

**CONTRACT TERMS AND CONDITIONS**  
**IFB 6100059833**

**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 Enterprise Software and Related 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 III of this Exhibit A.

**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**

## **EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS**

- 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 Schedule**

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. Alternatives**

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**

- a. 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).
- b. 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

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

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.
- c. 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.
- d. 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.
- e. 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 & 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.

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- 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 Certificate & 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 & 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**

It is the intent of the Commonwealth to make a single award of each Original Equipment Manufacturer (OEM) listed in APPENDIX A, MANUFACTURE DISCOUNT PRICE LIST, to the lowest responsive and responsible bidders. The same bidder is permitted to win each OEM. 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.

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### **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. Term of Contract & Commencement of Performance.**

- (a) The initial term of the Contract shall be **five** years, commencing on the Effective Date (as defined below) and ending on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.
- (b) 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.
- (c) 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.

### **2. 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.

### **3. 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.

#### **4. Renewal of Contract Term.**

The Contract may be mutually renewed for a maximum of 5 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 90 days prior to the expiration of the term of the Contract, or any extension thereof, and the Contractor consents to the renewal not less than 60 days prior to the expiration of the term of the Contract 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

#### **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. Definitions.**

As used in this Contract, these words shall have the following meanings:

Agency or Purchasing Agency. The department, board, commission or other agency of the Commonwealth listed as the purchasing agency and acting on behalf of the Commonwealth. . If a COSTARS entity or external procurement activity has issued an order against this Contract, that entity shall also be identified as "Agency."Commonwealth. The Commonwealth of Pennsylvania and its Agencies.

##### **(a) Confidential Information.**

- (i) Any information the disclosing party directly or indirectly discloses to the receiving party in accordance with this Contract, including: (i) any document, Data or other information the disclosing party designates or has designated as "private," "proprietary", "confidential", "confidential proprietary information" or a "trade secret" ; (ii) proprietary methodologies, techniques, marketing plans and tools of the disclosing party; (iii) information that, under the circumstances surrounding disclosure, a reasonable person would believe ought to be treated as confidential; and (iv) Sensitive Information. Such "Confidential Information" may be furnished or observable in any tangible or intangible form, including written or printed documents, visual demonstrations, computer disks, or tapes, other electronic media and oral communication.
- (ii) All Commonwealth Property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the

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Commonwealth pursuant to this Contract shall be considered Confidential Information.

- (b) Contract. The integrated documents as defined in Section 8, Order of Precedence of the Participating Addendum.
- (c) Contracting Officer or Contract Manager. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- (d) Contractor. The party executing this Contract to provide Services, Supplies or both to the Commonwealth pursuant to this Contract.
- (e) COSTARS. The Commonwealth's cooperative purchasing program that serves as a conduit through which registered and eligible local public procurement units and state-affiliated entities are able to leverage contracts established by DGS to cost effectively and efficiently identify suppliers with whom to do business.
- (f) COSTARS Members. Local public procurement units and state-affiliated entities authorized by the Solicitation to participate in the Contract in accordance with Chapter 19 of the *Commonwealth Procurement Code*, [62 Pa. C. S. Chapter 19](#).
- (g) Data. Any recorded information, regardless of the form, the media on which it is recorded or the method of recording.
- (h) Days. Calendar days, unless specifically indicated otherwise.
- (i) Developed Works or Developed Materials. All of the fully or partially complete property, whether tangible or intangible prepared by the Contractor for ownership by the Commonwealth in fulfillment of the requirements of this Contract, including, but not limited to, documents, sketches, drawings, designs, works, papers, files, reports, computer programs, documentation, data, records, software, source code, samples, literary works and other works of authorship.
- (j) 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 or other machine-readable storage media.
- (k) Effective Date. (a) the Effective Date printed on the Contract after the Contract has been fully executed by the Contractor and the Commonwealth (signed and approved as required by Commonwealth contracting procedures); or (b) the "Valid from" date printed on the Contract, whichever is later.

- (l) Expiration Date. The last valid date of this Contract, as indicated in the Contract documents to which these Terms are attached.
- (m) Purchase Order. Written authorization for the Contractor to proceed to furnish Supplies or Services.
- (n) Reseller Services. All Contractor activity necessary to satisfy the Contract, including, but not limited to, resale of licensed Software and Services; pre-sales assistance; license administration; order fulfillment; and Contractor management of Software and Services.
- (o) Sensitive Information. A subcategory of Confidential Information of the Commonwealth and shall include, regardless of whether marked or identified by the Commonwealth as confidential:
  - (i) information related to the design or implementation of the Commonwealth's technology and security infrastructure and architecture;
  - (ii) passwords, encryption keys, and other cyber security control design information;
  - (iii) consumer information;
  - (iv) employee information;
  - (v) information that is either nonpublic personal information or personally identifiable information, including, without limitation, names, addresses, telephone numbers, fax numbers, electronic mail addresses, web universal resource locators (URLs), Internet Protocol (IP) addresses, vehicle identifiers, account numbers, birthdates, social security numbers, individual likeness or images, fingerprint or biometric data, genetic information, demographic, financial and transactional information, and any other information that is deemed to be nonpublic personal information or personally identifiable information under federal and state law including, but not limited, to Title V of the Gramm-Leach-Bliley Act, Section 628 of the Fair Credit Reporting Act, Section 216 of the Fair and Accurate Credit Transactions Act, the Children's Online Privacy Protection Act, and any implementing regulations, guidelines and Commonwealth Policies adopted under any of these or other related laws;
  - (vi) Payment Card Industry Information (PCI);
  - (vii) all medical records and information relating to medical records, including, without limitation, all medical record numbers, health plan beneficiary numbers, dates of admission, account numbers, and certificate/license numbers and any other information that is protected by the Health Insurance Portability and Accountability Act (HIPAA); and

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- (viii) any other information protected under applicable privacy or data security laws or regulations.
- (p) Services. All Contractor activity necessary to satisfy the Contract.
- (q) Service Level Agreements. The metrics by which Services are measured, setting forth the expectation of quality of the services and any remedies or penalties in the event that such expectations are not met.
- (r) Software. A type of Supply. 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). The term includes, but is not limited to, commercially available licensed Software, Software packaged with hardware as an appliance, Software subscriptions and Software-as-a-Service.
- (s) Software-as-a-Service (SaaS). Applications provided to the customer and running on a Third Party's infrastructure ("cloud infrastructure"). The applications are accessible from a variety of client devices through a thin client interface, e.g., a Web browser or a program interface. The customer does not manage the cloud infrastructure or application capabilities, with the exception of limited user-specific application configuration settings.
- (t) Software Licensor (or Software Publisher). An entity that sells Software licenses, subscriptions, or Software Services through the Contractor and enters into a Software license agreement directly with the Commonwealth.
- (u) Software Services. All Software Licensor activity necessary to satisfy a Statement of Work, including, but not limited to, configuration; customization; documentation; implementation; installation; maintenance and support.
- (v) Solicitation. A document issued by the Commonwealth to procure Services or Supplies, e.g., Request for Proposal; Request for Quotation; Supplier Pricing Request; or Invitation for Bid, including all attachments and addenda thereto.
- (w) Statement of Work: A document attached to a Purchase Order from the Contractor which details the Software Services which will be provided by a Software Licensor.
- (x) Supplies. All tangible and intangible property including, but not limited to, materials, Software, Developed Works and equipment provided by the Contractor to satisfy the Contract.
- (y) Terms. These Standard Contract Terms and Conditions for IT Supplies and Related Services.

- (z) Third Party. A party that is not party to this Contract, including but not limited to, a party that licenses its property to the Contractor for use under this Contract.
- (aa) Third Party Property. Property licensed by the Contractor or Commonwealth for use in its work under this Contract.

## **7. Purchase Orders.**

- (a) Purchase Orders. An Agency may issue Purchase Orders against the Contract or issue a stand-alone Purchase Order that incorporates these terms and conditions. In addition, and if permitted in the Solicitation, COSTAR Members may issue a Purchase Order against this Contract in accordance with Chapter 19 of the Pennsylvania Procurement Code. These Purchase Orders constitute the Contractor's authority to provide Services or deliver Supplies. 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 may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Agency shall provide the agency name, employee name, credit card number and expiration date of the card. The Contractor agrees to accept payment through use of a Commonwealth Purchasing card.

## **8. Independent Prime 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. The Contractor will be responsible for all Services in this Contract whether or not the 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.

