

PART V
CONTRACT
FOR
ELECTION MANAGEMENT AND ADMINISTRATIVE SERVICES FOR THE
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD TRUSTEES

This Contract for **Election Management and Administration for the Public School Employees' Retirement Board Trustees** ("Contract") is between the Commonwealth of Pennsylvania, Public School Employees' Retirement System, ("Agency") and **[Insert Name of Contractor]** ("Contractor").

The Agency issued a Request for Proposals for the provision of **Election Management and Administration for the Public School Employees' Retirement Board Trustees**, RFP No. **2025-8**, ("RFP") and the Contractor submitted a proposal in response to the RFP.

The Contractor's proposal was selected for the Best and Final Offer ("BAFO") phase of the RFP process. In response to the BAFO request, the Contractor submitted a BAFO Cost Submittal. The Agency determined that the Contractor's proposal, as revised by its BAFO Cost Submittal, was the most advantageous to the Agency after taking into consideration all of the evaluation factors set forth in the RFP and selected Contractor for contract negotiations; and

The parties have negotiated this Contract as their final and entire agreement in regard to providing **Election Management and Administration for the Public School Employees' Retirement Board Trustees** to the Agency.

The parties, intending to be legally bound, agree as follows:

1. The Contractor shall, in accordance with the terms and conditions of this Contract, provide **Election Management and Administration for the Public School Employees' Retirement Board Trustees** as more fully defined in the RFP, to the Agency.
2. The Contractor shall provide the **Election Management and Administration for the Public School Employees' Retirement Board Trustees** listed in its Cost Submittal, which is attached as Exhibit C and made a part of this Contract, at the prices listed for those items in Exhibit C.
3. This Contract is comprised of the following documents, which are listed in order of precedence in the event of a conflict between them:
 - a. the Contract document;
 - b. the Data and Information Security Addendum, which is attached as Exhibit A and made part of this Contract;

- c. the Contract Terms and Conditions, which are attached as Exhibit B and made part of this Contract;
- d. the BAFO Cost Submittal which is attached as Exhibit C and made a part of this Contract;
- e. the RFP, including all of the referenced Appendices and as revised by all Addenda to the RFP, which is attached as Exhibit D and made a part of this Contract; and
- f. the Contractor's Technical Submittal, which is attached as Exhibit E and made a part of this Contract.

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The parties have signed this Contract below. The date of execution is described in the Contract Terms and Conditions.

CONTRACTOR NAME:

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES'
RETIREMENT SYSTEM**

By: _____
[Name] _____ Date
[Title] _____

By: _____
Benjamin L. Cotton _____ Date
Interim Executive Director

By: _____
Jennifer A. Mills _____ Date
Deputy Executive Director and
Director of Defined Contribution Investments

APPROVED AS TO FORM AND LEGALITY:

To be obtained electronically _____
Office of Chief Counsel _____ Date

To be obtained electronically _____
Office of Attorney General _____ Date

APPROVED:

To be obtained electronically _____
Comptroller _____ Date

EXHIBIT A

DATA AND INFORMATION SECURITY ADDENDUM

THIS DATA AND INFORMATION SECURITY ADDENDUM (“Addendum”) forms part of that certain Contract for Election Management and Administrative Services for the Public School Employees’ Retirement Board Trustees, as may be amended (herein referred to as the “Agreement”) made by and between the Commonwealth of Pennsylvania, Public School Employees’ Retirement System (“PSERS”) and *[insert name of party with whom PSERS is contracting]*, a *[insert jurisdiction of organization and type]* (“Contractor”) and sets forth additional terms and conditions with respect to data and information security applicable to the Agreement.]

RECITALS

WHEREAS, PSERS and Contractor acknowledge that the Agreement will or may require: (1) PSERS or an entity or individual for or on behalf of PSERS to disclose certain data and information to Contractor; (2) Contractor to accept, collect and/or use that data and information; and (3) Contractor to create data and information; and

WHEREAS, PSERS and Contractor desire to agree to protect and provide for the privacy and confidentiality of all such data and information.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Addendum, and the mutual promises and undertakings hereinafter set forth, and the exchange of data and information pursuant to the Agreement and this Addendum, Contractor and PSERS agree as follows:

1. Definitions. As used in this Addendum:

- (a) “Act” means the Breach of Personal Information Notification Act, Act of Dec. 22, 2005, P.L. 474, No. 94, 73 P.S. Section 2301, et. seq., as amended and enacted in the Commonwealth of Pennsylvania, including as amended by the Act of Nov. 3, 2022, P.L.2139, No. 151 and Act of June 28, 2024, P.L. 427, No. 33.
- (b) “Applicable Standards” has the meaning specified in Section 2 of this Addendum.
- (c) “Authorized Person” means a Contractor’s employee, subcontractor, and any other individual or entity acting for Contractor who has:
 - (i) PSERS’s authorization; and
 - (ii) a specific need for access to PSERS’s Confidential Information to perform Services for or on behalf of PSERS.
- (d) “Computing Service” means one or more of the following:
 - (i) software that is installed on a desktop or server or is accessible via web-browser that in each case, involves creating, accessing, transmitting, maintaining, accepting, or hosting Commonwealth of Pennsylvania (“Commonwealth”) data or PSERS Data; and

- (ii) any computing service managed infrastructure regardless of deployment model (public, private, or hybrid) or type, such as, but not limited to, software-as-a-service (SaaS) for web-based applications, infrastructure-as-a-service (IaaS) for Internet-based access to storage and computing power, or platform-as-a-service (PaaS) that gives developers the tools to build and host Web applications, that is procured through and hosted by or within a third-party vendor, licensor, contractor, or supplier (“Service Organization”) or its subcontractor(s) (commonly referred to as “Subservice Organizations”).
- (e) “Computing Services Review” means an established process to ensure the procurement and/or implementation of any Computing Service is aligned with PSERS's overall business and intellectual technology vision, strategy, goals, and policies. This term includes representation and review from all domains to proactively identify, manage, and mitigate risk, if any, with the Computing Service being considered. The foregoing process requires that the Service Organization (third-party vendor, licensor, contractor, or supplier), must complete the Computing Services Requirements (CSR) document provided by PSERS that is specific to the Computing Service being considered. Any procurement or use of a Computing Service requires an approved Computed Services use case.
- (f) “CONUS” means any state in the Continental United States and Hawaii.
- (g) “Documentation” means all documentation related to the Services, including, if applicable, a SOW.
- (h) “ISP” has the meaning specified in Section 3(a) of this Addendum.
- (i) “Industry Standards” means any of the following: (i) National Institute of Standards and Technology (NIST) 800 Series; (ii) NIST Cybersecurity Framework; and (iii) ISO 27001/2, and in each case, the successor thereto or their generally recognized equivalents.
- (j) “Multi-Factor Authentication” means the use of two or more of the authentication methods listed below. Two-factor employs two of the methods. Three-factor employs all three methods. The authentication methods include:
 - (i) something you know (e.g. PIN, password, shared information);
 - (ii) something you possess (e.g. token, smart card, digital certificate); and
 - (iii) something you are (biometrics - e.g. fingerprint, voice, iris, face).
- (k) “PSERS’s Confidential Information” means PSERS Data that is not Public Data, including information containing personally identifiable information (commonly referred to as "PII"), “personal information” as defined in the Act, protected health information (commonly referred to as "PHI"), and electronic protected health information (commonly referred to as "ePHI") as defined in regulations issued by the United States Department of Health and Human Services, investment portfolio information and trade secrets. Trade secrets include limited partnership agreements, side letters, private placement memoranda, and similar information.

