvania's fiscal year.
3. SOC 2 Type II reports shall address the following:
 - (i) Security of Information and Systems;
 - (ii) Availability of Information and Systems;
 - (iii) Processing Integrity;
 - (iv) Confidentiality; and
 - (v) Privacy.
4. At the request of the Commonwealth and at Licensor's expense, the Licensor shall, and shall require its subcontractors, as applicable, to complete a SOC for Cybersecurity audit in the event:
 - (i) Reoccurring findings in any SOC report required by subsection 1 above; or
 - (ii) A cybersecurity incident or breach that impacts the Commonwealth has occurred and was not handled in accordance with Licensor's Incident Response Plan (IRP) including, but not limited to, providing timely notice to the Commonwealth as required by Contract or applicable law; or
 - (iii) As agreed upon by the parties.

The SOC for Cybersecurity report shall detail the controls used by the Licensor or its subcontractor setting forth the description and effectiveness of the Licensor's or subcontractor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

The Licensor shall provide to the Commonwealth a report of the SOC for Cybersecurity audit findings within **60 days** of its completion.
5. Additional standards, certifications or audits as required by law shall be supported by Licensor as mutually agreed upon in writing by the parties.
6. The Licensor shall adhere to the then current American Institute of Certified Public Accountants (AICPA) audit standards. The Licensor acknowledges that the AICPA guidance may be updated during the Term of this Contract, and the Licensor shall comply with such updates, which shall be reflected in the next annual SOC report.

7. In the event an audit reveals any non-conformity within Licensor's SOC Reports, the Licensor shall provide the Commonwealth, within **45 days** of the issuance of the SOC report, a documented corrective action plan that addresses each non-conformity that is identified within the SOC report, including any subcontractor's SOC report. The corrective action plan shall provide, in detail:
 - (i) clear responsibilities of the personnel designated to resolve the non-conformity;
 - (ii) the remedial action to be taken by the Licensor or its subcontractor(s);
 - (iii) the dates when each remedial action is to be implemented; and
 - (iv) a summary of potential risks or impacts to the Commonwealth that are associated with the non-conformity(ies).
8. The Commonwealth may in its sole discretion agree, in writing, to accept alternative security report in lieu of a SOC report.

C. Security Requirements

1. The Licensor shall conduct a third-party independent security/vulnerability assessment at its own expense no less frequently than on an annual basis.
2. The Licensor shall provide, at minimum, an executive summary of vulnerability assessment results to the Commonwealth upon request. Summary shall include, at minimum, scan date, identified vulnerabilities, severity classification, and remediation status.
 - (a)
3. The Licensor shall remediate any security/vulnerability assessment findings to align with the industry standards.
4. The Licensor shall use industry best practices to protect access to the system with a firewall and firewall rules to prevent access by non-authorized users and block all improper and unauthorized access attempts.
 - (b)
5. The Licensor shall use industry best practices to secure access to public web interfaces, which shall include, but is not limited to, web application firewall (WAF) for services that handle non-public Commonwealth records.
6. The Licensor shall use industry best practices to provide applicable system intrusion detection and prevention in order to detect intrusions in a timely manner.
7. The Licensor shall use industry best practices, such as those outlined in NIST 800-83, to provide appropriate exploit and malware controls, on all servers, endpoints, and network components.

8. The Licensor shall provide access to provided systems and services and/or Commonwealth data only to staff located within CONUS (any of the Continental United States and Hawaii). Access shall be based on the principle of least privilege.
9. The Licensor shall provide the services using security technologies and techniques in accordance with industry best practices including, but not limited to, the prevention and detection of intrusions, and any other inappropriate use or access of systems and networks.
 - (c)
10. The Licensor shall provide the Commonwealth with access to audit logs with respect to the services being provided to the Commonwealth within 24 hours of a written request from the Commonwealth's Enterprise Information Security Office.