## **9. Delivery.**

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- (a) Software and other Supplies Delivery. All Software and other Supplies shall be delivered F.O.B. Destination. The Contractor shall work with the Agency to provide Software via any method available and as requested by the Agency including, but not limited to, compact disc (CD); electronic download; original Software Licensor media; etc. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract or a Purchase Order, delivery must be made within **10 days** after a Purchase Order is issued to the Contractor.
- (b) Delivery of Reseller Services. The Contractor shall proceed with all due diligence in the performance of the Reseller Services with qualified personnel, in accordance with the completion criteria set forth in the Contract.
- (c) Delivery of Software Services. Software Services shall be performed by the Software Licensor (including its subcontractors, agents, etc. as approved by the Commonwealth) in accordance with the applicable Software/Services License Requirements Agreement between the Commonwealth and the Software Licensor, and the Statement of Work attached to a Purchase Order from the Contractor.
- (d) Software Delivered via Download. The Contractor shall permit downloaded software to be returned with no additional fees up to **30 days** from the date of download, if allowed by the Software Licensor, provided that the Commonwealth provides any certifications required by the Software Licensor concerning the Commonwealth of the Software. If the Software Licensor has a shorter timeframe for returns or requires additional fees, the Contractor shall state this on the quote.

### **10. Commonwealth Software License Audits**

- (a) The Agency shall maintain, and promptly provide to the Contractor upon request, accurate records regarding use of Software licensed by the Agency. If the Agency becomes aware of unauthorized use of all or any part of such Software, the Agency shall notify the Contractor promptly, providing reasonable details. The limit of the Commonwealth's responsibility for use of the Software by more individuals than are permitted by the licensing terms applicable to the Software shall be to purchase additional licenses for such Software.
- (b) The Agency shall perform a self-audit upon the request of the Contractor, which request may not occur more often than annually, and report any change in user count (hereinafter "True up number"). The Agency shall notify the Contractor of the True up number no later than 45 calendar days after the request for the self-audit. If the user count has

increased, the Agency shall make an additional purchase of the Software which is equivalent to the additional users. This section sets out the sole software license audit right under this Agreement.

#### **10. Estimated Quantities.**

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 the Commonwealth, in accepting any bid/proposal or portion thereof, 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 the Commonwealth deems it to be in its best interest.

#### **11. Prior Notice.**

The Contractor is required to notify the Commonwealth delivery location when shipment is to be made in order that a Commonwealth representative may be present to receive the item(s) when they are delivered.

#### **12. Warranties.**

- (a) Unless the Contractor or its Affiliates is the manufacturer of the Software or other Supplies purchased by the Commonwealth hereunder, the warranties offered are those of the manufacturer, not the Contractor or its Affiliates. In purchasing the Software or other Supplies, the Commonwealth is relying on the manufacturer's specifications and is not relying on any statements, specifications, photographs or other illustrations representing the Software or other Supplies that may be provided by the Contractor or its Affiliates unless such Software or other Supplies are manufactured by the Contractor or its Affiliates. For Software or other Supplies not manufactured by the Contractor or its Affiliates, the Contractor AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO SOFTWARE AND OTHER SUPPLIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY.
- (b) The Contractor hereby represents and warrants to the Commonwealth that the Contractor will not knowingly cause or take any action that, directly, may cause a disruption of the Commonwealth's operations.

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

- (c) The Contractor warrants that it has the necessary legal rights, including licenses to Third Party products, tools or materials, to perform the Reseller Services and deliver the Software and Developed Works under this Contract.
- (d) EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT, THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (e) All warranties shall survive final acceptance.

### 13. Patent, Copyright, Trademark and Trade Secret Protection.

- (a) Contractor's Indemnification Obligations. The Contractor shall indemnify, hold harmless and defend, if requested, the Commonwealth from any suit or proceeding which may be brought by a Third Party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, and in any such suit or proceeding will satisfy any final award for such infringement, including costs.
- (b) Settlement; Defense; and Negotiations. The indemnity, defense and negotiations under this section shall be in accordance with the [Indemnification provision of this Contract](#).
- (c) Due Diligence by Contractor. 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 Supplies, Services and Documentation provided under this Contract do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that Supplies, Services and Documentation provided to the Commonwealth under this Contract shall be free and clear from all claims of any nature.
- (d) Remedies for Infringement or Likely Infringement. If the Supplies, Services and Documentation are determined to be infringing or in the Contractor's opinion the Supplies, Services and Documentation furnished pursuant to this Contract are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, without diminishing the Contractor's obligations to indemnify, hold harmless or defend the Commonwealth, the Contractor may, at its option and expense:
  - (e) substitute functional equivalents for the alleged infringing Supplies, Services and Documentation;



- (f) obtain the rights for the Commonwealth to continue the use of such Supplies, Services and Documentation; or
- (g) modify them so that they are no longer infringing and are functional equivalents.
- (h) Alternatives If Unable to Remedy. If the Contractor is unable to provide any of the remedies as set forth in subsection (d) above, 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 Supplies, Services or Documentation;
  - (ii) any license fee less an amount for the period of usage of any Supplies Services or Documentation; and
  - (iii) the prorated portion of any fees representing the time remaining in any period of Services for which payment was made.
- (i) Obligations Alleviated. The Contractor shall have no obligation under this section for claims that arise from”
  - (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 Supplies, Services or Documentation in an operating environment other than as expressly specified by the Contractor, if any;
  - (iv) the combination, operation, or use of the Supplies, Services or Documentation with other products, services, data, apparatus or deliverables expressly prohibited by the Contractor;
  - (v) the Commonwealth’s distribution, marketing or use of the Supplies, Services or Documentation beyond the scope of this Contract; or
  - (vi) the Commonwealth’s failure to use corrections or enhancements to the Supplies, Services or Documentation as required and provided by the Contractor at no charge so long as the corrections or enhancements continue to provide equivalent functionality.

#### **14. Intellectual Property and Right to Use.**

## **EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS**

The Contractor will provide to the Commonwealth a non-exclusive right to access and to use Software comprising all or part of the Supplies and Services. The Commonwealth's use of the Software is subject to the following:

- (a) Product License. The Contractor will provide the Commonwealth a nonexclusive license to use the Software purchased under the Contract.
- (b) Contractor Intellectual Property. The Commonwealth acknowledges that, in the course of providing and performing the Supplies and Services, the Contractor may use Software and related processes, instructions, methods, and techniques that have been previously developed by Contractor and that same shall remain the sole and exclusive property of the Contractor. The Contractor retains ownership of all Contractor Intellectual Property that the Contractor delivers to the Commonwealth pursuant to the Supplies provided and Services performed.
- (c) Commonwealth Intellectual Property and Data. The Commonwealth owns all Data and all Commonwealth Intellectual Property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract. The Commonwealth grants the Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of the Commonwealth's Intellectual Property and Data only to fulfill the purposes of this Contract and any applicable Purchase Order. The Commonwealth's license to the Contractor is limited by the terms of this Contract.
- (d) Third Party Property. Third Party Property integrated into the Supplies or Services, shall, unless otherwise indicated by the Contractor, be considered part of the Supplies and Services and subject to the terms and conditions of this Contract and the Commonwealth shall have the right to use the Third Party Property for the duration of this Contract. If the Contractor is required to pass through additional terms and conditions of a Third Party as a condition of the Commonwealth's use of the Third Party Property, the Commonwealth will negotiate with and enter into a separate agreement with such Third Party and any pass through terms and conditions, including any "click through," "click-wrap," "shrink-wrap" and hyperlink terms and conditions presented by Contractor related to such Third Party Property shall not be valid or enforceable against the Commonwealth.
- (e) Click-Through Terms. 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 negotiated the terms as outlined above in Paragraph 12(d).

- (f) No Transfer of Right, Title or Interest. Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon Contractor, any right, title, or interest in any physical or intellectual property that is now owned or subsequently owned by the Commonwealth or any third party. Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon the Commonwealth, any right, title, or interest in any physical or intellectual property that is now owned or subsequently owned by the Contractor.

## **15. Commonwealth Data.**

The Commonwealth owns all Data provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract. Commonwealth grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works using the Commonwealth's Data only to fulfill the purposes of this Contract and any applicable PO. The Commonwealth's license to Contractor is limited by the terms of this Contract. Unless the solicitation specifies otherwise:

- (a) Under no circumstances will Data be directly or indirectly transmitted or downloaded to, stored in, or accessible from any location that is not subject to the laws and jurisdiction of the United States.
- (b) All Data must travel networks which are approved in writing by the Commonwealth.
- (c) The Contractor shall be responsible for maintaining the privacy, security, and integrity of Data in its or its subcontractors' possession.
- (d) All Data shall be accessible to the Commonwealth upon request, and in a form acceptable to the Commonwealth.
- (e) All Data shall be surrendered to the Commonwealth upon request.
- (f) Data shall be destroyed by the Contractor at the Commonwealth's request.
- (g) 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.