- (l) “PSERS Data” means any data or information that Contractor creates, obtains, accesses, receives from PSERS or on behalf of PSERS, hosts, or uses in the course of its performance of the Agreement.
- (m) “Public Data” means any specific data or information, regardless of form or format, that PSERS has actively and intentionally disclosed, disseminated, or made available to the public.
- (n) “Security Breach” has the meaning specified in Section 4 of this Addendum.
- (o) “Services” means the services and other obligations described in the Agreement, and if applicable, any SOW.
- (p) “SOW” means a statement of work made in relation to Services.

2. Data Security.

- (a) Compliance. Contractor shall comply with and ensure that Services are provided under the Agreement in compliance with the requirements set forth in the following Subsections (i), (ii) and (iii) (individually and collectively referred to in this Addendum as the “Applicable Standards”):
 - (i) the information technology standards and policies as described in and subject to the terms of Appendix 1, Data and Information Security Addendum Operations Document, attached to and made part of this Addendum;
 - (ii) any applicable laws or regulations including:
 - (A) CJIS and CHRIA for criminal history data;
 - (B) HIPAA for health-related data;
 - (C) IRS Pub 1075 and SSA for federal protected data;
 - (D) PCI-DSS for financial data; and
 - (E) The Act; and
 - (iii) Industry Standards (as defined above in Section 1 of this Addendum).
- (b) Data Protection. To the extent that Contractor’s obligations under the Agreement involve creating, accessing, transmitting, maintaining, accepting, hosting, or using PSERS Data, Contractor shall preserve the confidentiality, integrity and availability of PSERS Data by implementing and maintaining administrative, technical and physical controls that conform to Applicable Standards. Contractor shall implement security controls that provide a level of security consistent with accepted information security standards, which are commensurate with the sensitivity of the PSERS Data to be protected.
- (c) Data Use and Access. Contractor shall use PSERS Data only and exclusively to support the performance of Services and not for any other purpose, including the

use of PSERS Data in any manner that relates to computing referred to as “artificial intelligence.” With the exception of Public Data, absent PSERS’s prior written consent or as required by law, Contractor shall not disclose to or allow access to PSERS Data by any person, other than an Authorized Person in connection with the performance of Services and PSERS’s authorized employees and agents who have a need to know to perform their services for PSERS. If such disclosure is required by law, Contractor shall notify PSERS in writing before such disclosure, unless such notification is prohibited by law.

- (d) Access to PSERS’s Specific Systems, Data and Services. Contractor shall limit access to PSERS-specific systems, data, and services, and provide access only, to Authorized Persons located within CONUS.
- (e) Data Hosting. Contractor shall only host, store, or backup PSERS Data in physical locations within the CONUS.
- (f) Multi-Factor Authentication. For services or applications exposed to the Internet, where sensitive data or information is stored, accessed, processed, or transmitted, Contractor shall provide Multi-Factor Authentication for user authentication to the web application via workstation and mobile browsers. If a service is provided via mobile application, Contractor shall cause that application to be protected by Multi-Factor Authentication.
- (g) Data Backup. If appropriate to protect the integrity and availability of PSERS Data in accordance with accepted industry practice, Contractor shall maintain (and cause any third-party hosting company that it uses to maintain) a means to backup and recover PSERS Data if PSERS Data is lost, corrupted or destroyed. Contractor shall store backups offline to prevent modification or encryption by ransomware or other malicious software. PSERS shall have the right to establish backup security for PSERS Data and to keep backup PSERS Data and PSERS Data files in its possession or control in PSERS’s sole discretion.
- (h) Return of PSERS Data. Upon PSERS’s request, Contractor shall ensure that PSERS can retrieve PSERS’s Data in the event Contractor is unable to continue providing Services for any reason or as a result of the termination of the Agreement. In the event of a termination and upon PSERS’s request, Contractor shall provide PSERS Data in a mutually acceptable format.
- (i) Effect of Termination on PSERS Data Retention. Upon the first to occur of the termination of the Agreement for any reason or notice of such termination having been given, the provisions of this Subsection (i) shall apply notwithstanding anything contained in the Agreement or this Addendum to the contrary. Unless otherwise directed by PSERS in writing, Contractor shall maintain PSERS Data and continue to extend the protections of the Agreement and this Addendum to such PSERS Data for a period of six (6) months at which point it shall return, and then upon PSERS’s written direction destroy, all PSERS Data received from PSERS (or created or received by Contractor on behalf of PSERS) regardless of form, and shall retain no copies of PSERS Data. Contractor shall certify in writing to PSERS that these actions have been completed within thirty (30) days after receipt of PSERS’s

direction to destroy. If return or destruction of PSERS Data is not feasible, Contractor shall:

- (i) promptly inform PSERS that the return or destruction, as applicable, is not feasible;
 - (ii) continue to extend the protections of the Agreement and this Addendum to such PSERS Data; and
 - (iii) limit further use of PSERS Data to those purposes that make the return or destruction of PSERS's Data infeasible.
- (j) Destruction of PSERS Data. Subject to Subsection (i) above, Contractor shall erase, destroy, and/or render unrecoverable all PSERS Data in Contractor's possession or control that is no longer required for the performance of Services. Upon PSERS's request, Contractor shall certify in writing that these actions have been completed within seven (7) days of PSERS's request.

3. Contractor Security.

- (a) Information Security Program. Contractor represents and agrees that Contractor has in place and will continue to maintain a formal information security program ("ISP") with written policies and procedures consistent with Industry Standards and reasonably designed to protect the confidentiality and integrity of PSERS Data when such PSERS Data is in the possession or control of Contractor. The ISP shall include administrative, technical, and physical safeguards. The safeguards shall appropriately:
- (i) relate to the type of data and information concerned;
 - (ii) be reasonably designed to maintain the integrity, confidentiality, and availability of the data and information;
 - (iii) protect against anticipated threats or hazards to the security or integrity of the data and information;
 - (iv) protect against unauthorized access to or use of the data and information that could result in substantial harm or inconvenience to PSERS;
 - (v) provide for secure disposal of the data and information; and
 - (vi) prescribe actions to be taken in the event that a security incident occurs or is suspected to have occurred.
- (b) Contractor Personnel. Contractor agrees that it shall only use Authorized Persons who are highly qualified in performing under the Agreement and have passed a background check. Contractor shall use the background check required under the Appendix 1 for individuals described therein and for all others, a background check that is recognized under Industry Standards as appropriate to address the security

concerns that apply to the specific individual and the services to be provided by the individual under the Agreement.

- (c) Acceptance of Acceptable Use Policy. Contractor shall ensure that all Contractor employees and other individuals acting for Contractor, who access or could access PSERS's network as a part of performing under the Agreement, have agreed to PSERS's Acceptable Use Policy as found in Management Directive 205.34 Amended, as it may be amended and any successor thereto (the current version being located at: https://www.pa.gov/content/dam/copapwp-pagov/en/oa/documents/policies/md/200/205_34.pdf), before such access.
- (d) Security Awareness Training. Contractor shall ensure that its employees, agents, contractors, subcontractors are provided cybersecurity awareness education and are adequately trained to perform their information security-related duties and responsibilities consistent with Applicable Standards.

