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**ROB McCORD, STATE TREASURER**

**REQUEST FOR PROPOSALS FOR**

**A Software Application Solution for the Transformation and Modernization of the  
Treasury Unclaimed Property Systems and Processes**

**ISSUING OFFICE**

**Pennsylvania Treasury Department  
Bureau of Support Services  
Procurement Division  
Room 3T, Finance Building  
Harrisburg, PA 17120-0018**

**RFP NUMBER**

**RFP 14-003**

**DATE OF ISSUANCE**

**December 10, 2014**



## **REQUEST FOR PROPOSALS**

### **FOR**

### **Transformation and Modernization of Treasury Unclaimed Property Systems and Processes**

## **TABLE OF CONTENTS**

|  |           |
|--|-----------|
| <b>CALENDAR OF EVENTS</b>                | <b>3</b>  |
| <b>Part I—GENERAL INFORMATION</b>        | <b>4</b>  |
| <b>Part II—PROPOSAL REQUIREMENTS</b>     | <b>10</b> |
| <b>Part III—CRITERIA FOR SELECTION</b>   | <b>17</b> |
| <b>Part IV—WORK STATEMENT</b>            | <b>19</b> |
| <b>LIST OF EXHIBITS &amp; APPENDICES</b> | <b>29</b> |



## CALENDAR OF EVENTS

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

| Activity   | Responsibility | Date  |
|--|----------------|---|
| Issue of RFP14-003 posted to <a href="http://www.patreasury.gov/RFP14-003">www.patreasury.gov/RFP14-003</a>  | Issuing Office | December 10, 2014   |
| Deadline to submit Questions via email to: <a href="mailto:RFP14-003@patreasury.gov">RFP14-003@patreasury.gov</a>  | Vendors        | December 19, 2014   |
| Answers to Potential Vendor questions will be send to master vendor list and posted to <a href="http://www.patreasury.gov/RFP14-003">www.patreasury.gov/RFP14-003</a> no later than this date.   | Issuing Office | December 31, 2014   |
| Sealed proposal must be received by the Issuing Office at:<br><b>Pennsylvania Treasury Department<br/>Bureau of Support Services<br/>Procurement Division<br/>Room 3T, Finance Building<br/>Harrisburg, PA 17120<br/>Attention: Mark Lavelle</b> | Vendors        | No later than<br>2:00 p.m. on<br>Wednesday,<br>January 14, 2015 |
| Product Demonstrations, if required  | Vendors        | Beginning Week of<br>Jan 19, 2015                               |

## PART I

### GENERAL INFORMATION

#### **I-1. Purpose**

This Request for Proposals ("RFP") provides to those interested in submitting proposals for the subject procurement ("Vendors") sufficient information to enable them to prepare and submit proposals for the Department of Treasury to satisfy a need for Transformation and Modernization of the Treasury Unclaimed Property Systems and Processes ("Project"). The Department seeks a single, comprehensive solution that meets the requirements designated in the Work Statement and Appendices. Entities that are separately unable to provide a solution addressing the diverse functional requirements of this RFP are encouraged to partner with others in order to propose a comprehensive solution. Multiple entity proposals must identify a prime Vendor.

Unless otherwise stated, Department shall mean the "Treasury" and here Commonwealth shall refer to all other state agencies, Boards or Commissions.

#### **I-2. Scope**

Treasury is issuing this RFP limited to bids for a software application solution that integrates the functions described by the requirements established in the Work Statement and Appendices. All references to "solution" in the content of this RFP include the software application solution and the implementation. This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the product(s) and/or service(s) to be provided; requirements which Vendors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

#### **I-3. Issuing Office**

The Treasury ("Issuing Office") has issued this RFP on behalf of the Department of Treasury. The sole point of contact for this RFP shall be Mark Lavelle, Chief Administrative Officer ("Issuing Officer"). Please refer all inquiries to the Issuing Officer by email at [RFP14-003@patreasury.gov](mailto:RFP14-003@patreasury.gov).

#### **I-4. Problem Statement**

Treasury's Unclaimed property technology environment is dated; complex in terms of its number of systems and the methods by which data is shared; limited, due to structural impediments, in its ability to share data efficiently; inflexible in that it cannot easily incorporate changes; and difficult to support.

The Department of Treasury is seeking a technology solution that will transition the existing structure to a secure and efficient architecture capable of satisfying the Department's Goals and Objectives. Additional detail is provided in **Part IV** of this RFP.

#### **I-5. Questions and Answers**

Vendors must submit questions by email (with the subject line **RFP 14-003 Questions**) to the Issuing Officer. Vendor questions submitted via email no later than December 19, 2014 will be answered by December 31, 2014. The Issuing Officer shall post questions received and answers provided to the TREASURY website at [www.patreasury.gov/RFP14-003](http://www.patreasury.gov/RFP14-003). Vendors shall not attempt to contact the Issuing Officer by any other means. The Vendor shall not attempt to contact the Issuing Officer by any other means.

The Issuing Officer shall post the answers to the TREASURY website at [www.patreasury.gov/RFP14-003](http://www.patreasury.gov/RFP14-003) December 31, 2014.

All questions and responses will be posted on the TREASURY website. Each Vendor shall be responsible to monitor the TREASURY website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation.

#### **I-6. Pre-proposal Conference**

*There will be no pre-proposal conference.*

#### **I-7. Contracting Terms and Conditions**

In the event that the Issuing Office enters into a contract as a result of this RFP, it is the intention to utilize a contract containing the Standard Contract Terms and Conditions as shown in Appendix A. Treasury anticipates entering into a direct licensing contract for the software application with the selected vendor.

The Issuing Office, in its sole discretion, may undertake negotiations with Vendors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.