## **16. Information Technology Policies.**

The Contractor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk and make reasonable attempts to comply with the terms and conditions included in the IT standards and policies issued by the Governor's Office

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

of Administration, Office for Information Technology (OA/OIT) (located at: <https://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Policy ACC001, Accessibility Policy, that are applicable to the scope of services the Commonwealth is receiving and that align with security best practices as identified by standards bodies such as the National Institute of Standards and Technology (NIST) and SOC 2 compliance standards. In the event such standards change during the Contractor's performance, the Commonwealth requests that the Contractor comply with the changed standard.

### 17. PCI Security Compliance.

- (a) General. By providing the Supplies or Services under this Contract, the Contractor may create, receive, or have access to credit card records or record systems containing cardholder data including credit card numbers (collectively the "Cardholder Data"). Where applicable to the Services provided, the Contractor shall comply with the Payment Card Industry Data Security Standard ("PCI DSS") requirements for Cardholder Data that are prescribed by the payment brands (including, but not limited to, Visa, MasterCard, American Express, and Discover), as they may be amended from time to time. The Contractor acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment brands, for purposes of this Contract or as required by applicable law or regulations.
- (b) Where applicable to the Services provided, the Contractor shall conform to and comply with the currently active version of the PCI DSS standards as defined by the PCI Security Standards Council at: [https://www.pcisecuritystandards.org/security\\_standards/index.php](https://www.pcisecuritystandards.org/security_standards/index.php). The Contractor shall monitor these PCI DSS standards and will promptly notify the Commonwealth if its practices should not conform to such standards. The Contractor shall make available to the Commonwealth the Attestation of Compliance within **seven (7) days** of Contractor's receipt of the annual PCI DSS compliance report.

### 18. Data Breach or Loss.

- a. Compliance with Laws. Where applicable to Services provided, 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*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329.
- b. Control by Contractor. 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, acquisition, use, release, loss, destruction or disclosure of Data or Confidential Information (“Incident”) to the Commonwealth within **twenty-four (24) hours** of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take commercially reasonable steps to mitigate any potential harm or further access, acquisition, 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.
  - iii. The Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents, which shall be reimbursed upon invoice received from the Commonwealth.
  - iv. The Contractor shall indemnify the Commonwealth against any Third Party claims arising out of an Incident in accordance with [Section 30, Indemnification](#).
- c. Diligent Performance and Cooperation. The Contractor shall diligently perform all of the duties required in this section in cooperation with the Commonwealth.

**19. Acceptance.**

- d. Software. No Software received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the Software. Any Software that 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 Software 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 **30 days** after notification. Rejected Software left longer than **30 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 Software. Upon notice of rejection, the Contractor shall immediately replace all such rejected Software 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 Software, and deduct from any monies due or that may thereafter become due to the

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

Contractor, the difference between the price stated in the Contract and the cost thereof to the Commonwealth.

- e. Reseller Services. Acceptance of Services, including Developed Works, shall occur in accordance with an Approval Plan (Plan) submitted by the Contractor and approved by the Commonwealth. Upon approval of the Plan by the Commonwealth, the Plan becomes part of this Contract. For Purchase Orders where the development of Software, the configuration of Software or the modification of Software is the deliverable, the Plan must include an Acceptance Test Plan. The Acceptance Test Plan will provide for a Final Acceptance Test and may provide for Interim Milestone Acceptance Tests. Each Acceptance Test will be designed to demonstrate that the Developed Works conform to the functional specification for the Developed Works, if any, and/or the requirements of this Contract. The Contractor shall notify the Commonwealth when the deliverable is completed and ready for acceptance testing. The Commonwealth will not unreasonably delay commencement of acceptance testing.
- f. Software Services. Unless otherwise approved by the Commonwealth, acceptance of Software Services shall occur in accordance with the applicable Specifications and Software/Services License Requirements Agreement between the Commonwealth and the Software Licensor.

### 20. Product Conformance.

The Commonwealth reserves the right to require any and all Contractors to:

- g. Supply published manufacturer product Documentation to the extent available.
- h. Complete a survey/questionnaire relating to the bid requirements and specifications.
- i. Provide customer references.

### 21. Rejected Material Not Considered Abandoned.

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within **30 days** of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

## **22. Compliance with Law.**

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

## **23. Environmental Provisions.**

In the performance of the Contract and to the extent applicable, the Contractor shall minimize pollution and shall to the best of its abilities comply with all applicable environmental laws and regulations, including, but not limited to, the *Clean Streams Law*, Act of June 22, 1937, (P.L. 1987, No. 394), as amended 35 P.S. §§ 691.1—691.1001; the *Pennsylvania Solid Waste Management Act*, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. §§ 6018.101—6018.1003; 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.

## **24. Post-Consumer Recycled Content.**

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 Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

## **24. Recycled Content Enforcement.**

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 to the extent provided by manufacturers.

## **25. Compensation.**

- j. Compensation for Software. The Contractor shall be required to furnish the awarded items(s) at the price(s) quoted in the Purchase Order. All item(s) shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.
- k. Compensation for Reseller Services: The Contractor shall be required to perform the specified Reseller Services at the rates quoted in the Contract or Purchase Order. All Reseller Services shall be performed within the time period(s) specified in the Contract or Purchase Order. The Contractor shall be compensated only for Reseller Services performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

expenses except as specifically set forth in the Contract. If not otherwise specified in the Contract and the travel is approved by the Commonwealth, 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](#).

- l. Compensation for Software Services: The Contractor shall resell Software Services to the Commonwealth at the price(s) quoted in the Purchase Order. All Software Services shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for Software Services that are delivered and accepted by the Commonwealth.

### 26. Billing Requirements.

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:

- m. Vendor name and “Remit to” address, including SAP Vendor number;
- n. Bank routing information, if ACH;
- o. SAP Purchase Order number;
- p. Delivery Address, including name of Commonwealth agency;
- q. Description of the Supplies/Services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- r. Quantity provided;
- s. Unit price;
- t. Price extension;
- u. Total price; and
- v. Delivery date of Supplies or Services.

If an invoice does not contain the minimum information set forth in this section, or, if applicable, comply with the provisions located at <https://www.budget.pa.gov/Programs/Pages/Ehttp://www.macomptroller.info/comptroller/docs/policies-procedures/accounts-payable/po-ap-commonwealth-bill-paying.pdfInvoicing.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.

Contractors are required to establish separate billing accounts with each Agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for Services to the Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists or any discounts negotiated by the Purchasing Agency.

**(h) Payment.**

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
  - i. the date on which payment is due under the terms of the Contract;
  - ii. **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 supplies or the services are satisfactorily performed); or
  - iii. the payment date specified on the invoice if later than the dates established by (i) and (ii) above.
- b. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within **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, as amended, [72 P. S. § 1507](#), (relating to interest penalties on Commonwealth accounts) and accompanying regulations [4 Pa. Code §§ 2.31—2.40](#). See, *Procurement Handbook, Part I, Chapter 18, A 8*. 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. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
- c. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The

## **EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS**

Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

### **(i) ACH Payments.**

- a. The Commonwealth will make contract payments through Automated Clearing House (ACH). Within **10 days** of award of the contract or purchase order, the Contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth's procurement system (SRM).
- b. The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
- c. It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

### **(j) Taxes.**

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. 23-740001-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 state 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.

### **(k) Assignment of Rights Under Antitrust Claims.**

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the Contract, and intending to

be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the Supplies and Services which are the subject of this Contract.

**(l) Indemnification.**

- a. Contractor's Obligations. The Contractor shall indemnify, hold harmless and, if requested, defend the Commonwealth against any and all Third Party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives the Contractor prompt notice of any such claim of which it learns
- b. Commonwealth Attorneys Act. 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 may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of the Contractor made in the defense of such suits. 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. If the Contractor requests the Commonwealth provide support to the Contractor in defense, 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. The Contractor, at its expense, will provide whatever cooperation OAG requests in the defense of the suit.
- c. Settlement. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld.

**(m) Audit Provisions.**

The Commonwealth shall have the right, at reasonable times and at a site agreed to by the parties, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of **three (3) years** from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives. The requirements of this section shall be applicable to and included in any subcontract hereunder.

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### (n) **Single Audit Act of 1984.**

In compliance with and where specifically required by the *Single Audit Act of 1984*, as amended, 31 U.S.C. § 7501—7507, the Contractor agrees to the following:

- a. This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in Government Auditing Standards, 1994 Revisions ([Yellow Book](#)).
- b. The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, as amended, 31 U.S.C. §§ 7501—7507, 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*.