4. Documentation and Required Notification.

- (a) Security Incident Handling. As part of the ISP, Contractor represents and agrees that Contractor has in place and will continue to maintain a documented security incident management process. The security incident management process shall:
 - (i) provide for the timely detection of security incidents and responses thereto; and
 - (ii) require the recordation of the applicable facts of each security incident and responses thereto, including the application or non-application of the security incident management process, escalation procedures, and the responsibilities of each affected party.
- (b) Notice to PSERS and Response of Security Breach.
 - (i) Contractor shall notify by telephone PSERS's Chief Information Security Officer at (717) 720-4699 and Deputy Executive Director for Administration at (717) 720-4825 and by e-mail PSERS at RA-PSISO@pa.gov:
 - (A) as soon as reasonably practicable and in any event within twenty-four (24) hours of first having knowledge or reasonable suspicion of:
 - (1) an unauthorized access, use, release, disclosure, or acquisition of PSERS Data;
 - (2) a loss, destruction, alteration, theft or corruption of PSERS Data;
 - (3) any event that creates a substantial risk to the confidentiality, integrity or availability of PSERS Data;

- (4) a breach of any of Contractor's security obligations under this Addendum;
 - (5) the occurrence of an event described in clauses (1), (2), or (3) (without reference to PSERS Data) involving data or information other than PSERS Data if Contractor has not reasonably determined that such event will not be an event described in clause (1), (2) or (3); or
 - (6) any other event requiring notification under applicable law, including the Act (each of the events described in clauses (1) – (5) and this clause (6)) is hereinafter referred to as a "Security Breach"), and
- (B) within ten (10) days of having a suspicion that a Security Breach may have occurred unless after investigation appropriate to the suspicion during such ten (10) day period, Contractor has reasonably concluded that no Security Breach occurred.

PSERS shall provide updated contact information to Contractor within ten (10) business days of any change to the PSERS's contact information set forth in this Subsection (i).

- (ii) In the event of a Security Breach and as soon as practicable after first having knowledge of the Security Breach, Contractor shall:
 - (A) preserve forensic evidence, mitigate any potential harm, and eliminate the cause of the risk or breach within Contractor's reasonable control; and
 - (B) undertake a thorough forensic investigation of any compromise or improper use and provide to PSERS all information necessary to enable PSERS to fully understand the nature and extent of the compromise or improper use to the extent known.
- (iii) To the extent that the Security Breach is attributable to the actions or failure to act by Contractor or Authorized Persons or breach of this Addendum by Contractor or Authorized Persons, Contractor shall at its sole expense provide timely notice to all individuals that may require notice under applicable law or regulation and an individual who would be entitled to notice under the Act, if such individual was a resident of the Commonwealth. The notice must be pre-approved by PSERS. At PSERS request, Contractor shall provide credit monitoring services to all individuals that may be impacted by the events requiring notice as described in this Section 4. Contractor agrees that it is doing business in the Commonwealth.
- (c) Security Incident Investigations. Contractor agrees to cooperate with PSERS in investigating a security incident, as declared by PSERS in PSERS's sole discretion, and provide the names and contact information, of at least two (2) security contacts

who shall respond to PSERS in a timely manner, dependent on criticality, in the event that PSERS must investigate a security incident. The current security contacts are:

Contact Names: _____
Phone Numbers: _____
Email Addresses: _____

Contractor shall provide updated contact information to PSERS within ten (10) business days of any change to the currently applicable security contact information provided to PSERS.

5. Maintenance of Safeguards.

- (a) Contractor shall maintain and follow Applicable Standards with respect to any of PSERS's Confidential Information in Contractor's possession or control and protect such information against any loss, alteration, theft or corruption.
- (b) At PSERS's request, Contractor shall provide PSERS with copies of its information security policies, processes, and procedures. Contractor shall notify PSERS within ten (10) business days of any changes to its policies, processes or procedures that relate to the security of PSERS Data in Contractor's possession or control.

6. Information Security Audit.

- (a) PSERS's Right to Review ISP and Onsite Assessment. PSERS shall have the right to review Contractor's ISP at any time that Contractor is subject to the terms of this Addendum. During the performance of the Services, on an ongoing basis annually and immediately in the event of a Security Breach, PSERS, including its professional advisors and auditors, at its own expense, shall be entitled to perform, or to have performed, an on-site assessment of Contractor's ISP. Contractor agrees that the assessment scope will address the services provided to PSERS, including related people, process, and technology.
- (b) System and Organization Controls (SOC) Reporting. PSERS shall have the right to review Contractor's ISP through Contractor's annual submission to PSERS of its current SOC report(s) as required to be provided under this Addendum. Upon the written request of PSERS, Contractor shall submit:
 - (i) a SOC 1 Type II report, if hosting financial information;
 - (ii) a SOC 2 Type II report, if hosting, handling or processing PSERS's Confidential Information; and
 - (iii) a SOC for Cybersecurity Report if any of the following conditions exist:
 - (A) reoccurring findings in SOC 1-Type II or SOC 2-Type II reports;
 - (B) a cybersecurity incident or security breach has occurred;

- (C) cybersecurity incidents or breaches are not being detected, prevented, reported, and/or mitigated in a timely manner (as determined by PSERS);
- (D) cybersecurity incidents or breaches are not being properly managed by Contractor;
- (E) uncertainty that Contractor has an effective cybersecurity risk management program;
- (F) Contractor has been engaged in a merger or acquisition during the term of the Agreement; or
- (G) Contractor has restructured its service offerings and/or business model.

Any report required to be provided under Subsections (i), (ii) and (iii) above shall document an assessment conducted by a qualified, independent third party. The assessment scope must address the services provided to PSERS, including related people, process, and technology.

- (c) Assessment Questionnaire. Upon PSERS's request but not more frequently than annually, Contractor agrees to complete within forty-five (45) days of receipt of PSERS's request an assessment questionnaire provided by PSERS regarding Contractor's ISP, including artifacts for a subset of controls.

7. Software Development Security. In the event that Contractor conducts application software development for PSERS, Contractor shall:

- (a) either make source codes available for review by PSERS or shall conduct source code scanning using a commercial security tool;
- (b) cause scans to be conducted annually and at any time significant code changes are made;
- (c) make scan reports available to PSERS within two (2) weeks of execution;
- (d) disclose remediation timelines for high, medium and low risk security code defects; and
- (e) perform scans before code is implemented in production. Contractor agrees that high risk security code defects may not be implemented in production without written approval from either PSERS's Executive Director or a Deputy Executive Director.

8. Computing Service Clearances. Contractor shall meet the following requirements to the extent that Contractor provides a Computing Service or any change to a Computing Service pursuant to the Agreement that occurs on or after the effective date of the Agreement:

- (a) Computing Service Review. Contractor shall coordinate with PSERS to complete and submit to PSERS the Computing Services Requirements (CSR) document provided by PSERS as part of the Computing Services Review. Contractor agrees that Computing Service Review and approval is required prior to implementing a Computing Service.
- (b) Computing Services Requirements and Assessment Questionnaire. Contractor represents, warrants and agrees to and with PSERS that all verbal and written information that Contractor provides or is provided on behalf of the Contractor to PSERS as part of or related to each of the following, whether before or on or after the effective date of the Agreement, does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statement not misleading:
 - (i) the Computing Services Requirements (CSR); and
 - (ii) the assessment questionnaire referred to in Section 6(c) of this Addendum.

Contractor agrees to immediately inform PSERS if any such information is untrue, ceases to be true or omits to state a material fact necessary to make the information not misleading.