#### **I-8. Electronic Version of RFP**

This RFP is being made available via the Commonwealth Department of General Services website ([www.emarketplace.state.pa.us/Search.aspx](http://www.emarketplace.state.pa.us/Search.aspx)) and the Treasury website ([www.patreasury.gov](http://www.patreasury.gov)). The Vendor acknowledges and accepts full responsibility to insure that its proposal responds to the RFP as published on these websites, as amended, if at all, by subsequent electronic means and/or addenda on the Treasury website. In the event of a conflict between a version of the RFP in the Vendor's possession and the Issuing Office's final version of the RFP, the Issuing Office's final version shall govern.

#### **I-9. Addenda to RFP**

If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will publish updated documents on the Treasury website. Answers to the questions asked during the Questions & Answers period and posted to the Treasury website are also considered addenda to the **RFP**.

#### **I-10. Response Date**

To be considered, Vendors must deliver hard copy proposals to the Issuing Office on or before the time and date specified in the RFP Calendar of Events.

Please remember to allow sufficient mail delivery time to ensure timely receipt of the proposal. If, due to inclement weather, natural disaster, or any other cause, the Issuing Office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission shall be automatically extended until the next business day on which the Department office is open, unless the Vendors are otherwise notified by Treasury. The time for submission of proposals shall remain the same even if the response date is extended. Late proposals shall not be considered.

### **I-11. Incurring Costs**

The Issuing Office is not liable for any costs the Vendor incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

### **I-12. Economy Of Preparation**

Vendors should submit proposals that are simple and economical, providing a straightforward, concise description of the Vendor's ability to meet the requirements of the RFP.

### **I-13. Proposal Contents**

a. Confidential Information. The Treasury is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Vendors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Vendors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Vendor who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, clearly marked to distinguish it from non-redacted versions, that removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

b. Treasury Use. All material submitted with the proposal shall be considered the property of the Pennsylvania Treasury Department and may be returned only at the Issuing Office's option. The Treasury has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Vendor copyright designations contained on proposals, the Treasury shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.

c. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Financial capability information submitted in response to Part II, Section II-8 of this RFP is exempt from public records disclosure under 65 P.S. § 67.708(b) (26).

### **I-14. Vendor's Representations and Authorizations**

By submitting its proposal, each Vendor understands, represents, and acknowledges that:

- a. All of the Vendor's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in making an award. The Treasury shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- b. The Vendor has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Vendor or potential Vendor. This provision has no application to those Vendors who partner to provide a comprehensive solution.
- c. The Vendor has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Vendor or potential Vendor for this

RFP, and the Vendor shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.

- d. The Vendor has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- e. The Vendor makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- f. To the best knowledge of the person signing the proposal for the Vendor, the Vendor, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Vendor has disclosed in its proposal.
- g. To the best of the knowledge of the person signing the proposal for the Vendor and except as the Vendor has otherwise disclosed in its proposal, the Vendor has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Vendor that is owed to the Commonwealth.
- h. The Vendor is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Vendor cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- i. The Vendor has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the solution described in its proposal or the specifications for the software application described in the proposal.
- j. Each Vendor, by submitting its proposal, authorizes Commonwealth agencies to release to the Issuing Office information concerning the Vendor's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- k. Until the selected Vendor receives a fully executed contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Vendor shall not begin to perform.

#### **I-15. Disadvantaged Business Information**

The Issuing Office encourages participation by small disadvantaged businesses as prime contractors, joint ventures and subcontractors/suppliers and by socially disadvantaged businesses as prime contractors.

Small Disadvantaged Businesses are small businesses that are owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. The term includes:

- A. Department of General Services Bureau of Minority and Women Business Opportunities (BMWBO)-certified minority business enterprises (MBEs) and women business enterprises (WBEs) that qualify as small businesses;
- B. United States Small Business Administration certified 8(a) small disadvantaged business concerns; and
- C. Businesses that BMWBO determines meet the Small Business Administration criteria for designation as a small disadvantaged business.

Small businesses are businesses in the United States which are independently owned, are not dominant in their field of operation, employ no more than 100 full-time or full-time equivalent employees, and earn less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

Socially disadvantaged businesses are businesses in the United States that BMWBO determines are owned or controlled by a majority of persons, not limited to members of minority groups, who are subject to racial or ethnic prejudice or cultural bias, but which do not qualify as small businesses. In order for a business to qualify as “socially disadvantaged,” the offeror must include in its proposal clear and convincing evidence to establish that the business has personally suffered racial or ethnic prejudice or cultural bias stemming from the business person’s color, ethnic origin or gender.

Questions regarding this Program can be directed by e-mail (with the subject line “RFP 14-003 Bureau of Minority and Women Business Opportunities”) to the Issuing Officer named in Part I, Section I-2 of the RFP.

A database of BMWBO-certified minority- and women-owned businesses can be accessed at <http://www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx> . The federal vendor database can be accessed at <http://www.ccr.gov> by clicking on Dynamic Small Business Search (certified companies are so indicated).

#### **I-16. Restriction of Contact**

From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Vendor's proposal. If the Issuing Office later discovers that the Vendor has engaged in any violations of this condition, the Issuing Office may reject the offending Vendor's proposal or rescind its contract award pursuant to terms and conditions.

Vendors must agree not to distribute any part of their proposals beyond the Issuing Office. A Vendor who shares information contained in its proposal with other Treasury personnel and/or competing Vendor personnel may be disqualified.

#### **I-17. Prime Vendor Responsibilities**

The selected Vendor will be required to assume responsibility for all services offered in the proposal whether it produces them itself or by subcontract. The Issuing Office will consider the selected Vendor to be the sole point of contact with regard to contractual and contract matters.

#### **I-18. Rejection of Proposals**

The Issuing Office reserves the right, in its sole and complete discretion, to reject any or all proposals received in response to this RFP, or to negotiate separately with competing Vendors.