### (o) **Default.**

- a. Notice of Default. The Commonwealth may, subject to the provisions of [Section 34, 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 35, Termination](#)) the whole or any part of this Contract for any of the following reasons:
  - i. Breach of any provision of this Contract;
  - ii. Unsatisfactory performance of the Services;
  - iii. Multiple failures over time of a single Service Level Agreement or a pattern of failure over time of multiple Service Level Agreements, if the Contract incorporates Service Level Agreements;
  - iv. Failure to resume a Service, which has been discontinued as permitted by the Commonwealth, within a reasonable time after notice to do so;
  - v. Insolvency;

- vi. Failure to protect, repair or make good any damage or injury to property or systems;
  - vii. Failure of the Contractor to comply with any agreed upon Corrective Action Plan;
  - viii. Failure to comply with representations made in the Contractor's Proposal; or
  - ix. Failure to comply with applicable industry standards, customs and practice.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in subsection (a) above, the Commonwealth may procure, upon such terms and in such manner as it determines, Supplies and/or Services similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.
- c. If the Contract or a Purchase Order is terminated as provided in subsection (a) above, the Commonwealth, in addition to any other rights provided in this section, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other Documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

- 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 the [Contract Controversies](#) Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Commonwealth Board of Claims.

### (p) 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. 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, cancel the Purchase Order, 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 or Purchase Order.

### 35. Termination Provisions.

- (a) For Convenience. The Commonwealth may terminate the Contract or a Purchase Order issued against the Contract, in whole or in part, without cause by giving Contractor at least **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, the Contractor shall receive payment for all Services performed and Supplies provided consistent with the terms of the Contract prior to the effective date of termination, which shall be the total liability of the Commonwealth for termination. The Contractor is not entitled to recover any loss of anticipated profit (by the Contractor or any subcontractor), loss of use of money, or administrative or overhead costs.

- (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 shall have the right to terminate this Contract or a Purchase Order for Contractor default under [Section 33, Default](#), upon written notice 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. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under subsection (a) above.
- (d) Non-exclusive Rights and Remedies. 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. 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. (e) Termination Assistance. Upon the Commonwealth's request and regardless of the reason for the termination, the Contractor shall provide reasonable termination assistance services directly to the Commonwealth, or to any vendor designated by

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the Commonwealth for a period of 90 days after termination. The Commonwealth may request termination assistance from the Contractor upon full or partial termination of the Contract and/or upon the expiration of the Contract term, including any renewal periods. Contractor shall take all necessary and appropriate actions to accomplish a complete, timely and seamless transition of any Supplies or Services from Contractor to the Commonwealth, or to any vendor designated by the Commonwealth, without material interruption of or material adverse impact on the Supplies or Services. The Contractor shall cooperate with the Commonwealth and any new vendor and otherwise promptly take all steps required or reasonably requested to assist the Commonwealth in effecting a complete and timely transition of any Supplies or Services. Any changes necessary to the Contract to address the termination assistance shall be made via [Section 46, Changes](#).

- (f) Return Materials. Upon receipt of the Notice of Termination, regardless of the reason for termination, and within the notice period as determined by the Commonwealth, the Contractor shall at the request of the Commonwealth collect, assemble, and transmit to the Commonwealth 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 Supplies or Services required under the Contract.

### 36. 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, the Contractor must, within **six (6) months** after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. 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 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.

### **37. Assignability and Subcontracting**

- (a) Subject to the terms and conditions of this section, this Contract shall be binding upon the parties and their respective successors and assigns.
- (b) The Contractor shall not subcontract with any person or entity to perform all or any part of the furnishing of Supplies or performance of Services under this Contract without the prior written consent of the Contracting Officer, whose consent may not be unreasonably withheld.
- (c) The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, whose consent may not be unreasonably withheld.
- (d) Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- (e) For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- (f) Any assignment consented to by the Contracting Officer 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.

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- (g) A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

### 38. Other Contractors.

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

### 39. Nondiscrimination/Sexual Harassment Clause.

The Contractor agrees:

- (a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act (PHRA)* and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- (b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *PHRA* and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- (c) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *PHRA* and applicable federal laws, in the provision of services under the contract.
- (d) Neither the Contractor nor any subcontractor nor any person on their behalf shall 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.

- (e) The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- (f) The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- (g) The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII* of the *Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- (h) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- (i) The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

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- (j) The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

### 40. Contractor Integrity Provisions.

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

- (a) Definitions. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:
  - (i) “Affiliate” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
  - (ii) “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
  - (iii) “Contractor” means the individual or entity, that has entered into this contract with the Commonwealth.
  - (iv) “Contractor Related Parties” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
  - (v) “Financial Interest” means either:
    - (1) Ownership of more than a five percent interest in any business; or
    - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

- (vi) “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18*, the 4 Pa. Code § 7.153(b), shall apply.
  - (vii) “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- (b) In furtherance of this policy, Contractor agrees to the following:
- (i) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
  - (ii) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
  - (iii) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
  - (iv) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of the contract signed by Contractor.

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- (v) Contractor certifies to the best of its knowledge and belief that within the last **five (5) years** Contractor or Contractor Related Parties have not:
- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - (3) had any business license or professional license suspended or revoked;
  - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
  - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

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

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

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or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

### 41. Contractor Responsibility Provisions.

For the purpose of these provisions, the term Contractor is defined 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 of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- (a) The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- (b) The Contractor also certifies, in writing, that as of the date of its execution of this Bid/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) The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within **15 days** of the date of suspension or debarment.
- (d) The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- (e) The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of



investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- (f) The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

#### **42. Americans With Disabilities Act.**

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

- (a) Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101 *et seq.*, the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- (b) The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of [subsection \(a\)](#).

#### **43. Covenant Against Contingent Fees.**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **44. Applicable Law.**

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law provisions) and the

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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, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.

### 45. 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 quotations, invoices, business forms, 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.

### 46. Changes.

- (a) Change Request. The Commonwealth reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the Services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the Service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through the [Contract Controversies](#) section.
- (b) Amendment or New Contract. Changes outside the scope of this Contract shall be accomplished through the Commonwealth's procurement procedures, and may result in an amendment to the 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.

### 47. 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 facilities owned by Third Parties but utilized by the Commonwealth), either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at **Error! Hyperlink reference not valid.**<https://www.psp.pa.gov/Pages/Criminal-History-Background-Check.aspx>. The background check must be conducted prior to initial access and on an annual basis thereafter.

- (b) Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any 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 appropriately address 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 background checks over and above that described herein.
- (d) Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of [Commonwealth Management Directive 625.10 Amended](#), *Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings*. The requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.

#### **48. Confidential and Sensitive Information.**

- (a) General. The parties agree to protect the confidentiality of each party's Confidential Information in accordance with commercially reasonable standards or as required by law, whichever is more restrictive.

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- (b) Copying; Disclosure; Termination. 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 Third Party recipients, including subcontractors, of the Confidential Information have agreed to be bound by confidentiality requirements no less restrictive than those set forth in this Contract. Each copy of Confidential Information shall be marked by the party making the copy with any notices appearing in the original. Upon expiration or termination of this Contract or any license granted hereunder, the receiving party will return to the disclosing party, or certify as to the destruction of, all Confidential Information in the receiving party's possession, other than one copy (where permitted by law or regulation), which may be maintained for archival purposes only, and which will remain subject to this Contract.
- (c) Exceptions. Insofar as information is not otherwise protected by law or regulation, the obligations stated in this section do not apply to information:
- (i) already known to the recipient at the time of disclosure other than through the contractual relationship;
  - (ii) independently generated by the recipient and not derived from the information supplied by the disclosing party;
  - (iii) 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;
  - (iv) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
  - (v) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- (d) Submission of Confidential or Proprietary Information. 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:
- (i) Prepare and submit an un-redacted version of the appropriate document;
  - (ii) Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret. The Contractor shall use a redaction program that ensures the information is permanently and irreversibly redacted; and

- (iii) Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:
  - (1) the attached material contains confidential or proprietary information or trade secrets;
  - (2) the Contractor is submitting the material in both redacted and unredacted format, if possible, in accordance with 65 P.S. § [67.707\(b\)](#); and
  - (3) the Contractor is requesting that the material be considered exempt under 65 P.S. § [67.708\(b\)\(11\)](#) from public records requests.
  
- (e) Restrictions on Use. All Confidential Information and all intellectual property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract shall be used only for the work of this Contract. No Confidential Information, intellectual property, Documentation or Developed Works may be used, disclosed, or otherwise opened for access by or to the Contractor or any third party unless directly related to and necessary under the Contract.
  