9. Additional On-Going Contractor Obligations.

- (a) Monitoring and Audit Logging. Contractor shall ensure system monitoring and security audit logging is enabled and accessible to PSERS's Chief Information Security Officer or designee. Contractor shall:
 - (i) provide monitoring (in addition, PSERS recommends verbose logging);
 - (ii) provide software with ability to correlate events and create security alerts; and
 - (iii) maintain reports that are easily accessible and in a readable format online for a minimum of 90 days and archived for a minimum of one (1) year.
- (b) Data Segmentation / Boundary Protection. Upon request, Contractor shall provide PSERS with a network/architecture diagram showing what technical controls are performing the network segmentation. If a solution spans more than one hosting environment (such as integration to PSERS's managed environments, or across multiple hosting providers), Contractor shall provide PSERS with details on what solution components and data are deployed in which environment and:
 - (i) include border gateway, perimeter and/or network firewall, web application firewall, VPN tunnels, security zone access as applicable to the solution;
 - (ii) describe data encryption methods at rest and in transit across environments; and

- (iii) include the direction of connectivity (specify whether initiated inbound, outbound, or both) and specifications for API calls, protocols, etc. Contractor shall describe how data segregation (physically or logically) of PSERS Data from non-PSERS data is guaranteed and maintain the diagram as long as Contractor is subject to the terms of this Addendum and provide updates if changes occur.
- (c) Exploit and Malware Protection. Contractor shall provide security controls required to identify attacks, identify changes to files, protect against malware, protect user web services, data loss prevention (DLP) and to perform forensic analysis. Contractor shall provide:
 - (i) file Integrity Monitoring Controls;
 - (ii) Anti-Malware and Antivirus Controls;
 - (iii) Intrusion Detection System (IDS)/Intrusion Prevention System (IPS) Controls;
 - (iv) Data Loss Prevention (DLP) Controls;
 - (v) Forensic Controls; and
 - (vi) Advanced Persistent Threat (APT) Controls.
- (d) Encryption. Contractor shall enable industry standard strong encryption for all records involved with Software as a Service (SaaS). Contractor shall provide technical controls with strong encryption to protect Data in Transit and Data at Rest.
- (e) Identity & Access Management. Contractor shall provide technical controls for authenticating users, provisioning and deprovisioning users, identity interaction and nonrepudiation needs for administrators, internet users and internal users. Multi-Factor Authentication (MFA) shall be implemented by the Contractor for users requiring direct access to any PSERS's application from outside the Commonwealth network. Where possible, the Commonwealth MFA solution shall be utilized.
- (f) Vulnerability Assessment. Contractor shall ensure all applications are securely coded, vetted and scanned. Contractor shall:
 - (i) conduct a third-party independent vulnerability assessment annually or sooner if due to compliance regulations or other requirements, or upon a major change to the solution;
 - (ii) provide vulnerability assessment results to PSERS on an annual basis during the period the Contractor is subject to the terms of this Addendum;
 - (iii) identify and validate vulnerabilities required for remediation; and
 - (iv) ensure patching is up to date.

- (g) Data Protection / Recovery. Upon PSERS's request, Contractor shall provide a business continuity plan that addresses:
- (i) Data/Database Recovery;
 - (ii) Application Recovery;
 - (iii) Operating System Recovery; and
 - (iv) Infrastructure Recovery.

In connection therewith, Contractor shall describe:

- (i) its capability to do a complete restoration in the event of a disaster;
 - (ii) what tests are performed as part of its disaster recovery plan; and
 - (iii) its capability to provide services during a pandemic event.
- (h) Inventory. Contractor shall ensure a complete, accurate and up-to-date inventory of PSERS's deployed resources within the infrastructure supporting PSERS's deployed resources is maintained and upon request, made available for review by PSERS..
10. Compliance with Applicable Federal, State and Local Laws. Contractor shall comply with all applicable federal, state, and local laws concerning data protection, data security, data privacy and data breach notification laws, including but not limited to, the Act in the performance of the Agreement, including this Addendum.
11. Enforcing Compliance. Contractor shall enforce and be responsible for compliance by its employees, agents, and subcontractors with the provisions of this Addendum and all other confidentiality obligations owed to PSERS. Contractor shall be deemed in control of, be responsible and liable for the acts and omissions of its agents and subcontractors, including all Authorized Persons.
12. Accommodation of Additional Protections. Contractor agrees to comply with such additional protections as PSERS shall reasonably request.
13. Termination. If PSERS determines that the Contractor has breached any provision of this Addendum, such breach shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by PSERS pursuant to the Agreement.
14. Indemnification.
- (a) Contractor agrees to indemnify and hold harmless PSERS, its trustees, officers and employees (individually and collectively "Indemnified Party") from and against all losses, damages, costs, expenses and other harm which any of the Indemnified Parties may incur, be responsible for or pay, as a result of, or arising directly or

indirectly out of or in connection with, (i) Contractor's failure to meet any of its obligations under this Addendum and (ii) Security Breaches.

- (b) Contractor agrees to indemnify, hold harmless and defend Indemnified Party from and against all third party claims, demands, losses, awards, judgments, actions and proceedings (including Indemnified Party's costs and expenses incidental thereto (including costs of defense and attorneys' fees)) which any Indemnified Party may incur, be responsible for or pay, arising out of or in any way connected with Contractor's performance or failure to perform under this Addendum.

PSERS shall provide Contractor with prompt notice of any claim or suit of which it learns to which the obligation to defend under this Section 14(b) applies.

- (i) 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 PSERS in actions brought against PSERS. The OAG, however, in its sole discretion and under the terms it deems appropriate, may delegate its right of defense. If OAG delegates the defense to Contractor, PSERS will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- (ii) Neither Contractor nor PSERS may enter into a settlement of any claim or suit to which this Section 14(b) of this Addendum applies without the other party's written consent, which will not be unreasonably withheld. PSERS may, in its sole discretion, allow Contractor to control the defense and any related settlement negotiations.
- (c) Contractor agrees that any limitations on Contractor's liability, regardless of conflicting language elsewhere in the Agreement, shall not limit the Contractor's liability under this Section 14.

15. Changes to Information Technologies Standards and Policies. During the period that Contractor is subject to the terms of this Addendum, Contractor acknowledges and agrees that:

- (a) the information technology standards and policies referenced in this Addendum, including Appendix 1, may change, be replaced or supplemented; or
- (b) PSERS may need to change, replace or supplement such information technology standards and policies to address:
 - (i) changes in requirements applicable to PSERS; or
 - (ii) changes in information systems, including, hardware, software, networks, cloud services and data that is collected, stored, processed and distributed.

Upon written notice from PSERS that sets forth the changes and implementation timelines required by PSERS, Contractor agrees to comply with such changes and implementation timelines, provided however, that if a change constitutes a change that is required by

PSERS and Contractor or other recipients of the services or products of Contractor, Contractor shall not be required to implement the change unless upon the request of Contractor, PSERS agrees in writing to amend the economic terms of the Agreement to reflect such additional reasonable costs that Contractor demonstrates will be expended to comply with the request.

16. Survival; Order of Precedence. Notwithstanding anything contained this Addendum or the Agreement to the contrary, Contractor agrees that the obligations imposed on Contractor under this Addendum shall:
 - (a) apply during the term of the Agreement;
 - (b) survive the termination of the Agreement for such other period of time as may be necessary to effectuate the intended purpose of protecting PSERS Data, systems, and services; and
 - (c) in the event of any conflict with any term of the Agreement, the terms of this Addendum shall govern and take precedence.
17. Assignment. Contractor may not assign any of its rights, duties or obligations under this Addendum without PSERS's prior written consent.
18. Cyber and Technology Errors and Omissions Insurance.
 - (a) Type of Insurance. During the term of the Agreement and for such other period of time that Contractor is obligated to PSERS under this Addendum, Contractor shall maintain at its expense, and require its agents, contractors, and subcontractors to procure and maintain, policies of insurance for cyber liability ("Cyber Liability") and technology errors and omissions ("Tech E&O") with limits of not less than \$5,000,000.00 per occurrence and \$10,000,000.00 aggregate that includes coverage for:
 - (i) Liability for network security failures and privacy breaches, including loss or unauthorized access, use or disclosure of customer data, systems, and services, whether by Contractor or any subcontractor or cloud service provider used by Contractor;
 - (ii) Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
 - (iii) Expenses related to regulatory compliance, governmental investigations, fines, fees, assessments, and penalties where insurable by law;
 - (iv) Liability for technological products and services provided by or created by Contractor, including intellectual property infringement or misappropriation;
 - (v) Liability for professional services provided by or for Contractor;
 - (vi) PCI fines, fees, penalties, and assessments;
 - (vii) Cyber extortion payment and response costs;
 - (viii) First and third-party business interruption loss resulting from a network security failure or system failure;

- (ix) Costs of restoring, updating, or replacing data; and
- (x) Liability losses connected to network security, privacy and media liability.

(b) Certificates of Insurance.