#### **I-19. Discussion for clarifications**

Vendors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Vendor responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification.

#### **I-20. Best and Final Offer (BAFO)**

While not required, the Issuing Office reserves the right to conduct discussions with Vendors for the purpose of obtaining “best and final offers”. To obtain best and final offers from Vendors, the Issuing Office may do one or more of the following:

- a. Schedule product demonstrations;
- b. Request revised proposals;
- c. Enter into pre-selection negotiations.
- d. The Issuing Office will limit any discussions to responsible Vendors (those that have submitted responsive proposals and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance) whose proposals the Issuing Office has determined to be reasonably susceptible of being selected for award. The Criteria for Selection found in **Part III, Section III-4**, shall also be used to evaluate the best and final offers.

#### **I-21. Notification of Selection**

The Issuing Office will notify the selected Vendor in writing of its selection for negotiation after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to Treasury.

#### **I-22. Term of Contract**

The term of the contract will commence on the Effective Date and may extend for **five (5) years, with optional renewal years. The contract must grant to Treasury sole discretion to determine the exercise of renewal options, if any, in single or multiple year increments.** The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Vendor and by the Treasury and all approvals required by Commonwealth contracting procedures have been obtained.

#### **I-23. Debriefing Conferences**

Vendors whose proposals are not selected will be notified of the name of the selected Vendor and given the opportunity to be debriefed. The Issuing Office will schedule the time and location of the debriefing. The debriefing will not compare the Vendor with other Vendors, other than the position of the Vendor's proposal in relation to all other Vendor proposals. A Vendor's exercise of the opportunity to be debriefed does not constitute the filing of a protest.

#### **I-24. New Releases**

Vendors shall not issue news releases, internet postings, advertisements or any other public communications pertaining to this project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

PART II  
PROPOSAL REQUIREMENTS

**II-1. General Requirements**

Vendors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. Vendors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal should be kept separate from and not included in the Technical Submittal. Each Proposal shall consist of the following **three** separately sealed submittals:

- a. Technical Submittal, which shall be a response to **RFP 14-003**
- b. Cost Submittal, in response to **RFP 14-003**
- c. Redacted Technical submission

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Vendor's competence, business organization, and financial resources are adequate to deliver the RFP requirements.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Vendor to deliver and support the solution, and the Vendor shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Vendor fails to satisfy the Issuing Office that such Vendor is properly qualified to carry out the obligations of the RFP and to complete the Project as specified.

**II-2. Technical Submittal**

- a. **Statement of the Problem:** State in succinct terms your understanding of the problem presented or the service required by this RFP.
- b. **Vendor Fit-Gap Response:** Complete the vendor fit-gap response for each of the functional requirements identified in Part IV-3.
- c. **Vendor Solution Summary:** Provide a list of modules, tools and software packages required for the comprehensive solution as well as the nature of the services to be provided. Include an Executive Summary of the proposed solution.
- d. **Response to Training:** Provide the training methodology, plan, schedule and modes of training and training materials proposed for the recommended training of agency personnel.
- e. **Response to Data Conversion:** Provide the conversion methodology, plan, schedule, data cleansing and validation process details for UPS2000 data and legacy data separately.
- f. **Implementation Requirements:** Describe your estimate of the number and type of resources needed to implement your products, an estimated timeline for a project of the size and scope defined in this RFP.
- g. **Financial Capability:** Describe your company's financial stability and economic capability to demonstrate the likelihood that you will be able to continue to support the product. Financial

documents such as audited financial statements or recent tax returns will be acceptable to the Treasury.

- h. **Oral Presentations/Product Demonstrations:** If required, vendors will also be asked to make oral presentations summarizing their technical proposal:
- 1) To clarify information in your proposal
  - 2) To demonstrate a production version of the software application to meet the requirements of the RFP
  - 3) Evaluate ease of use.

Come prepared to answer questions or demo any of the functional requirements listed in Part IV identified as part of your core system. At a minimum, product demonstrations should demonstrate the proposed software application features.

The demonstration will focus on illustrating how the functional requirements in the RFP Part IV are met and also include the following:

- i Software application overview
- ii Scripted demonstration of the proposed software
- iii List all Software and Hardware used in live demo
- iv Conduct any necessary orientation for the evaluation team members to understand the software application operations demonstrated.

The second presentation should demonstrate your company's long term commitment to the software application products identified in your proposal, your technology acquisition strategy and product roadmap, and your company's experience and capabilities as it relates to this RFP.

No customization of software to meet the specific requirements outlined in this RFP will be required to the Vendor's proposed software application for the purpose of these demos. The demonstration and presentation could potentially take up to a day.

Treasury will invite vendors of the top scoring proposals to demonstrate their products. The expectation is that these presentations will be scheduled approximately two weeks after proposal receipt.

Significant representations made by a Vendor during the oral presentation/demonstration shall be submitted in writing. All such representations will become part of the Vendor's proposal and are binding if the Contract is awarded. The Procurement Officer will notify Vendors of the time and location.

- i. **Emergency Preparedness:** To support continuity of operations during an emergency, including a pandemic, the Treasury needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts clearly address services provided to Treasury in the event of a Treasury emergency affecting critical systems.
- j. **Disaster Recovery:** Include in your proposal a disaster recovery strategy and plan for the software application solution you propose that corresponds with a recovery window (RTO) of no more than four hours and a recovery point (RPO) of no more than one hour.