- (f) Sensitive Information Protections. The Contractor understands that its level of access may allow or require it to view or access Sensitive Information and Confidential Information. The Contractor shall hold all Commonwealth Sensitive Information in the strictest of confidence and shall use industry standard protective measures prescribed by law and/or regulation.
  
- (g) Sign-Off Documents. Sensitive Information and Confidential Information is subject to various state and federal laws, regulations and policies that vary from Agency to Agency or from COSTAR Member to COSTAR Member, and from program to program within an Agency or COSTAR Member. If applicable, prior to deployment of the Supplies or Services, the Contractor must receive and sign off on particular instructions and limitations as dictated by an Agency or COSTAR Member, including but not limited to, as necessary, HIPAA Business Associate Agreements.
  
- (h) Certification and Warranty of Compliance. The Contractor hereby certifies and warrants that it will comply with the sign-off document, if applicable, and the terms and conditions of this Contract with respect to Sensitive Information and Confidential Information and every sign-off document completed by an Agency or COSTAR Member and signed by at least one signatory authorized to bind the Contractor is valid and is hereby integrated and incorporated by reference into this Contract.

**49. Limitation of Liability.**

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

- (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) in the prior twelve (12) months giving rise to the claim. 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 willful misconduct;
  - (iv) to real property or tangible personal property for which the Contractor is legally liable;
  - (v) Contractor's obligations under [Section 11, Patent, Copyright, Trademark and Trade Secret Protection](#);
  - (vi) the Contractor's obligations under [Section 16, Data Breach or Loss](#); or
  - (vii) the Contractor's obligations under [Section 50, Virus, Malicious, Mischievous or Destructive Programming](#);
- (b) The Contractor will not be liable for consequential or incidental damages, except with for damages as set forth in paragraphs (a)(i)—(vii) above, or as otherwise specified in the Contract.

### 50. **Virus, Malicious, Mischievous or Destructive Programming.**

- (a) Contractor Liability. The Contractor shall be liable for any damages, costs, fines, remedial measures incurred by the Commonwealth if the Contractor or any of its employees, subcontractors or consultants knowingly introduces or should have known of the introduction of a virus or malicious, mischievous or destructive programming into the Supplies, Services, or the Commonwealth's or Third Party's software, data, systems or computer networks.
- (b) (Reserved)
- (c) Indemnification. The Contractor shall indemnify the Commonwealth against any Third Party claims arising out of this section in accordance with [Section 30, Indemnification](#).
- (d)

Device Compliance Audit. Using mechanisms documented in an applicable Statement of Work, the Commonwealth may reasonably verify, by a mutually agreed upon means, any computing devices connecting to Commonwealth infrastructure to provide Services or Supplies 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. The Commonwealth will provide reasonable notice to the Contractor if the Commonwealth has plans to audit. Devices found to be out of compliance will not be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made.

**51. Sovereign Immunity.**

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

**52. Service Levels.**

- (a) The Contractor shall comply with the procedures and requirements of the Service Level Agreements, if any, which are made part of this Contract.
- (b) Where there are expressly defined Service Levels, Contractor shall measure and report its performance against these standards on at least a monthly basis, except as many otherwise be agreed between the Parties in respect of Services performed less frequently than monthly. All Services without expressly defined Service Levels must be performed at least to the same degree of accuracy, completeness, efficiency, quality and timeliness as is provided by well-managed suppliers providing services similar to the Services, so long as such performance is commercially and operationally reasonable.
- (c) The Commonwealth's acceptance of any financial credit incurred by the Contractor in favor of the Commonwealth for a Service Level default ("Service Level Credit") shall not bar or impair Commonwealth's rights and remedies in respect of the failure or root cause as set forth elsewhere in this Contract, including without limitation claims for liquidated damages, injunctive relief and termination rights, provided however, Service Level Credits paid would be credited against any such claims for damages.

**53. 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) within the scope of work to be subcontracted in its bid/proposal, award of the Contract is deemed approval of all named Subcontractors and a separate

## **EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS**

approval is not required. The existence of any subcontract shall not change the obligations of Contractor to the Commonwealth under this Contract and the Contractor shall be responsible for all Services and Supplies in this Contract. Upon request of the Commonwealth, the Contractor must provide the Commonwealth with an unredacted copy of the subcontract agreement between the Contractor and the subcontractor in accordance with the provisions of the **Confidentiality** provision of this Contract. 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.

### **54. Publicity/Advertisement.**

The Contractor must obtain Commonwealth approval prior to mentioning the Commonwealth or a Commonwealth agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.

### **55. Integration.**

This Contract, including all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

### **56. Installment Purchase Additional Terms and Conditions.**

To the extent that the Contractor offers the Commonwealth or any Purchasing Agency (“Purchaser”) the option to pay for any items covered by the Contract in installments over time, these Installment Purchase Terms and Conditions shall, in addition to the other terms and conditions of the Contract, govern the installment purchase, except to the extent the Contractor assigns an Installment Purchase to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Installment Purchase Terms and Conditions. If a Purchaser desires to purchase items on an installment basis, the Purchaser shall indicate its Installment Purchase election on the PO issued to the Contractor (“Installment Purchase PO”). By issuing an Installment Purchase PO, the Purchaser explicitly agrees to these Installment Purchase Terms and Conditions. Any items covered by an Installment Purchase shall be called “Installment Items” in these Installment Purchase Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the Contract and these Installment Purchase Terms and Conditions, these Installment Purchase Terms and Conditions shall prevail to the extent that the Purchaser has elected an Installment Purchase option.



- (a) Term of Installment Purchase. The Contractor may provide any Installment Items under the Contract for any term up to **60 months**. The Purchaser shall identify the term selected on the Installment Purchase PO. The Installment Purchase term shall commence on the date the Purchaser accepts the Installment Items by executing the Acceptance Certificate, and the term shall continue for the length specified on the Installment Purchase PO. The form of the Acceptance Certificate is attached as **Appendix E, Acceptance Certificate** to the Addendum.

If the Contractor delivers the Contract items in more than one delivery, unless otherwise specified in the Specifications for this procurement, the Purchaser will provide separate acceptance certificates for each delivery of the items, and the Purchaser will make separate payments for the Contract items corresponding to the amount of Contract items delivered and accepted **30 days** prior to the payment due date.

(b) Payments.

- (i) Full Term Intention. The Purchaser shall pay the applicable monthly payment for the Installment Items. The Purchaser shall continue payment for the full Installment Purchase term, unless the Purchaser terminates the Installment Purchase, either for Contractor default as set forth in the **Default** provision of the Contract or for non-appropriation of funds as specified in this section.
- (ii) Non-Appropriation. The Purchaser's obligation is payable only and solely from funds allotted for the purpose of the Installment Purchase. If sufficient funds are not appropriated for continuation of performance under any Installment Purchase for any fiscal year subsequent to the one in which the Purchaser issued the Installment Purchase PO, the Purchaser may return the Installment items to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee will release the Purchaser of all further obligations under the Installment Purchase, provided:
- (1) The Purchaser delivers unencumbered title to the Installment items to the contractor or Initial Assignee (if applicable);
  - (2) The Purchaser returns the Installment items to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
  - (3) The Purchaser gives **30 days'** written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Installment Items are not being replaced by similar items from another vendor. In the event the Purchaser returns

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

the Installment Items for failure of appropriations, the Purchaser shall pay all amounts then due under the Installment Purchase through the end of the fiscal year for which sufficient funds were appropriated for the Installment Purchase.

(c) Title and Security Interest.

(i) The title to the Installment Items shall pass to the Purchaser at the time and place of delivery to the Purchaser of each unit of equipment. The Contractor or its Initial Assignee shall have a purchase money security interest in the Installment Items until payment of all installments as set forth in the payment schedule are made, or if the Purchaser prepays its installments, upon payment of the agreed amount between the Contractor and the Purchaser as set forth in subsection (i), Financing and Prepayment, of this section.

(1) Upon payment of the final installment or other concluding payment option, neither the Contractor nor its assignee shall have any further interest in the Installment Items.

(2) The Installment Items shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.

(3) At the request of the Contractor or Initial Assignee, the Purchaser will join the Contractor/assignee in executing one or more UCC-1 financing statements.

(4) The Purchaser will keep the Installment Items free and clear of all encumbrances except the Contractor's/assignee's security interest.

(d) Use and Location of, and Alteration to Installment Items. The Purchaser shall keep the Installment Items within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Installment Items. The Purchaser, at its own cost and expense, shall maintain the Installment Items in good operating condition and will not use or deal with the Installment Items in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Purchaser agrees not to misuse, abuse, or waste the Installment Items and the Purchaser will not allow the Installment Items to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Installment Items shall be made without the approval of the Contractor/Initial Assignee.