- (i) Upon the request of PSERS, Contractor shall provide to PSERS, Certificates of Insurance for each of the Cyber Liability and Tech E&O policies reflecting applicable limits, sub-limits, self-insured retentions and deductibles. For the Cyber Liability policy, PSERS and the Commonwealth of Pennsylvania must also be named as an additional insured and this shall be indicated on the Certificate of Insurance. The Cyber Liability and Tech E&O policies shall contain a provision that the coverages afforded under each of the policies shall not be cancelled or changed until at least thirty (30) days written notice has been given to PSERS. PSERS shall have no obligation to obtain such certificates or endorsements from the Contractor(s). Failure by PSERS to obtain the certificates or endorsements shall not be deemed a waiver of the Contractor's obligation to obtain and furnish certificates and endorsements. PSERS shall have the right to inspect the original insurance policies.
- (ii) A Certificate of Insurance must confirm the required coverages in the "Additional Comments" section or Contractor must provide a copy of the declarations page confirming the details of the insurance. Contractor is responsible for all deductibles, self-insured retentions or waiting period requirements. Contractor shall provide any coverage sub-limits under each policy. In the event Contractor maintains broader coverage and/or higher limits than the minimums shown above, PSERS shall be entitled to the broader coverage and/or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available. If the Cyber Liability or Tech E&O insurance is written on a claims-made basis, the retroactive date must be before the effective date of the Agreement. If Cyber Liability or Tech E&O insurance is written on a claims-made basis and non-renewed at any time during and up until the end of Contractor's obligations under the Addendum, Contractor shall maintain coverage that meets the requirements established in this Section 18 for a period of not less than three years from the date on which Contractor's obligations under the Addendum end with a retroactive date before the effective date of the Agreement or shall purchase an Extended Reporting Period for at least a three year period. The Contractor shall maintain the insurance policies from insurance carrier(s) authorized to conduct business under the laws of the Commonwealth and carry an A.M. Best rating of at least A-, Class VIII.

- 19. Notices. Except as provided in Section 4(b)(i) of this Addendum above, as to matters requiring notice covered by this Addendum, PSERS and Contractor agree that the notice provisions in the Agreement shall apply.
- 20. No Waiver. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. A waiver is effective only in the specific instance and for the specific purpose for which it is given and shall not be deemed a waiver of any subsequent breach

or default. No delay in exercising, failure to exercise, course of dealing with respect to, or partial exercise of any right or remedy shall constitute a waiver of any other right or remedy, or future exercise thereof.

21. Severability. If any term, covenant, or condition of this Addendum or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Addendum, or the application of such term, covenant, or condition to persons or circumstances other than to those to which is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, or condition of this Addendum shall be valid and be enforced to the fullest extent permitted by law.
22. Miscellaneous. The section headings contained in this Addendum are for convenience of reference purposes only and shall not affect the meaning or interpretation of this Addendum. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural. Usage of the term “including” in this Addendum shall be deemed to be followed by the phrase “without limitation” and shall be regarded as a reference to nonexclusive and non-characterizing illustrations. Except to the extent that PSERS has agreed otherwise in writing, PSERS and Contractor hereby acknowledge and agree that PSERS has all right, title and interest in and to PSERS Data.

EXHIBIT A

Appendix 1

DATA AND INFORMATION SECURITY ADDENDUM OPERATIONS DOCUMENT

1. Purpose

This Data and Information Security Addendum Operations Document (Appendix 1) provides the information technology standards and policies which the [Placeholder for short-name of vendor – standard usage is Contractor], as defined in the Data and Information Security Addendum (Addendum) to which this Appendix 1 is incorporated, and each other entity or individual that is obligated to comply (each such entity and individual, together with the Contractor, individually and collectively referred to herein as “Contracted Resources”) shall comply for purposes of Section 2 (a)(i) of the Addendum.

2. Requirements

Contracted Resources shall comply with and adhere to the following requirements, as may be changed, replaced or supplemented pursuant to the terms of the Addendum (“Requirements”) in the performance of the Agreement to which the Addendum forms a part. The Commonwealth of Pennsylvania (“COPA”) Chief Information Security Officer (“CISO”) and the Public School Employees’ Retirement System (“PSERS”) CISO have discretion to review and monitor performance of compliance with the Requirements.

	Requirements
Information Security	<ul style="list-style-type: none">• Ensure the location(s) of server and data centers as well as the location of the workforce accessing them are within the United States of America.• Ensure Information Technology (IT) environments and systems that contain COPA or PSERS data comply with all the Requirements.
Host Security	<ul style="list-style-type: none">• Promptly investigate any suspected security incidents. Implement procedures for responding to and reporting incidents or breaches.

	Requirements
Software Suite Standards	<ul style="list-style-type: none"> • Utilize industry standard software for Endpoint Detection Response (EDR) on all servers, desktops, and laptops that are utilized to access or host COPA or PSERS data. • Install and maintain appropriate EDR monitoring and management agents on all servers, desktops, and laptops that are utilized to access or host COPA or PSERS data. • Ensure systems which access or host COPA or PSERS data are being actively monitored and run weekly reports to ensure compliance EDR and anti-virus standards. • Implement procedures to mitigate overall and specific risks of breach or misuse of COPA or PSERS IT resources and their associated damages and costs. This includes patching, internal and external scanning, and monitoring. • Utilize industry standard anti-virus, anti-malware, host intrusion prevention, incident response procedures, monitoring, reporting, network, and application firewalls for real-time scanning, detection, removal, and blocking of potentially malicious content. • Ensure the names, work and mobile phone numbers, and work e-mail addresses for a primary and backup contact are provided to the PSERS CISO at ra-psiso@pa.gov.
Security Auditing and Monitor	<ul style="list-style-type: none"> • Implement services for internet access monitoring, content filtering, SSL decryption and inspection.
Web Application Firewall	<ul style="list-style-type: none"> • Implement a Web Application Firewall (WAF). The WAF shall be used to protect data. In addition, the WAF shall: <ol style="list-style-type: none"> 1. Minimize the threat window for each exposure by blocking access to the vulnerability until the vulnerability can be fixed in the source code; 2. Meet HIPAA and privacy compliance requirements; 3. Monitor end-user's transactions with a web application; and 4. Provide an additional layer of web application hardening Open Web Application Security Project (OWASP) protection.
Application Certification and Accreditation	<ul style="list-style-type: none"> • Scan all application code for vulnerabilities using an industry standard static and dynamic code scanning tool. • Ensure internet facing and web facing applications applicable to this category of Requirement go through the COPA Application Certification and Accreditation (CA2) process before being deployed in production. • Provide attestation of ongoing application code and vulnerability scanning. • Ensure secure coding practices are built within applications according to and in alignment with the Software Development Lifecycle (SDLC) process, refer to NIST Special Publication 800-160v1r1, Engineering Trustworthy Secure Systems). • Ensure applicable applications go through the CA2 reaccreditation process every 3 years.