Another part of the strategy is to ensure that essential contracts that provide critical business services to the Treasury have planned for such an emergency and put contingencies in place to provide needed goods and services during the duration of those contracts. Treasury acknowledges that the nature of services provided may vary and hence some of the following statements may not be applicable:

- i.** Describe how you anticipate such a crisis will impact your operations.
- ii.** What is the notification process utilized for customers in the event of a disaster?
- iii.** What is the timeframe for declaring a disaster and executing the plan?
- iv.** Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of preparedness:
  - 1) Employee training (describe your organization’s continuity of operations training plan, and how frequently your plan will be shared with employees)
  - 2) Identified essential business functions and key employees (within your organization) necessary to carry them out
  - 3) Contingency plans for:
    - How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
    - How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
  - 4) How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
  - 5) How and when your emergency plan is tested, and if the plan will be tested by a third-party.
- v.** If any services are provided by a third-party vendor, all supporting documentation from that vendor should be included in your response.
- vi.** If your response proposes Software as a Service, is there a “hot” site for DR processing? Please describe. How long can operations be maintained at this site?

### **II-3. Cost Submittal**

The Cost Submittal shall be placed in a separate sealed envelope clearly labeled Cost Submittal within the sealed proposal, separated from the technical submittal. The Cost Proposal shall present the total firm fixed price to perform all of the requirements of the Request for Proposal. The Treasury recognizes that each Offeror may have a unique pricing methodology. The Offeror has the flexibility to apply the pricing model that meets the requirements of this RFP and minimizes the cost to the Treasury while meeting all requirements of this RFP. All labor rates must be “fully loaded” to represent services provided at the project site in Harrisburg, Pennsylvania (i.e., travel and living expenses must be included in the rates). All cost estimates shall be inclusive of all taxes. The Treasury will not pay any taxes separately.

The Offeror shall agree that all terms, warranties, and prices, as a whole, are comparable to or better than the equivalent terms, warranties, and prices, as a whole, offered by the Offeror to any present customer meeting substantially the same requirements or qualifications as the Treasury. If the Offeror shall, during the term of this contract, enter into arrangements with any other customer providing greater benefits or more favorable terms, as a whole, the Offeror shall provide the same to the Treasury.

The Cost Proposal must not include exceptions or additional terms and conditions.

Offerors should direct in writing to the Issuing Office pursuant to Part I, Section I-9, of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

Treasury reserves the right to purchase any required 3rd party tools from existing Commonwealth contracts.

## **II-4. Cost Proposal – Total Not to Exceed Cost**

The Offeror's total cost for the entire project must be presented as the Total Not To Exceed Cost.

### **II-4.1 Software Solution**

This section provides the format to provide the breakdown and summary of costs for the application proposed by the Offeror.

1. Software license cost (if the software application is modularized please provide breakup cost for each module)
2. Annual maintenance cost

### **II-4.2 Implementation Cost**

This section provides the format to provide the breakdown and summary of costs for the implementation of the application proposed by the Offeror as requested by the Treasury, and covers the following major project activities:

1. Project Management
2. System Configuration and Development
3. Testing
4. Data Conversion
5. Interface Development
6. Reporting
7. Training
8. System Cut-Over
9. Post Implementation Support
10. Other (all other management and technical topics).

Please provide the Treasury with a firm not to exceed cost of implementation for the proposed services using this cost table. The Offeror's estimates should take into consideration a scope of work as detailed in this RFP as well as the Offeror's recommended implementation and integration methodology.

## II-4.3 Instructions

Each vendor must complete the cost tables in the exact format provided. Any reformatting may cause the Treasury to reject the Vendor's proposal.

1. All cost figures shall be provided in a fixed fee amount.
2. Since this is a fixed price solicitation, all cost figures shall be inclusive of travel and expenses (no travel and living expenses shall be billable to the Treasury).
3. Costs shall include all applicable taxes. Vendors may not reformat this form.

| <b>Project Activity</b>                            | <b>Cost</b> |
|--|-------------|
| Project Management.                                |             |
| System Configuration and Development               |             |
| Testing  |             |
| Data Conversion – UPS2000 data                     |             |
| Data Conversion – legacy data                      |             |
| Interface Development                              |             |
| Reporting  |             |
| Training   |             |
| System Cut-Over                                    |             |
| Post Implementation Support                        |             |
| Other (all other management and technical topics). |             |
| <b>TOTAL COST</b>                                  |             |

## II-5. Optional Functionality Costs

**Part IV Section 7** of this RFP contains optional functions that are not mandatory, but Treasury would prefer to be part of this project. Hence, please provide software cost and implementation cost for these optional functions.

## II-6. Future Offeror Rates

The Treasury may request additional services from the selected Offeror and require rates in the event that additional service is required. Offeror must include a burdened hourly rate (all cost figures shall be inclusive of travel and expenses - no travel and living expenses shall be billable to the Treasury) for change orders as a result of modifications to the original scope of work. The Offeror's Cost Proposal must identify labor categories and rates that will be used to cost any customizations or major modifications identified during the project, and guarantee those rates for the life of the project. The following format must be used to provide this information.

| <b>Labor Category</b>     | <b>Rate</b> | <b>Total Cost</b> |
|---------------------------|-------------|-------------------|
| Project Manager           |             |                   |
| Functional Lead           |             |                   |
| Software Development Lead |             |                   |
| Testing Lead              |             |                   |
| Training Lead             |             |                   |
| Tech Team                 |             |                   |
|                           |             |                   |

**II-7. Payment Schedule by Deliverable**

It is the Treasury’s intent to negotiate a fixed fee payment structure that is based on satisfactorily completing each stated milestone. Each payment will be due and made once it is confirmed that each milestone has been completed to the satisfaction of Treasury. Offerors are required to submit a proposed payment schedule that is tied to specific dates and deliverables and which identifies the estimated amounts of invoices and the approximate dates on which those invoices might be generated. Preferably, the payment schedule will be performance-based and the actual payment dates will be based upon the completion and acceptance of the related deliverables. No invoice will be approved unless the Treasury Project Director has approved the associated deliverable(s). The Treasury requires 20 business days review for complex deliverables and 10 business days review for normal ones. The Treasury intends to withhold 10 percent of each payment until the Treasury formally accepts the implementation of the application at the end of the post implementation support period.