(e) Assumption of Risks.

- (i) The Purchaser shall, after acceptance of the Installment Items, assume and bear the risk of damage to, or loss or theft of, the Installment Items (including all component parts) from any cause other than action or inaction of the Contractor/assignee. The loss or damage of the Installment Items shall not impair any obligation of the Purchaser under these Installment Purchase Terms and Conditions, which shall continue in full force and effect. In the event that all or part of the Installment Items shall, as a result of the above-mentioned causes, become, in the Purchaser's reasonable determination, lost, stolen, destroyed, rendered unusable, or irreparably damaged, then the Purchaser shall notify the Contractor/assignee in writing. At its option, the Purchaser shall elect either:
    - (1) to replace the equipment with like equipment, or
    - (2) to pay pro rata to the Contractor/assignee all payments then currently due according to the payment schedule, plus the pro rata principal portion of any remaining installments. The "pro rata principal portion of remaining installment payments" is that percentage of the principal portion of remaining installment payments as of the date of payment that the cost of the units of the equipment lost, stolen, destroyed, or rendered irreparably unusable or damaged bears to the total cost of the equipment determined by the amounts set forth in the field purchase order.
  - (ii) The Purchaser assumes all risks and liabilities for injury to or death of any person, or damage to any property, arising out of the Purchaser's possession, use, operation, condition, or storage of any Installment Items, as more fully set forth in paragraph (i) of subsection (g) of this section.
  - (iii) The Purchaser agrees to insure the Installment Items as provided under paragraph (ii) of subsection (g) of this section.
- (f) Warranties.
- (i) The Purchaser shall have the benefit of any and all manufacturer or supplier warranties for the Installment Items.
  - (ii) The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Purchaser's quiet enjoyment of the Installment Items so long as no event of default as defined in subsection (j) of this section shall have occurred and be continuing.

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

(g) Liability.

- (i) The Purchaser assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Purchaser's possession, use, operation, condition, or storage of any Installment Item, whether such injury or death be of agents or employees of the Purchaser or of third parties, and whether such property damage be to the Purchaser's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Purchaser, its agents or employees, and provided that judgment has been obtained against the Purchaser, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Purchaser.
- (ii) The Purchaser shall, during the Installment Purchase term, either selfinsure or purchase insurance to cover the risks it has assumed under paragraph (i) of this subsection, including but not limited to risks of public liability and property damage.

(h) Assignment.

- (i) The Purchaser shall not assign any Installment Purchase PO or other interest in the Installment items without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Installment Purchase to an Initial Assignee, who in turn may further assign and/or grant a security interest in an Installment Purchase to a subsequent assignee without the Purchaser's consent. Any other Contractor assignment shall require the Purchaser's prior written consent. Upon written notice to the Purchaser, the Contractor may assign payments under any Installment Purchase to a third party.
- (ii) The Contractor may assign, without DGS or Purchaser consent, any Installment Purchase PO to a third party ("Initial Assignee") who will fund the purchase of the Installment Items. The Initial Assignee may take title to, and assume the right to receive all payments for, the Installment Items. The Contractor shall notify the Purchaser of any Installment Purchase PO assignment in its acknowledgment of the Installment Purchase PO to the Purchaser, providing the Purchaser with a copy of the assignment agreement between the Contractor and the Initial Assignee.
- (iii) Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Installment Purchase

Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing an Installment Purchase PO, the Purchaser waives any claims it may have under the Installment Purchase against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Installment Item. The Purchaser acknowledges that the Initial Assignee is not the supplier of the Installment Items and is not responsible for their selection or installation. After the ordering Purchaser executes, and the Initial Assignee receives, an acceptance certificate in the form attached to these Installment Purchase Terms and Conditions, if any portion of the Installment Items is unsatisfactory for any reason, the ordering Purchaser shall, nevertheless, continue to make payments under the applicable Installment Purchase terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.

- (iv) After a Purchaser executes and the Initial Assignee receives an acceptance certificate:
  - (1) The Purchaser shall, regardless of whether any portion of the Installment Items is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Installment Purchase and shall make any claim relating to the Installment Items against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and
  - (2) The rights of the Initial Assignee and any subsequent assignee to receive payments are absolute and unconditional and shall not be affected by any defense or right of set-off.
  
- (v) Warranty Disclaimer. IN THE EVENT THE CONTRACTOR ASSIGNS AN INSTALLMENT PURCHASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE INSTALLMENT ITEMS), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE PURCHASER TAKES THE EQUIPMENT AND ANY FINANCED ITEM "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE PURCHASER HAVE ANY REMEDY AGAINST, THE INITIAL

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR  
CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

- (i) Financing and Prepayment.
  - (i) If the Contractor is not the supplier of the Installment Items, the Contractor will pay the charges for the Installment Items directly to the supplier. In the event the Contractor assigns the Installment Purchase to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned payments under the Installment Purchase to an Initial Assignee, the Purchaser's obligation to make payments for the Installment Items for which the Purchaser has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Purchaser dissatisfaction with any Installment Item.
  - (ii) The Purchaser may at any time elect to prepay its remaining Installment Purchase payments. The Purchaser shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining payments to reflect the requested prepayment and shall advise the Purchaser of the balance to be paid.
  - (iii) If the Purchaser purchases Contract items related to an Installment Item prior to the expiration of the Installment Purchase terms, or if the Installment Purchase is terminated for any reason except nonappropriation as described in subsection (b) of these Installment Purchase Terms and Conditions, and if the Installment Item has been delivered and the Purchaser has executed and delivered to the Contractor an acceptance certificate, the Purchaser shall prepay such Installment Item.
- (j) Remedies for Default.
  - (i) If the Purchaser does not make a required payment within **30 days** after its due date and such nonpayment continues for **15 days** after receipt of written notice from the Contractor/Initial Assignee that the Purchaser is delinquent in payment, if the Purchaser breaches any other provision under these Terms and Conditions and such breach continues for **15 days** after receipt of written notice of the breach from the Contractor/Initial Assignee, or if the Purchaser files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:

- (1) Terminate the applicable Installment Purchase.
  - (2) Take possession of any or all Contract items in the Purchaser's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Contract items may be and remove and repossess the Contract items, from the premises without being liable to the Purchaser in any action or legal proceedings. The Contractor/assignee may, at its option, sell the repossessed Contract items at public or private sale for cash or credit. The Purchaser shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Contract items and placing the Contract items in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Contract items shall include only those items that were purchased under the Installment Purchase.
  - (3) Recover from the Purchaser all payments then due, plus the net present value of the amount of the remaining payments. The present value of such remaining payments shall be calculated using a discount rate equal to the average of the weekly two- and threeyear Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Installment Purchase. The Treasury Constant Maturities are published in Statistical Release H.15 and may be accessed via the [Federal Reserve Board's Internet website](#).
- (ii) In the event of Contractor default under the [Default](#) provision of the Contract, the Purchaser may pursue one or more of the following remedies:
- (1) If the payments under the Installment Purchase have been assigned to an Initial Assignee, the Purchaser shall continue to make payments for those Contract Items which have been delivered and for which the Purchaser has provided acceptance certificates to the Contractor/Initial Assignee.
  - (2) The Purchaser may cancel, without liability for payment, its order for any Contract items which have not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the Contract payments will be recalculated to take into consideration and pay for the actual number of Contract items which were delivered

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

and accepted. If no Installment items have been delivered and accepted, the Purchaser may terminate the Installment Purchase without liability for any payment.

- (3) If payments have not been assigned, the Purchaser may set off or counterclaim any and all damages incurred by the Purchaser as a result of the Contractor's default against its obligation to make payments.

(k) Compliance with Internal Revenue Code.

- (i) Tax Exempt Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Purchaser shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Purchaser shall also keep a copy of each notification of assignment with the Purchaser's counterpart of the order and shall not, during the Installment Purchase term, permit the Installment Items to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.
- (ii) Governmental Status. Eligible Purchasers include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Purchaser's status under the IRC shall constitute an event of default by the Purchaser. If the Internal Revenue Service rules that the Purchaser does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Purchaser fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Purchaser will, upon demand, pay the Contractor/Initial Assignee a sum the Contractor/Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

- (l) Governing Law. All Purchases made under these Installment Purchase Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Installment Purchase Terms and Conditions.

- (m) Notices. Service of all notices under these Installment Purchase Terms and Conditions shall be sufficient if delivered to the Purchaser at the address set forth in



the applicable Installment Purchase PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the Installment Purchase PO, including any attached document.

Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage. Notices delivered by hand or by overnight courier shall be effective when actually received.