	Requirements
Minimum Standards for IDs, Passwords, Sessions, and Multi-Factor Authentication	<ul style="list-style-type: none"> • Password policies shall be utilized, including but not limited to the requirement for complex passwords and multi-factor authentication (MFA). • Implement multi-factor authentication (MFA) for Contracted Resources requiring direct access to a system from outside the COPA and PSERS network. • Implement MFA for any systems containing classified or confidential data.
Minimum Contractor Background Checks	<ul style="list-style-type: none"> • Conduct background checks for each Contracted Resource and any subcontracted resources who will have access to COPA data or PSERS data or COPA or PSERS owned or leased facilities, either through onsite or remote access. • Background checks shall be conducted via the COPA requests for criminal record check processes (see Request a Criminal History Background Check) for in-state Contracted Resources or subcontracted resources or via a criminal background check through the appropriate state agency, (see appropriate state agency) for out of state Contracted Resources or subcontracted services. • The background check shall be conducted prior to initial access by the Contracted Resource or subcontracted resources, and annually thereafter. • Ensure a fingerprint database search is conducted for Contracted Resources or subcontracted resources having access to Criminal Justice Information (CJI), Federal Tax Information (FTI), Criminal History Record Information (CHRI), and PA Commonwealth Law Enforcement Assistance Network (CLEAN) by either on site or remote computer access. • Be responsible for the payment of all fees associated with background checks for Contracted Resources or subcontracted resources.
Virtual Private Network Standards	<ul style="list-style-type: none"> • Require Virtual Private Network (VPN) access to its networks and/or connected systems. • Utilize a VPN connection for any access to the COPA and PSERS network from an external source.
Data Cleansing	<ul style="list-style-type: none"> • Implement process(es) for the cleansing of data from electronic media when the data retention requirements have expired, the data is no longer needed, or the data is scheduled for disposal as determined by PSERS. • Degauss, wipe or destroy decommissioned electronic media in by following best practices outlined in NIST Special Publication 800-88 Revision 1, Guidelines for Media Sanitization).
Information Security Officer Contact for PSERS	<ul style="list-style-type: none"> • Provide contact information for an Information Security Officer (ISO) and backup ISO who are responsible for all security matters related to PSERS.

	Requirements
Procedures for Protecting COPA and PSERS Electronic Data	<ul style="list-style-type: none"> • Utilize a web application firewall (WAF) to protect data. • Encrypt classified and confidential data at rest using encryption standards in alignment with, but not limited to, the National Institute of Standards and Technology (NIST) Cryptographic Module Validation Program. <ul style="list-style-type: none"> ○ For Criminal Justice Information, encryption must also meet Criminal Justice Information Services Security (CJIS) Policy requirements. ○ For systems receiving, processing, or storing Federal Tax Information (FTI), encryption must also meet IRS Publication 1075 requirements.
Security Information and Event Management	<ul style="list-style-type: none"> • Log events to include: <ol style="list-style-type: none"> 1. Log collection and consolidation; 2. Security event collection from multiple sources (firewalls, routers, servers, etc.); 3. Identification of security related events and incidents; 4. Automated response/alerting capability when incidents are detected; and 5. Correlation of events from multiple sources.
Information Technology Technical Security Assessments	<ul style="list-style-type: none"> • Perform assessments, audits, vulnerability scanning, and/or penetration testing consistent with industry standards.
Cyber Security Incident Reporting	<ul style="list-style-type: none"> • Provide notice to PSERS as soon as practical upon discovery of a cyber security incident, but no later than the time period specified in the Addendum, and if applicable, the Pennsylvania Breach of Personal Information Notification Act, as amended (Act). • Have a documented cyber security incident response process and ensure all suspected cyber security incidents are reported as required in the Addendum. • Follow a cyber security incident response process, including, but not limited to, disconnecting a system from the network, confiscating hardware for evidence, providing information for investigative purposes.

	Requirements
Proper Use and Disclosure of Personally Identifiable Information (PII)	<ul style="list-style-type: none"> • Perform a data element inventory, identifying and classifying all “personally identifiable information” (PII) generated, collected, stored, used, and disclosed by PSERS or third party on PSERS’s behalf. • Ensure access or use of information utilizing PII, or other protected data types (CJIS, FTI, HIPAA, etc.) for any purpose, is properly controlled, encrypted, and restricted to prevent unauthorized use or disclosure. For Social Security Administration (SSA) compliance, the system’s encryption methods must align with the guidelines established by NIST. SSA recommends the Advanced Encryption Standards (AES) or Triple Data Encryption Algorithm (Triple DES). • Take appropriate measures, implement necessary technology, and establish operating procedures to ensure data privacy is maintained. • Limit the generation, collection, storage, use, and disclosure of PII to that which is necessary for business purposes only. • Ensure that systems that require a unique identifier do not use PII as that identifier. • Assign a unique identification number to an individual for systems requiring it. The unique identification number cannot be the same as or cannot be traced back to users PII. Security must be applied, and care must be taken to ensure that access to the electronic system and use of these unique identification numbers are restricted in accordance with any law or other PSERS requirement. • Ensure contracted resource and agency hosted systems do not display PII visually, whether on computer monitors, printed forms, or other system output, unless required by any law or other requirement applicable to PSERS, or business necessity. • Report security incidents involving PII in accordance with any laws or regulations for incidents or data breaches, such as the Act.

	Requirements
Physical Security for IT Resources	<ul style="list-style-type: none"> • Implement policies and practices to ensure the protection of physical facilities and appropriate screening for facility access for any IT facility or resource hosting COPA or PSERS data. • Ensure their personnel cooperate with COPA site requirements, which includes providing information for COPA badging and being escorted. Contracted Resources and COPA approved subcontracted resources who do not have a COPA badge, shall always display their company identification badge while on COPA premises. COPA and PSERS reserve the right to request additional photo identification from Contracted Resources and subcontracted resources. • Document an inventory of items (such as tools and equipment) being brought onto the COPA worksite, and to submit to a physical search at COPA worksites that have this requirement for persons entering their premises such as the State Police or Department of Corrections. <ul style="list-style-type: none"> ○ Ensure Contracted Resources and subcontracted resources always have a list of tools being brought onto the worksite and are prepared to present the list to a COPA employee upon arrival, as well as present the tools or equipment for inspection. ○ Before leaving the worksite, Contracted Resources and subcontracted resources shall again present the list and the tools or equipment for inspection and may be searched by COPA staff, or a correctional or police officer. • Restrict access to their IT facilities and resources to only authorized persons. • Ensure their IT facilities and resources hosting or accessing COPA or PSERS data are physically protected in proportion to the data or application's criticality or functional importance.
Encryption Standards	<ul style="list-style-type: none"> • Ensure protection of COPA and PSERS data that is stored within the Contracted Resource's systems. • Ensure COPA and PSERS classified and confidential data are encrypted during rest and transit in alignment with industry standards, including but not limited to, NIST Cryptographic Module Validation Program. • Ensure use of full disk encryption for archiving and back up. • Ensure non-Windows environments requiring full disk encryption, utilize full disk encryption that conforms to AES specifications and the NIST Cryptographic Module Validation Program. • Ensure use of data element encryption when COPA or PSERS classified and confidential data are stored within a database. Transparent Data Encryption (TDE) or other database specific methods can be utilized to meet this requirement.

	Requirements												
Data Loss Prevention (DLP) Compliance Standards	<ul style="list-style-type: none">Implement a Data Loss Prevention (DLP) technology/solution.												
Firewall Rule Set	<ul style="list-style-type: none">Ensure any devices with access to or hosting COPA or PSERS data are protected by a perimeter firewall system.An audit must be performed to identify all application service protocols to ensure specific port requirements are documented and applied to the necessary firewall(s).												
Mobile Device Security	<ul style="list-style-type: none">If mobile device access to COPA or PSERS resources or data is permitted, a Mobile Device Management (MDM) solution shall be implemented to manage access and protect mobile devices in the event they are lost or stolen.												
Data Center Privileged User Identification and Access Management	<ul style="list-style-type: none">Ensure default application and/or hardware passwords are changed and managed to meet industry standard requirements, including but not limited to, MFA and complex password requirements.												
IT Service Organization Management and Requirements	<ul style="list-style-type: none">Comply with Requirements by coordinating with respective COPA agencies to complete the Computing Services Requirements (CSR) document as part of the Use Case Review Process as and if provided and requested by the PSERS.<ul style="list-style-type: none">Submit relevant SOC reports or other agreed upon third-party security assessment as required by the Addendum.												
Standard Patching Requirements	<ul style="list-style-type: none">Ensure security patches are applied in accordance with industry standards and best practices to any systems connecting to the COPA or PSERS network, or supporting COPA or PSERS systems, applications, or data, provided that compliance with this Requirement shall be deemed satisfied if monthly release patches are tested and deployed within the number of business days of the vendor release as set forth in the following schedule, as applicable:<div><div>1. For Microsoft patches:</div><table><tr><th>Severity</th><th>Critical</th><th>Important</th><th>Moderate</th></tr><tr><td>Testing</td><td>Immediate</td><td>5 business days</td><td>10 business days</td></tr><tr><td>Deployment</td><td>10 business days release</td><td>10 business days</td><td>15 business days</td></tr></table></div>2. For all other vendor hardware/software patches: within 25 business days regardless of severity level.	Severity	Critical	Important	Moderate	Testing	Immediate	5 business days	10 business days	Deployment	10 business days release	10 business days	15 business days
Severity	Critical	Important	Moderate										
Testing	Immediate	5 business days	10 business days										
Deployment	10 business days release	10 business days	15 business days										