The Offeror must include, within the fixed price for its service activities, tasks, and preparation of the required deliverables, pricing for the deliverables based on the proposal approach, methodology and tools. A fixed price must be provided for each deliverable. The following format must be used to provide this information.

| <b>Deliverable</b> | <b>Deliverable Type (document, software, non-software, etc.)</b> | <b>Delivery Date</b> | <b>Payment Amount</b> | <b>Percent of Total</b> | <b>Cumulative Amount</b> |
|--------------------|--|----------------------|-----------------------|-------------------------|--------------------------|
|                    |  | MM/DD/YY             | \$\$                  | %%                      | \$\$                     |
|                    |  |                      |                       |                         |                          |
|                    |  |                      |                       |                         |                          |
|                    |  |                      |                       |                         |                          |
|                    |  |                      |                       |                         |                          |
|                    |  |                      |                       |                         |                          |
|                    |  |                      |                       |                         |                          |
| <b>TOTAL COST</b>  |  |                      |                       |                         |                          |

The prices and information provided in this section will form the basis of payment under any contract resulting from this RFP.

**II-8. Prior Experience**

Include experience as the prime contractor for other Public Sector entities in the successful configuration and implementation of the Unclaimed Property system modules. Include experience for all identified subcontractors in the successful configuration and implementation of the proposed solution for Public Sector. The proposal will demonstrate this requirement by listing the projects (including scope, budget, time line, present status, and client size) and references from these projects for the key personnel within the last 2 years. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified. If the Offeror is selected for

presentation, the name of the reference customer, including the name, address, and telephone number of the responsible official of the reference customer who may be contacted must be provided.

## PART III CRITERIA FOR SELECTION

### **III-1. Mandatory Responsiveness Requirements**

To be eligible for selection, a proposal must be:

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

### **III-2. Nonconforming Proposals**

The Issuing Office reserves the right, in its sole discretion, to waive technical or immaterial nonconformities in a Vendor's proposal.

### **III-3. Evaluation Committee**

Proposals will be reviewed and evaluated by a committee of qualified personnel selected by Treasury. This committee will recommend for selection the proposal which it determines is the most advantageous to Treasury after considering all of the evaluation factors.

Award will only be made to a Vendor determined to be responsible in accordance with Commonwealth Management Directive 215.9, Contractor Responsibility Program.

### **III-4. Criteria for Selection**

The following criteria will be used in evaluating each proposal.

**Technical:** The Technical component will be evaluated based on the following criterion: compliance with the RFP procedural requirements, the extent to which the proposal meets Treasury's functional requirements as described in Part IV, and the Product Demonstrations if required.

**Cost:** The Cost criterion for this RFP will be evaluated separately

### **III-5. Offeror Responsibility**

To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. An Offeror which fails to demonstrate sufficient financial capability to assure good faith performance of the contract may be considered by the Issuing Office, in its sole discretion, for best and final offers or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Issuing Office. Based on the financial condition of the Offeror, the Issuing Office may require a performance bond conditioned upon the faithful performance of the contract by the Offeror. If a performance bond is required by the issuing office, the Offeror shall purchase a performance bond from a surety licensed to do business in the Commonwealth. The performance bond shall be in the same amount as the total not to exceed cost and shall entitle the Treasury to call upon the

surety to complete the contract in one of three ways: 1. The surety completes the contract by hiring a completion contractor; 2. The surety and the Treasury choose a new contractor to complete the project and the surety pays the costs; or 3. The Treasury alone chooses a new contractor and the surety pays the costs, the surety assumes the same risk as the original Offeror. The performance bond shall be attached as an exhibit to, and shall be incorporated by reference in, the contract. The cost of the required performance security will be the sole responsibility of the Offeror and cannot increase the Offeror's cost proposal or the contract cost to the Treasury.

Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

## PART IV

### WORK STATEMENT/REQUIREMENTS

#### IV-1. Overview

By Commonwealth code, BUP is to safeguard abandoned or unclaimed property and to return these funds to the rightful owner. There are several different types of unclaimed property received each year and can be separated into three main types: cash, equities and tangible items.

- Cash - During FY 12/13, BUP receipted over 14K holder payments exceeding \$206M while issuing over 70K checks for over \$103M. Cash is the largest type of property received and the easiest maintained in our current software application.
- Equities – The types received are usually in the form of mutual funds, book entry shares, DTC whole shares and physical certificates and require liquidation upon receipt. During FY 12/13, this process resulted in over 2,700 sales that needed to be manually entered, accounting for an additional \$40.3M in revenues.
- Tangible - Certain holders also remit tangible property in the form of jewelry, coins and other collectables. These items are largely reported by financial institutions and police departments and must be manually inventoried.

During FY 12/13 alone, BUP received over 13K reports containing over 1.1M properties. There is currently \$1.9B available. Please be advised that the Commonwealth must maintain custody of unclaimed property in perpetuity provided such property is not returned to its rightful owner. Any system must meet this requirement.

Currently, the application users include approximately 75 users within BUP, and an additional 20 users within Treasury. More information about our program can be found on [www.patreasury.gov](http://www.patreasury.gov).

#### IV-2. Overview of Required Functionality

Provide a flexible and customized Unclaimed Property Management Software System developed to retain data records and perform numerous accounting, database utility functions, and comprehensive interface and interactive program functions. In addition, the software management system must provide reliability and security controls. The required functionality is listed below.

- Integration of online technology to include Treasury and other website claim and business (holder) reporting processing and processes. In addition, the system must have the capability to incorporate and bring online new technology aimed at program efficiency and expediency.
- Capability to interface with related software packages to include, or equivalent, but not limited to: Microsoft Office Products, Hyland OnBase, Oracle PeopleSoft, Lexis Nexis, Siemens Phone System, major VOIP vendors, eBay, and Paypal.
- Provides efficiencies and accountability with considerations in archiving closed records while maintaining report reconciliation.