## **57. Leasing Additional Terms and Conditions**

To the extent that the Contractor offers the Commonwealth or any Purchasing Agency (“Lessee”) the option to lease any items covered by the Contract, these Leasing Terms and Conditions shall, in addition to the other terms and conditions of the Contract, govern the Lease, except to the extent the Contractor assigns a Lease to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Leasing Terms and Conditions. If a Lessee desires to lease contract items, the Lessee shall indicate its leasing election on the PO issued to the Contractor (“Lease PO”). By issuing a Lease PO, the Lessee explicitly agrees to these Leasing Terms and Conditions. Any items covered by a Lease shall be called “Leased Property” in these Leasing Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the Contract and these Leasing Terms and Conditions, these Leasing Terms and Conditions shall prevail to the extent that the Lessee has elected a leasing option.

- (a) Term of Lease. The Contractor may provide any Leased Property under the Contract for any term up to **60 months**, including a Fair Market Value Option for Lease/Purchases. The Lessee shall identify the term selected, as well as its election of either a Lease or Lease/Purchase option, on the Lease PO. The Lease term shall commence on the date the Lessee accepts the Leased Property by executing the Acceptance Certificate, and the term shall continue for the length specified on the Lease PO. The form of the Acceptance Certificate is attached as **Appendix E, Acceptance Certificate**, to the Addendum.

If the Contractor delivers the Leased Property in more than one delivery, unless otherwise specified in the Specifications for this procurement, the Lessee will provide separate acceptance certificates for each delivery of the items, and the Lessee will make periodic payments for the Leased Property corresponding to the amount of the Leased Property delivered and accepted **30 days** prior to the payment due date.

- (b) Payments.
- (i) **Full Term Intention.** The Lessee shall pay the applicable monthly or annual rent payment for the Leased Property for the full Lease term, unless the Lessee terminates the Lease, either for Contractor default as set forth in the

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

**Default** provision of the Contract or for non-appropriation of funds as specified in this section.

- (ii) **Non-Appropriation.** The Lessee's obligation is payable only and solely from funds allotted for the purpose of the Lease. If sufficient funds are not appropriated for continuation of performance under any Lease for any fiscal year subsequent to the one in which the Lessee issued the Lease PO, the Lessee may return the Leased Property to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee shall release the Lessee of all further obligations under the Lease, provided:
  - (1) The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
  - (2) The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
  - (3) The Lessee gives **30 days'** written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Leased Property is not being replaced by similar items from another vendor. In the event the Lessee returns the Leased Property for failure of appropriations, the Lessee shall pay all amounts then due under the Lease through the end of the fiscal year for which sufficient funds were appropriated for the Lease.
  
- (c) **Title.** Title to the Leased Property shall not pass to the Lessee but shall remain in the Contractor or Initial Assignee, whichever applies; except in the case of a Lease/Purchase, the title shall pass to the Lessee upon payment of the final installment or other concluding payment option.
  - (i) Upon payment of the final installment or other concluding payment option, neither the Contractor nor its assignee shall have any further interest in the Leased Property.
  - (ii) The Leased Property shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
  - (iii) At the request of the Contractor or Initial Assignee, the Lessee will join the Contractor/assignee in executing one or more UCC-1 financing statements.
  - (iv) The Lessee will keep the Leased Property free and clear of all encumbrances except the Contractor's/assignee's security interest.

- (d) Use and Location of, and Alteration to Leased Property. The Lessee shall keep the Leased Property within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Leased Property. The Lessee, at its own cost and expense, shall maintain the Leased Property in good operating condition and will not use or deal with the Leased Property in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Lessee agrees not to misuse, abuse, or waste the Leased Property and the Lessee will not allow the Leased Property to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Leased Property shall be made without the approval of the Contractor/Initial Assignee.
- (e) Risk of Loss. The Contractor shall assume and bear the risk of loss or damage to, or theft of, the Leased Property and all component parts while the Leased Property or parts are in the Lessee's possession, unless the Lessee could have prevented such loss, damage, or theft by exercising reasonable care or diligence in the use, protection, or care of the Leased Property or parts. No loss or damage to the Leased Property or parts shall impair any Contractor or Lessee obligation under the Lease, except as expressly provided in these Leasing Terms and Conditions. If the damage could not have been prevented by the Lessee's exercise of reasonable care or diligence, and the Contractor determines the Leased Property or parts can be economically repaired, the Contractor shall repair or cause to be repaired all damages to the Leased Property or their parts. In the event that the any of the Leased Property or their parts are stolen or destroyed, or if in the Contractor's opinion they are rendered irreparable, unusable, or damaged, the affected Leased Property shall be considered a total loss and the Lease shall terminate as to that Leased Property, and the Lessee's obligation to pay rent for the affected Leased Property shall be deemed to have ceased as of the date of the loss.
- (f) Warranties.
- (i) The Lessee shall have the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.
- (ii) The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Lessee's quiet enjoyment of the Leased Property so long as no event of default as defined in subsection (j) of this section shall have occurred and be continuing.
- (g) Liability.

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

- (i) The Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Lessee's possession, use, operation, condition, or storage of any Leased Property, whether such injury or death be of agents or employees of the Lessee or of third parties, and whether such property damage be to the Lessee's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Lessee, its agents or employees, and provided that judgment has been obtained against the Lessee, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Lessee.
  - (ii) The Lessee shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under paragraph (i) of this subsection, including but not limited to risks of public liability and property damage.
- (h) Assignment.
  - (i) The Lessee shall not assign any Lease PO or other interest in the Leased Property without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Lease PO and Leased Property to an Initial Assignee, who in turn may further assign and/or grant a security interest in a Lease to a subsequent assignee without the Lessee's consent. Any other Contractor assignment shall require the Lessee's prior written consent. Upon written notice to the Lessee, the Contractor may assign payments under any Lease to a third party.
  - (ii) The Contractor may assign, without Lessee consent, any Lease PO to a third party ("Initial Assignee") who will fund the purchase of the Leased Property. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Leased Property. The Contractor shall notify the Lessee of any Lease PO assignment in its acknowledgment of the Lease PO to the Lessee, providing the Lessee with a copy of the assignment agreement between the Contractor and the Initial Assignee.
  - (iii) Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Leasing Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing a Lease PO, the Lessee waives any claims it may have under the Lease against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any

Leased Property. The Lessee acknowledges that the Initial Assignee is not the supplier of the Leased Property and is not responsible for their selection or installation. After the ordering Lessee executes, and the Initial Assignee receives, an Acceptance Certificate, if any portion of the Leased Property is unsatisfactory for any reason, the ordering Lessee shall, nevertheless, continue to make payments under the applicable Lease terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.

(iv) After a Lessee executes and the Initial Assignee receives an Acceptance Certificate:

(1) The Lessee shall, regardless of whether any portion of the Leased Property is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Lease and shall make any claim relating to the Leased Property against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

(2) The rights of the Initial Assignee and any subsequent assignee to receive rental payments are absolute and unconditional and shall not be affected by any defense or right of set-off.

(v) Warranty Disclaimer. IN THE EVENT THE CONTRACTOR ASSIGNS A LEASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE LEASED PROPERTY), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE LESSEE TAKES THE LEASED PROPERTY "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE LESSEE HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

(i) Financing and Prepayment.

(i) If the Contractor is not the supplier of the Leased Property, the Contractor will pay the charges for the Leased Property directly to the supplier. In the event the Contractor assigns the Lease to an Initial Assignee, the Initial Assignee will pay

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned rental payments under the Lease to an Initial Assignee, the Lessee's obligation to make rental payments for the Leased Property for which the Lessee has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Lessee dissatisfaction with any Leased Property.

- (ii) The Lessee may at any time terminate the financing for any Leased Property by prepaying its remaining rental payments. The Lessee shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining rental payments to reflect the requested prepayment and shall advise the Lessee of the balance to be paid.
- (iii) If the Lessee purchases Contract items related to Leased Property prior to the expiration of the Lease term, or if the Lease is terminated for any reason except non-appropriation as described in subsection (b) of this section, and if the Leased Property has been delivered and the Lessee has executed and delivered to the Contractor an acceptance certificate, the Lessee shall prepay such Leased Property.

(j) Remedies for Default.

- (i) If the Lessee does not make a required payment within **30 days** after its due date and such nonpayment continues for **15 days** after receipt of written notice from the Contractor/Initial Assignee that the Lessee is delinquent in payment, if the Lessee breaches any other provision under these Leasing Terms and Conditions and such breach continues for **15 days** after receipt of written notice of the breach from the Contractor/Initial Assignee, or if the Lessee files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:
  - (1) Terminate the applicable Lease.
  - (2) Take possession of any or all Leased Property in the Lessee's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Leased Property may be and remove and repossess the Leased Property, from the premises without being liable to the Lessee in any action or legal proceedings. The Contractor/assignee may, at its

option, sell the repossessed Leased Property at public or private sale for cash or credit. The Lessee shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Leased Property and placing the Leased Property in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Leased Property shall include only those items that were leased or lease/purchased under the Lease.