EXHIBIT B

CONTRACT TERMS AND CONDITIONS – ELECTRONIC CONTRACT

1. TERM OF CONTRACT

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

The Effective Date shall be: a) the Effective Date printed on the Contract after the Contract has been fully executed by the 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.

2. RENEWAL OF CONTRACT TERM

The Contract may be renewed for a maximum of 2 additional 1-year term(s), so long as Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter prior to the expiration of the term of the agreement, or any extension thereof. The Commonwealth may exercise the renewal as an individual year or multiple year term(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.

3. 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.

4. SIGNATURES

The Contract shall not be a legally binding contract until the fully-executed Contract has been sent to the Contractor. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

The Contract may be electronically signed by the Commonwealth. The electronically-printed name of the Purchasing Agent represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have "Fully Executed" at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

The fully-executed Contract may be sent to the Contractor electronically or through facsimile equipment. The electronic transmission of the Contract shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Contract shall constitute receipt of the fully-executed Contract.

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract to be legally enforceable.

- b. The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

5. DEFINITIONS

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

- a. Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this contract, that entity shall also be identified as "Agency".
- b. Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- c. Days: Unless specifically indicated otherwise, days mean calendar days.
- d. Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
- e. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
- f. Services: All Contractor activity necessary to satisfy the Contract.

Capitalized terms used in these Commonwealth standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the contract to which it is attached.

6. PURCHASE ORDERS

The Agency may issue Purchase Orders against the Contract. These orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance

with the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.

Purchase Orders may be electronically signed by the Agency. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.

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. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

Purchase Orders under ten thousand dollars (\$10,000) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

7. 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 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.

8. DELIVERY

- a. **Supplies Delivery:** All item(s) shall be delivered F.O.B. Destination. 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, delivery must be made within thirty (30) days after the Effective Date.

- b. **Delivery of Services:** The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

9. ESTIMATED QUANTITIES

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

10. WARRANTY

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

11. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the commonwealth under the contract. The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is

enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

12. OWNERSHIP RIGHTS

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

13. ACCEPTANCE

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

14. PRODUCT CONFORMANCE

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

- a. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
- b. Supply published manufacturer product documentation.
- c. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
- d. Complete a survey/questionnaire relating to the bid requirements and specifications.
- e. Provide customer references.

- f. Provide a product demonstration at a location near Harrisburg or the using agency location.
- 15. 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 thirty (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.

16. 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.

17. ENVIRONMENTAL PROVISIONS

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly 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. § 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. § 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1.

18. POST-CONSUMER RECYCLED CONTENT

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

19. COMPENSATION

- a. **Compensation for Supplies:** The Contractor shall be required to furnish the awarded item(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.
- b. **Compensation for Services:** The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

20. 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:

- a. Vendor name and "Remit to" address, including SAP Vendor number;
- b. Bank routing information, if ACH;
- c. SAP Purchase Order number;
- d. Delivery Address, including name of Commonwealth agency;
- e. Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- f. Quantity provided;
- g. Unit price;
- h. Price extension;
- i. Total price; and
- j. Delivery date of supplies or services.

If an invoice does not contain the minimum information set forth in this paragraph, 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 using 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.

21. PAYMENT

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be

construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. 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.

- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The 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.

22. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS

- a. **Payment Method.** The Commonwealth shall make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the contract or purchase order, the Contractor must submit or must have submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).
- b. **Unique Identifier.** The Contractor must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Contractor's unique invoice number on its ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
- c. **ACH Information in SRM.** The Contractor shall ensure that the ACH information contained in SRM is accurate and complete. The Contractor's failure to maintain accurate and complete information may result in delays in payments.

23. OFFSET

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

24. 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. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania 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 paragraph 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.

25. ASSIGNMENT OF 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 products and services which are the subject of this Contract.

26. INDEMNIFICATION

- a. **Contractor Obligations.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Contractor or its employees and agents that are related to this contract, as determined by the Commonwealth in its sole discretion.
- b. **Commonwealth Attorneys Act.** The Commonwealth shall provide the Contractor with prompt notice of any claim or suit of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under any terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- c. **Settlement.** Notwithstanding the above, neither party may enter into a settlement of any claim or suit without the other party's written consent, which will not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

27. AUDIT PROVISIONS

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, 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.

28. DEFAULT

- a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, 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 the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
 - 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;

- 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - 3) Unsatisfactory performance of the work;
 - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - 5) Improper delivery;
 - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - 7) Delivery of a defective item;
 - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - 9) Discontinuance of work without approval;
 - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - 11) Insolvency or bankruptcy;
 - 12) Assignment made for the benefit of creditors;
 - 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - 14) Failure to protect, to repair, or to make good any damage or injury to property;
 - 15) Breach of any provision of the Contract;
 - 16) Failure to comply with representations made in the Contractor's bid/proposal; or
 - 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.
- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the

Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

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

29. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract or Purchase Order.

30. TERMINATION PROVISIONS

The Commonwealth has the right to terminate this Contract or any Purchase Order for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work

satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.

- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. 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 Subparagraph a.

31. CONTRACT CONTROVERSIES

- a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.
- 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 fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

32. ASSIGNABILITY AND SUBCONTRACTING

- a. Subject to the terms and conditions of this Paragraph, 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 work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- 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, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- 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.
- 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.

33. OTHER CONTRACTORS

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees. 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.

34. NONDISCRIMINATION/SEXUAL HARASSMENT

- a. **Representations.** The Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and

policies relating to nondiscrimination and sexual harassment for the term of the contract. The Contractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

b. **Nondiscrimination/Sexual Harassment Obligations.** The Contractor shall not:

- 1) in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (“PHRA”) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- 2) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this contract.
- 3) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this contract.
- 4) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which this contract relates.
- 5) in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts’ enforcement and shall comply with any provision of law establishing organizations as employees’ exclusive representatives.

c. **Establishment of Contractor Policy.** The Contractor shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of the contract, the Contractor shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.

d. **Notification of Violations.** The Contractor’s obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the contract. Accordingly, the Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes aware of any actions or occurrences that would result in

violation of these provisions.

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

35. CONTRACTOR INTEGRITY

- a. **Definitions.** For purposes of these Contractor Integrity Provisions, the following definitions apply:
 - 1) "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - 2) "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
 - 3) "Contractor Related Parties" means any Affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
 - 4) "Financial Interest" means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - 5) "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), as may be amended, 4 Pa. Code §7.153(b), apply.
 - 6) "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- b. **Representations and Warranties.**
 - 1) **Contractor Representation and Warranties.** The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:

- a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- b) been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
- c) had any business license or professional license suspended or revoked;
- d) 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
- e) been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

- 2) **Contractor Explanation.** If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the contract.
- 3) **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
- 4) **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.

c. **Contractor Responsibilities.** During the term of this contract, the Contractor shall:

- 1) maintain the highest standards of honesty and integrity.
- 2) take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.
- 3) establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
- 4) not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable

to the provision of goods or services under this contract.