- Must be interlinked between the numerous tables and functions and maintain detailed accounting and audit history capabilities.
- Provide and maintain detailed balancing and reconciling functions throughout the transactions and functions of the program and data tables.
- Provide detailed report creation capabilities to include annual activity reports and date specific activity/transaction reports.
- Provide on screen and output capabilities to support the entire Treasury claim process along with the data and receipt of unclaimed property processes.
- Provide comprehensive securities (stock, mutual funds, bonds) processing features, including transaction management. The system must track security information such as issue name, symbol, CUSIP, security pricing history and detailed trade information. Inclusive in this process must provide custodial batch transactions and apply corporate actions such as dividends, splits and mergers.
- Must be interactive with Treasury's PeopleSoft Accounting System, Data interactive with other states (compatible with NAUPA format), and flexible to the program and daily operational requirements throughout the: (a) Receipt of unclaimed property data and receipts, (b) accounting, balancing and reconciling of reports, (c) claim processing and vouchering, (d) report/letter/data generation and query reports and requirements, (e) data retention and (f) incremental growth of the data.
- Easily interface with the Treasury's PeopleSoft Accounting System and website along with performing routine tasks such as data import/export and provide the flexibility to produce needed tools and documents to support all aspects of the unclaimed property program.
- Supports multiple users (up to 100 users simultaneously).

#### **IV-3. Software Application – Required Functionality**

Provide a menu driven, user friendly software program tailored to the specific program functions as identified below:

- Holder Reports – All businesses (“Holder”) filing reports with the program are maintained in the existing software application. Holder information such as current address and contact along with an identifying number (Holder ID) is assigned to correspond to the hardcopy files maintained in office. Unclaimed Property holder reports are maintained for an indefinite period of time while the software application also maintains all annual reports and associated records and remittances. In addition to housing all holder reports and owner data, the unclaimed property software application must provide the interactive and search/report capability, but not limited to, view/manage business names/data and records, record zero reports, auto-correct or populate fields, apply system-based logic to limit unacceptable data, provide means to assign batches/reports, access reports/utilities with customizable abilities (example: holder batch

reports, holder mailing labels, largest holder reporting, largest holder remittances, reporting holder count summary, holder reports not electronic, print holder letters). In addition, this module must provide and maintain a strong audit trail for all data entries, calculations, transactions and documented record history of related transactions.

- B. Receipts - All unclaimed property (ACH/Wires/checks, securities/stock certs and tangible items) are received into the lockbox. Once received they are posted to the existing software application and are linked to their reports and reconciled under a strict accounting system. Internal controls are in place to ensure all monies/property are recorded and errors are minimized in database processing. The unclaimed property software application must complete, at a minimum, the above mentioned accounting function. It must also provide the interactive and search/produce report capability, but not limited to: view/manage deposits, balance holder reports, access reports/utilities (example, report identifying “reports not balanced”, print balancing detail, improperly balanced receipts, deposit reports, deposit reports by deposit, deposits made/no report). In addition, this module must provide and maintain a strong audit trail for all data entries, calculations, transactions, and documented record history of related transactions.
- C. Securities – Unclaimed property received from reporting businesses may consist of securities (stocks, dividend reinvestment plans, mutual funds, bonds). The unclaimed property software application must house and have the ability to retrieve this data in association with the reported owner. In addition, the accounting process associated with securities will include the posting of the securities, sale proceeds, and other transactions such as dividends, fractional share sales, mergers and splits as some examples. The security portion of the software application must also have the ability to implement an individual security transaction or batches (example: posting of corporate actions, dividends and proceeds to a single owner, all owners on a report and/or all owners on multiple reports). The software application must also allow for posting of the transactions to be limited by a specific report as well as the ability to isolate securities into separate Custodians. The software application must provide the ability to create/edit/delete information on the stock id. The system must not allow any property linked to a stock sale to be paid until the sale has been approved. In addition the software application must provide the interactive and search/report capability, not limited to: locate/edit/delete stock properties, batch transactions, access and produce reports and utilities such as transaction reports, stock reconciliation reports, and utilities reports to assist in management of the data and transactions related to securities and associated data tables. In addition, this module must provide and maintain a strong audit trail for all data entries, calculation, transactions, and documented record history of related transactions. The software application would also provide the ability to generate specific correspondence by extracting pertinent information from of the receipt function (example: generate a letter requesting liquidation of shares or generating a W-9 tax exempt form). The software application must also have the ability to interface with an imaging system to retrieve images of stock sales currently in OnBase and securities statements imaged under the receipt function.
- D. Safekeeping/Tangible Functions – The software application must house and have the ability to retrieve data entered regarding tangible property reported. It must have the ability to create and manage auctions and appropriately distribute proceeds to the property owners. Specific data fields needed for inventorying tangible property include but is not limited to owner information, reference numbers provided by the holder, inventory numbers designated by our own software application with associated barcode labels, contents reported (either hand-entered or drop-down box), associated picture, storage location, quantity, face value, Treasury inventory and reconciler

information, sales proceeds and information (date of sale, seller, estimated value, appraised description).

- a. The software application must have the capability of providing a strong audit trail for all data entries, deletions and edits, calculations, transactions and documented record history of related transactions. It must provide the ability to create reports with all fields applicable. The software application must have the ability to prevent certain functions from being updated due to human error and should be permission driven. *Examples:* An item being updated to a sold value if it was a cash property, deletion of sale value or moving the location of an item if it is cash and was already deposited.
- b. The software application must be able to integrate with Excel, OnBase, Lexis, barcode printers, eBay, PayPal.