D. Data Protection

1. The Licensor shall only host, handle, and process data in physical locations within CONUS.
2. The Licensor shall use industry best practices to protect their operational systems with applicable anti-virus, intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.
3. The Licensor shall be solely responsible for applicable data storage required.
4. The Licensor shall encrypt all Commonwealth data in transit and at rest. The Licensor's method of data encryption shall meet or exceed National Institute Standards and Technology (NIST) encryption guidelines and standards in alignment with Commonwealth ITPs.
5. The Licensor shall take all commercially viable and appropriate measures to protect the data availability including, but not limited to, real-time replication, traditional backup, and/or georedundant storage of Commonwealth data in accordance with industry best practices and encryption techniques.
6. The Licensor shall have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, to protect that data particularly in instances where such critical or sensitive data may be stored on a Licensor-controlled or Licensor-owned electronic device.
7. The Licensor shall utilize a secured backup solution to prevent loss of data. Stored backups must be kept in an all-hazards protective storage environment at the

primary location and any additional locations where the data is being maintained. All back up data and media shall be encrypted.

E. Adherence to Policy

1. The Licensor support and problem resolution solution shall provide a means to classify problems as to criticality and impact and with appropriate resolution procedures and escalation process for classification of each problem.
2. The Licensor shall abide by the Commonwealth's Information Technology Policies (<https://www.oa.pa.gov/Policies/Pages/itp.aspx>) that are applicable to the products and services provided, as set forth within the responsibilities section of each ITP. A non-exhaustive list of ITPs with Licensor responsibilities is included below in Attachment 1.
3. The Licensor shall comply with all pertinent federal and state regulations and laws, including but not limited to, data protections, data security, privacy, and data breach notification.

F. Closeout

When the purchase order's or other procurement document's term expires or terminates, and a new purchase order or other procurement document has not been issued by a Commonwealth Agency within **60 days** of expiration or termination, or at any other time at the written request of the Commonwealth, the Licensor must promptly return to the Commonwealth all Commonwealth's data (and all copies of this information) that is in the Licensor's possession or control. The Commonwealth's data shall be returned in a format agreed to by the Commonwealth.

Upon confirmation that Commonwealth data is in possession or control of the Commonwealth, the Licensor shall ensure all residual user account(s) are promptly deleted or reset in the solution. The Licensor shall notify the Commonwealth within **10 business days** that all user account(s) have been deleted or reset.

67. ATTACHMENT 1

**Information Technology Policies (ITPs) for
Outsourced/Licensor(s)-hosted Solutions**

ITP Number and Name	ITP Link
ITP_ACC001 - Accessibility Policy	https://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf
ITP_BUS010 - Business Process Management	https://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf
ITP_BUS012 - AI General Policy	https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf
ITP_BUSFM013 - Software Asset Management	https://www.oa.pa.gov/Policies/Documents/rfd_busfm013b.pdf
ITP_BUS014 - Public Generative AI	https://www.oa.pa.gov/Policies/Documents/itp_bus014.pdf
ITP_INF000 - Data and Information Management	https://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf
ITP_INF001 - Database Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf
ITP_INF003 - Data Modeling Standards	https://www.oa.pa.gov/Policies/Documents/itp_inf003.pdf
ITP_INF004 - Data Warehouse Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf004.pdf
ITP_INF006 - Commonwealth County Code Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf
ITP_INF009 - e-Discovery Technology Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf
ITP_INF010 - Business Intelligence Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf
ITP_INF011 - Business Intelligence Reporting	https://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf
ITP_INF012 - Business Intelligence Dashboard	https://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf
ITP_INF015 - Identifying, Classifying, and Categorizing Data	https://www.oa.pa.gov/Policies/Documents/itp_inf015.pdf
ITP_INFRM001 - Life Cycle of Records	https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf
ITP_INFRM004 - Management of Web Records	https://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf
ITP_INFRM005 - System Design Review of Electronic Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf
ITP_INFRM006 - Electronic Document Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf
ITP_INT001 - Message Oriented Middleware	https://www.oa.pa.gov/Policies/Documents/itp_int001.pdf
ITP_INT002 - Electronic Commerce Formats and Standards	https://www.oa.pa.gov/Policies/Documents/itp_int002.pdf
ITP_INT003 - Electronic Commerce Interfaces	https://www.oa.pa.gov/Policies/Documents/itp_int003.pdf
ITP_INT006 - Business Engine Rules	https://www.oa.pa.gov/Policies/Documents/itp_int006.pdf
ITP_NET001 - Wireless LAN Technology	https://www.oa.pa.gov/Policies/Documents/itp_net001.pdf
ITP_NET002 - Network Router and Switch Technology Standards	https://www.oa.pa.gov/Policies/Documents/itp_net002.pdf
ITP_NET004 - Internet Protocol Address Standards	https://www.oa.pa.gov/Policies/Documents/itp_net004.pdf
ITP_NET008 - Telecommunications Services for Commonwealth Business Partners	https://www.oa.pa.gov/Policies/Documents/itp_net008.pdf
ITP_NET017 - Network Timing Protocol	https://www.oa.pa.gov/Policies/Documents/itp_net017.pdf
ITP_NET018 - Commonwealth Metropolitan Area Network (MAN) and Internet Access	https://www.oa.pa.gov/Policies/Documents/itp_net018.pdf
ITP_PLT005 - Server Operating System Policy	https://www.oa.pa.gov/Policies/Documents/itp_plt005.pdf