- 5) not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest. The Contractor must disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.
- 6) comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
- 7) comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.
- 8) immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.

d. **Investigations.** If a State Inspector General investigation is initiated, the Contractor shall.

- 1) reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- 2) cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions and make identified Contractor employees available for interviews at reasonable times and places.
- 3) upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. This information may include, but is not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.

e. **Termination.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Contractor Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does not preclude the use of all or any other. These rights and remedies are in addition to those the

Commonwealth may have under law, statute, regulation, or contract.

- a. **Subcontracts.** The Contractor shall include these Contractor Integrity Provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of this provision in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Contractor becomes aware of a subcontractor's violation of these provisions, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

36. CONTRACTOR RESPONSIBILITY

- a. **Definition.** For the purpose of these provisions, the term "Contractor" means as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth. The term also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.
- b. **Contractor Representations.**
 - 1) The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.
 - 2) The Contractor represents that as of the date of its execution of this contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- c. **Notification.** The Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.
- d. **Default.** The Contractor's failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the contract with the Commonwealth.
- e. **Reimbursement.** The Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this contract or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

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

37. AMERICANS WITH DISABILITIES ACT

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

38. HAZARDOUS SUBSTANCES

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 34 Pa. Code Section 301.1 et seq.

- a. **Labeling.** The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):
- 1) **Hazardous substances:**
 - a) The chemical name or common name,
 - b) A hazard warning, and
 - c) The name, address, and telephone number of the manufacturer.
 - 2) **Hazardous mixtures:**
 - a) The common name, but if none exists, then the trade name,
 - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,

- d) A hazard warning, and
 - e) The name, address, and telephone number of the manufacturer.
- 3) Single chemicals:
- a) The chemical name or the common name,
 - b) A hazard warning, if appropriate, and
 - c) The name, address, and telephone number of the manufacturer.
- 4) Chemical Mixtures:
- a) The common name, but if none exists, then the trade name,
 - b) A hazard warning, if appropriate,
 - c) The name, address, and telephone number of the manufacturer, and
 - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

- b. Material Safety Data Sheet. The contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The

contractor shall also notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

39. 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.

40. APPLICABLE LAW AND FORUM

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

41. 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.

42. 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 solicitation; and the Contractor's response to the solicitation.

43. CONTROLLING TERMS AND CONDITIONS

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. 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.

44. CHANGES

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 Contract Controversies Provision.

45. BACKGROUND CHECKS

- a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <https://www.pa.gov/services/psp/request-a-criminal-history-background-check>. 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.

46. CONFIDENTIALITY

- a. The Contractor agrees to guard the confidentiality of the Commonwealth's confidential information with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.
- b. The obligations stated in this Section do not apply to information:
 - 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
 - 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
 - 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - 4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- c. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

47. INSURANCE – GENERAL

The Contractor is required to have in place during the term of the Contract and any renewals or extensions thereof, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:

A. **Worker's Compensation Insurance** for all of the Contractor's employees and those of any subcontractor, engaged in work at the site of the project as required by law.

B. **Public Liability and Property Damage Insurance** to protect the Commonwealth, the Contractor, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property including the loss of use resulting from any property damage, which may arise from the activities performed under the Contract or the failure to perform under the Contract, whether such performance or non-performance be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The minimum amounts of coverage shall be \$250,000 per person and \$1,000,000 per occurrence for bodily injury, including death, and \$250,000 per person and \$1,000,000 per occurrence for property damage. Such policies shall be occurrence rather than claims-made policies and shall not contain any endorsements or any other form designated to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.

Prior to commencement of the work under the Contract and at each insurance renewal date during the term of the Contract, the Contractor shall provide the Commonwealth with current certificates of insurance. These certificates or policies shall name the Commonwealth as an additional insured and shall contain a provision that the coverage's afforded under the policies will not be cancelled or changed until at least thirty (30) days written notice has been given to the Commonwealth.

The Commonwealth shall be under no obligation to obtain such certificates from the Contractor(s). Failure by the Commonwealth to obtain the certificates shall not be deemed a waiver of the Contractor's obligation to obtain and furnish certificates. The Commonwealth shall have the right to inspect the original insurance policies.

48. **MANUFACTURER'S PRICE REDUCTION**

If, prior to the delivery of the awarded item(s) 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.

49. **NOTICE**

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

- a. If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.
- b. If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.

50. **RIGHT TO KNOW LAW**

- a. **Applicability.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL")

applies to this contract.

- b. **Contractor Assistance.** If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Contractor that it requires the Contractor's assistance, and the Contractor shall provide to the Commonwealth:
 - 1) access to, and copies of, any document or information in the Contractor's possession (Requested Information) arising out of this contract that the Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and
 - 2) any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this contract.
- c. **Trade Secret or Confidential Proprietary Information.** If the Contractor considers the Requested Information to include a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Contractor, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth's determination.
- d. **Reimbursement.**
 - 1) **Commonwealth Reimbursement.** If the Contractor fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Contractor shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
 - 2) **Contractor Reimbursement.** The Commonwealth will reimburse the Contractor for any costs that the Contractor incurs as a direct result of complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL.
- e. **Challenges of Commonwealth Release.** The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Contractor's legal challenge, regardless of the outcome.
- f. **Waiver.** As between the parties, the Contractor waives all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- g. **Survival.** The Contractor's obligations contained in this Section survive the termination or expiration of this contract.

51. ENHANCED MINIMUM WAGE

- a. **Enhanced Minimum Wage.** Contractor shall pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this contract/lease, and for an employee's hours performing ancillary services necessary for the performance of the services or lease when the employee spends at least 20% of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate will be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions do not apply to employees
 - 1) Exempt from minimum wage under the Minimum Wage Act of 1968;
 - 2) covered by a collective bargaining agreement;
 - 3) required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - 4) required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** The Contractor shall: (1) post this Enhanced Minimum Wage Provision for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.
- e. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.
- g. **Subcontractors.** The Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contract or lease to ensure that these provisions are binding on its subcontractors.

52. WORKER PROTECTION AND INVESTMENT

- a. The Contractor shall comply with all applicable Pennsylvania state labor laws and worker

safety laws including, but not limited to, the following:

- 1) Construction Workplace Misclassification Act;
- 2) Employment of Minors Child Labor Act;
- 3) Minimum Wage Act;
- 4) Prevailing Wage Act;
- 5) Equal Pay Law;
- 6) Employer to Pay Employment Medical Examination Fee Act;
- 7) Seasonal Farm Labor Act;
- 8) Wage Payment and Collection Law;
- 9) Industrial Homework Law;
- 10) Construction Industry Employee Verification Act;
- 11) Act 102: Prohibition on Excessive Overtime in Healthcare;
- 12) Apprenticeship and Training Act; and
- 13) Inspection of Employment Records Law.

53. DATA BREACH OR LOSS

The Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the [*Breach of Personal Information Notification Act*](#), as amended November 22, 2022, P.L. 2139, No. 151, 73 P.S. §§ 2301—2330. Further, to the extent the Contractor maintains, stores, or manages computerized data on behalf of the Commonwealth that constitutes personal information, as defined in the that constitutes personal information, as defined in the [*Breach of Personal Information Notification Act*](#), the Contractor shall comply with the then current version of the following IT Policies (ITPs): [*Data Classification Policy*](#), [*IT Security Incident Reporting Policy*](#), and [*Encryption Policy*](#).

EXHIBIT C

BEST AND FINAL OFFER (BAFO) COST SUBMITTAL

(Attached electronically as a separate file.)

EXHIBIT D

RFP# 2025-8

(Attached electronically as a separate file.)

EXHIBIT E
CONTRACTOR'S TECHNICAL SUBMITTAL

(Attached electronically as a separate file.)