E. Inquiry System – The software application must provide easy and quick search/result inquiries based on variables such as, but not limited to:

- a. *Owner Records:* Owner name, social security number, property ID, EIN, date of birth
- b. *Property Records:* Amount, name, social security number, EIN, report ID, property ID, holder account number, legacy property ID, date of birth, owner ID, check number
- c.  *Holders:* holder name, EIN, holder ID, report ID, contact name, contact address, previous business name, report agent and report type.
- d. *Receipts:* Deposit number, batch date, batch ID, batch amount, Find Receipt (receipt ID, amount, shares, instrument date, description, log number, payor, CUSIP number, certificate, issue date, batch ID.)
- e. *Reports:* Holder name, holder ID, EIN, Find Report (Report ID, remitted cash, remitted shares, legacy ID), Find Property (Property ID)
- f. *Deposits:* view deposit by deposit #, deposit date, business data-file ID, receipt amount.
- g. *Claims:* Claimant name, EIN, social security number, claim ID, warrant number, subject, property ID, phone number, claimant 2, edit claim, approve, deny
- h. *Securities:* search by CUSIP, symbol, company, property ID, custodian
- i. *Safekeeping:* Property ID, safekeeping ID, wildcard description search, auction lot number, lot ID, safekeeping location, transaction (sold)date, transaction (sold) amount
- j. *Audits:* search by business name, business ID#, tax ID, audit ID, Reporting Agent and Report Type.

F. Claims – All unclaimed property received, added to the software application and reconciled, becomes eligible to be claimed by potential owners/heirs. This claim process, as governed by the Pennsylvania Disposition of Abandoned and Unclaimed Property Act “DAUPA”, is integrated and plays a fundamental part of the unclaimed property program software application requirements. The software system must be end-user friendly by providing a sound operational framework that combines optimal screen appearances, efficient transaction recording, and minimal deviations from the user’s work area. The software system must provide, at a minimum, the ability to create claim forms, maintain associated reference claim numbers, history of claims (created, mail date, status, payment date, etc.), view and manage claims, assign workflow, interface capability with Treasury’s unclaimed property website, owner identity records (Lexis, Revenue), imaging system (OnBase), phone system (Siemens/other major VOIP vendor systems), and related sites (missingmoney.com). Also, the software system must have the ability to manage approved claims, contain an automated process for batching/vouchering claims for

payment, and view/manage paid claims. This Claims' module must be able to interface with Treasury's PeopleSoft accounting software for the submission and payment of claims by either utilizing Treasury's web services or the Treasury's standard XML file formats for the warranting process. The software and the interface to Treasury's PeopleSoft system is required to provide electronic payment options including ACH for holder remittance and claim disbursements.

In addition, the software application must provide the interactive and search/produce report capabilities, including but not limited to: claim form processing/reports; and produce customer letters (additional evidence needed, correspondence letters, claim denial letters, etc.). The software system must also include claim status reports (claims generated, paid, denied by date or date range or by user), generate reports to support claim queries (filed, processed, paid and record retention). In addition, the software application must provide and maintain a strong audit trail for all data entries, calculations, transactions, and documented record history of related transactions.

- G. Advertising– In accordance with the Pennsylvania Unclaimed Property Law, efforts to locate the respective owners is a significant part of the unclaimed property program. The software application should provide a fully configurable solution, which will assist in generating advertising lists, capturing advertising dates and provide flexibility to manage the advertising process in an efficient fashion. The system must provide utilities to produce preliminary advertising extraction files and provide the flexibility to manipulate these files to produce final products.
- H. Owner Outreach– Treasury is required, under DAUPA, to contact newly reported property owners within 9 months of receiving property. A configurable solution is needed to extract owner information from the application based on DAUPA requirement to generate mass mailings. This solution should also have the ability to mark owner records with a mail date, import additional fields provided by third parties and generate claim ID's.
- I. Website – All eligible unclaimed property available for claim meeting the Offeror's established criteria should appear on the searchable website. The website, as governed by the Pennsylvania Disposition of Abandoned and Unclaimed Property Act, is an essential means for the public to access records 24/7. The data must remain current as new records are received, added and reconciled to the Offeror's software application. Records must no longer appear as available for claim once a valid claim has been received by the Offeror. Dropped, partially paid and denied records should reappear if the property has not been paid 100%. The website must be end-user friendly by providing a sound operational framework that combines optimal screen appearances, efficient transaction recording, and minimal deviations from the user's work area. Search capabilities include but not limited to: Owner last name/first name, business name, SSN, EIN, DOB, account number. The website application should provide but not be limited to: online user authentication, ability for the user to confirm affiliation to the reported address and automated link to identify additional properties available to claim. The website application functionality should be capable of identifying the claimant's selection (Owner, Heir or Business) and provide the required documentation. The integration on demand between the website and software application should allow claims based upon established criteria to import into the workflow/payment process. The website application must provide, at a minimum, the ability to create claim forms, maintain associated reference claim IDs, capture and maintain all claimant-provided information and the history of all activity (status monitoring through the entire

process). The website application must contain sound security/protection to minimize the Offeror's risk to fraud including but not limited to: hacking, phishing, breach of confidential information, exposure of sensitive data which could compromise the integrity of software application records.

- J. Audits/Compliance – The system must be able to track the status of ongoing and completed audits, as well as, have the ability to search holders and reporting histories. It is also required that the system generates reports including but not limited to: property types remitted by holder, holder reporting by tax ID number, holders not reporting, audit activity and status information. Also needed is the ability to track by report type and reporting agent. Many of these categories need to have the capability to be broken down into date range and/or report year. These reports will need to have the capability to be exported into Excel with the proper format. The ability to designate holders as a third party or voluntary disclosure is vital. The system should have the ability to send demand letters to businesses for compliance purposes. It needs the capability to track extensions. There should be an audit trail of any changes that are made to the holder name and tax ID.
  