*Exhibit B, Attachment 1, Information Technology Policies (ITPs) for
Outsourced/Licensor(s)-hosted Solutions*

ITP_PLT017 - Desktop and Laptop Operating System Standards	https://www.oa.pa.gov/Policies/Documents/itp_plt017.pdf
ITP_PLT018 - PA Centralized Email Policy	https://www.oa.pa.gov/Policies/Documents/itp_plt018.pdf
ITP_PLT019 - Web Server/Application Server Standards	https://www.oa.pa.gov/Policies/Documents/itp_plt019.pdf
ITP_SEC000 - Information Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf
ITP_SEC001 - Enterprise Host Security Software	https://www.oa.pa.gov/Policies/Documents/itp_sec001.pdf
ITP_SEC003 - Enterprise Security Auditing and Monitoring	https://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf
ITP_SEC004 - Enterprise Web Application Firewall	https://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf
ITP_SEC005 - Commonwealth Application Certification and Accreditation	https://www.oa.pa.gov/Policies/Documents/itp_sec005.pdf
ITP_SEC007 - Minimum Standards for IDs, Passwords and Multi-Factor Authentication	https://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf
ITP_SEC009 - Contractor Background Checks	https://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf
ITP_SEC010 - Virtual Private Network Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf
ITP_SEC015 - Data Cleansing	https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf
ITP_SEC016 - Information Security Officer Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec016.pdf
ITP_SEC017 - Credit Card Use for e-Government	https://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf
ITP_SEC019 - Protecting PA Electronic Data	https://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf
ITP_SEC021 - Security Information and Event Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf
ITP_SEC023 - Information Technology Security Assessment and Testing Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf
ITP_SEC024 - IT Security Incident Reporting Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf
ITP_SEC025 - Proper Use and Disclosure of PII	https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf
ITP_SEC029 - Physical Security Policy for IT Resources	https://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf
ITP_SEC031 - Encryption Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf
ITP_SEC032 - Enterprise Data Loss Prevention (DLP) Compliance Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf
ITP_SEC034 - Enterprise Firewall Rule Set	https://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf
ITP_SEC035 - Mobile Device Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec035.pdf
ITP_SEC038 - PA Data Center Privileged User IAM	https://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf
ITP_SEC039 - Keystone Login and Identity Proofing	https://www.oa.pa.gov/Policies/Documents/itp_sec039.pdf
ITP_SEC040 - Computing Services Provided by Service Organizations	https://www.oa.pa.gov/Policies/Documents/itp_sec040.pdf
ITP_SEC041 - IT Resources Patching	https://www.oa.pa.gov/Policies/Documents/itp_sec041.pdf
ITP_SFT002 - PA Website Standards	https://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf
ITP_SFT004 - Geospatial Information Systems (GIS)	https://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf
ITP_SFT005 - Managed File Transfer (MFT)	https://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf
ITP_SFT006 - Internet Browser Policy	https://www.oa.pa.gov/Policies/Documents/itp_sft006.pdf
ITP_SFT009 - Application Development	https://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf
ITP_SYM008 - Server Virtualization Policy	https://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf

Exhibit B, Attachment 1, Information Technology Policies (ITPs) for Outsourced/Licensors(s)-hosted Solutions

ITP_SYM010 - Enterprise Services Maintenance Scheduling	https://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf
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