(3) Recover from the Lessee all rental payments then due, plus the net present value of the amount of the remaining rental payments. The present value of such remaining rental payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Lease. The Treasury Constant Maturities are published in Statistical Release H.15 and may be accessed via the [Federal Reserve Board's Internet website](#).

(ii) In the event of Contractor default under the **Default** provision of the Contract, the Lessee may pursue one or more of the following remedies:

(1) If the rental payments under the Lease have been assigned to an Initial Assignee, the Lessee shall continue to make payments for that Leased Property which has been delivered and for which the Lessee has provided acceptance certificates to the Contractor/Initial Assignee.

(2) The Lessee may cancel, without liability for payment, its order for any Leased Property which has not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the rental payments will be recalculated to take into consideration and pay for the actual amount of Leased Property which was delivered and accepted. If no Leased Property has been delivered and accepted, the Lessee may terminate the Lease without liability for any payment.

(3) If payments have not been assigned, the Lessee may set off or counterclaim any and all damages incurred by the Lessee as a result of the Contractor's default against its obligation to make rental payments.

(k) Purchase Option. If the Lessee is not in default, it shall have the right at the expiration of the Lease term to buy the Leased Property "as is with no additional

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

warranty” by tendering the purchase option amount the parties have established. For any Lease with a Fair Market Value Option, the fair market value of the equipment shall be established by the Contractor/Initial Assignee and shall not exceed the then-current purchase price of the Leased Property as established in the Contract. Upon the Lessee’s exercise of a purchase option and payment of the required amount to the Contractor/Initial Assignee, all right, title, and interest in the Leased Property shall pass to the Lessee.

- (l) Extension. If the Lessee does not elect to purchase the Leased Property at the expiration of a Lease term, and the Lessee is not in default under the Lease, the Lessee may elect to extend the Lease by written notification to the Contractor/Initial Assignee. The Lessee will make any elective extension under the same Leasing Terms and Conditions, including any rent payable (not less than fair market rental value), and will continue until the earlier of termination by either party upon one month’s prior written notice, or five years from the date of installation.
- (m) Return of Leased Property. At the expiration or termination of a Lease for any Leased Property, or upon Contractor/Initial Assignee demand pursuant to subsection (j) of this section, the Lessee shall promptly return the Leased Property, freight prepaid, to any location in the continental United States specified by the Contractor/Initial Assignee. The Lessee shall pay the required rent for the Leased Property until they have been shipped to the Contractor.
- (i) Since DGS has, as a matter of policy, determined that all hard drives contain information that is confidential or sensitive, the Contractor shall, at its discretion, either remove and destroy any hard drive from the Leased Property or clean the hard drive to Office of Administration/U.S. Department of Defense standards, and the Contractor shall provide written certification to the Lessee that the hard drive has been destroyed or cleaned to Office of Administration/U.S. Department of Defense standards.
- (ii) Except in the event of a total loss of any or all Leased Property as described in subsection (e) of this section, and except for any costs associated with the removal, destruction, and cleaning of any hard drives, the Lessee shall pay any costs the Contractor/Initial Assignee incurs to restore the Leased Property to good operating condition in accordance with the Contract specifications. All parts the Contractor/Initial Assignee may remove and replace shall become the Contractor’s/Initial Assignee’s property.
- (iii) The Contractor’s/Initial Assignee’s costs associated with the cleaning of any hard drive to Office of Administration/U.S. Department of Defense standards and the removal and destruction of any hard drive(s) shall be included in the rental amount. The Lessee shall not be required to pay additional charges for the Contractor’s/Initial Assignee’s cleaning of a hard



drive to Office of Administration/U.S. Department of Defense standards nor for the Contractor's/Initial Assignee's removal and destruction of any hard drive(s) upon the return of a Leased item.

(n) Compliance with Internal Revenue Code.

- (i) Tax Exemption Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the

Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Lessee shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Lessee shall also keep a copy of each notification of assignment with the Lessee's counterpart of the order and shall not, during the Lease term, permit the Leased Property to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.

- (ii) Governmental Status. Eligible Lessees include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Lessee's status under the IRC shall constitute an event of default by the Lessee. If the Internal Revenue Service rules that the Lessee does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Lessee fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Lessee will, upon demand, pay the Contractor/Initial Assignee a sum the Contractor/Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

- (o) Governing Law. All Leases made under these Leasing Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Leasing Terms and Conditions.

- (p) Notices. Service of all notices under these Leasing Terms and Conditions shall be sufficient if delivered to the Lessee at the address set forth in the applicable Lease PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the Lease PO, including any attached document. Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage.

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

Notices delivered by hand or by overnight courier shall be effective when actually received.

### 58. Insurance

(a) General. 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 *Worker's 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 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 regarding the Services performed for or Supplies provided to the Commonwealth.
- (iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.
- (iv) Professional Liability/Errors and Omissions Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.

- (v) Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under Company's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (vi) Completed Operations Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
- (vii) Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.

(b) Certificate of Insurance. Prior to commencing Services or providing Supplies 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's Contracting Officer, unless otherwise designated by 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.

#### **59. Manufacturer's Price Reduction.**

If, prior to the delivery of the awarded Supplies by the Contractor, a price reduction is announced by the original equipment manufacturer, a comparative price reduction will be given to the Commonwealth by the Contractor.

#### **60. Non-Exclusive Contract.**

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

#### **61. Notice**

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

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) The Pennsylvania *Right-to-Know Law*, 65 P.S. §§ 67.101—3104, (“RTKL”) applies to this Contract.
- (b) If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- (c) Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
  - (i) Provide the Commonwealth, within **10 calendar days** after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - (ii) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within **seven (7) calendar days** of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL.

Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within **five (5) business days** of receipt of written notification of the Commonwealth's determination.

- (f) If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- (g) The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- (h) The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- (i) The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

### **63. Enhanced Minimum Wage.**

- (bb) Enhanced Minimum Wage. Contractor/Lessor agrees to 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 contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- (cc) Adjustment. The minimum wage rate shall be increased each year 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

## EXHIBIT A: SOFTWARE AND SERVICES REQUIREMENTS

- Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- (dd) Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:
- (ii) exempt from the minimum wage under the Minimum Wage Act of 1968;
  - (iii) covered by a collective bargaining agreement;
  - (iv) 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
  - (v) required to be paid a higher wage under any state or local policy or ordinance.
- (ee) Notice. Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- (ff) Records. Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- (gg) Sanctions. Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- (hh) Subcontractors. Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

### 64. Additional Federal Provisions.

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

PA Supplier ID Number: \_\_\_\_\_

### EXHIBIT A-5, QUOTE REQUEST TEMPLATE

<b>Requestor:</b>				
<b>1. Agency:</b>		[Name of the Delivery Center or Agency purchasing the products]		
<b>2. Purchasing Area:</b>		[Program area purchasing the product]		
<b>3. Contact Person:</b>		[Name, Title, and contact information]		
<b>Vendor Information:</b>				
<b>Publisher/Licensor:</b>		[Name of Publisher or Company's product being purchased]		
<b>Software License Agreement number:</b>		[Commonwealth agreement number with the publisher/licensor]		
<b>Products:</b>				
<b>Publisher/Licensor:</b>		[Name of Publisher or Company's product being purchased]		
<b>Software License Agreement number:</b>		[Commonwealth agreement number with the publisher/licensor]		
<u>Item</u>	<u>Item or Description</u>	<u>Publisher/Manufacturer Part #</u>	<u>Qty</u>	<u>No Bid ?</u>
1	[Description of Product]	[Part # as identified by the OEM]	[quantity]	["X" = No Bid]
2	[Description of Product]	[Part # as identified by the OEM]	[quantity]	["X" = No Bid]
3	[Description of Product]	[Part # as identified by the OEM]	[quantity]	["X" = No Bid]
<b>Services:</b>				
<u>Item</u>	<u>Service Description</u>	<u>Service Details</u>	<u>Service #</u>	<u>No Bid ?</u>
1	[Description of Service]	[Any additional details on service being requested]	[Licensor ID # if applicable]	["X" = No Bid]
2	[Description of Service]	[Any additional details on service being requested]	[Licensor ID # if applicable]	["X" = No Bid]
3	[Description of Service]	[Any additional details on service being requested]	[Licensor ID # if applicable]	["X" = No Bid]
<b>Notes:</b>				
[Any additional information relevant to this request]				