- K. Business Reports – This software application should include a comprehensive reporting module to support recurring and ad hoc reporting needs. Reporting will include customized data structures to facilitate reporting including but not limited to:
  - a. Pre-summarized data- The pattern of expected use makes it more efficient to summarize data in advance of the query. Examples of such summarization would include monthly, quarterly, and annual financial statements as well as backlog, throughput, and productivity statistics
  - b. Record structures to facilitate comparative period and trend reporting (e.g. for financial outcomes, backlog statistics, productivity statistics)
  - c. Throughput, backlog, and productivity reporting for all major processes
  - d. Historical reporting of comparative period backlog, throughput, and productivity by user selected time frame
  - e. Performance reporting
  - f. Security reporting for user activity (e.g. user updates, inquiries, deletes, etc.)
  - g. Forecasting reports
  - h. Audit error reporting
  - i. Development of management level dashboards
  
- L. Administrative Functions - provide on-line configuration, of security, setup tables, 'master data', and provide system maintenance utilities. Minimum administration and management requirements of unclaimed property application are:
  - a. Provide on-line data correction functionality and utilities
  - b. Configurable System Defaults
  - c. Ability to delete: error reports and data
  - d. Ability to move and transfer property items on a report
  - e. Ability to change property statuses/property types (global/by report or individually)
  - f. Ability to change property or owner relation codes
  - g. Identify and correct orphan owners
  - h. Replace owner field type

- i. Ability to provide reporting totals
- j. Audit trail to track and report user changed item reports
- k. Audit trail to track and report invalid login attempts
- l. Administrator function providing reporting of statistics for individual or total users
- m. Month end summary reports
- n. Security program: Identify duplicate claim addresses
- o. Utility to edit address errors in voucher process
- p. Ability to search property comments
- q. Configurable user security permissions by role and user.
- r. Configurable reference tables and codes for: unclaimed property, deposits, businesses, claims, securities, safekeeping, audits: (Examples: set owner types, owner relations, property types, property status, audit source, claims status, security ticker symbols, safe deposit box content/status codes, and claim approval levels)
- s. Maintain US zip code reference table

M. Other Unclaimed Property Software application requirements – (related functions of the Unclaimed Property software application) In addition to and to reiterate importance of the above mentioned unclaimed property software application components, other abilities/functions of this solution must exhibit functions pro-active to provisions provided throughout the unclaimed property law and specific program administrative needs. These functions include but are not limited to:

- a. Detailed error/integrity checks throughout the management system
- b. Specific reports/functions related to detail and summary of receipt and payment transactions within the program/system
- c. Specific reports/functions related to the Treasurer’s custodial responsibilities of the program and software application.
- d. Provide data entry efficiencies related to importing holder report data and receipts. In addition, the system must provide capability of data import to NAUPA format along with other state specific formats
- e. Provide data extraction capabilities specific to sub setting/extracting property due and payable to other states
- f. Provide model enhancements/integration to incorporate transferable data to/from the Treasury website or other internet environments
- g. Integration with existing imaging database
- h. Ability to automate processes including but not limited to: claim form batch printing and transmission of electronic holder receipts
- i. Ability to generate 1099 export file

#### **IV-4. Software Application – Technology Requirements**

The proposed solutions must be compatible with the following

- Windows Server 2012
- Microsoft SQL Server 2012
- Windows 7 and 8.1
- Browser based solution

- IE 11 compatible
- Public interface compatible with all major browsers, and mobile platforms (both cellphones and tablet form factors)

#### **IV-5. Training**

To prepare for the implementation of the new system, the Treasury must provide training for all processes. All personnel who are identified as end users for the new system in all Treasury organizations will be required to attend all or some of the training. The training covered within the scope of this RFP includes provision of training products as described below for modules proposed for implementation.

The Offeror will be required to provide curriculum and course design for each of the modules to be implemented. The contents of the training materials will be role-based to align with user responsibilities. The Offeror will also be responsible for developing audience-appropriate training materials for the delivery of training. All curriculum, course design, training support material, and instructors will be reviewed and approved by the Treasury. The Offeror will be responsible for designing a formal process for reviewing and accepting all training materials. This design will be delivered as one of the first pieces of the training work stream.

In addition to the training deliverables described above, the Offeror will also be responsible for developing a training strategy, delivery system and materials to prepare for the Post-Implementation phase. These materials will accommodate ongoing training and refresher courses as needed.

Expected Deliverables and Work Products:

1. Final Training Strategy
2. Final Training Plan
3. Course Curriculum
4. Course Design
5. Class Materials

To help ensure training meets the Treasury goals, appropriate metrics will be defined to track training attendance, student feedback, and user confidence. These metrics will be defined as part of the Implementation Phase.

Treasury Preferences: A mixed set of training methods such that basic and prerequisite material should be delivered as self-paced customized instruction while complex business processes and system transactions should be delivered via instructor-led training.

The formal classroom instructor-led training will cover the “how to” for all business processes using the software. This includes all modules for all bureaus that will use the unclaimed property system. An estimate of the size of the training audiences is less than 100 employees.

Training material development will be managed by the Project Team under the direction of a training lead who is responsible to the Offeror’s project manager. The Treasury expects the Offeror to develop training materials.

#### **IV-6. Data Conversions**

To reduce the conversion effort, the Treasury intends to convert data from the current system to meet the processing and reporting needs of the Treasury. All data from the current system must be ported to the

new system. The Offeror will be responsible for data mapping, conversion, translation, and loading. The Offeror will assist the Treasury with identifying problem areas within the legacy system data during data cleansing. The Offeror will perform data loading and assist the Treasury with data validation and cleansing.

Expected Deliverables and Work Products:

1. Data Conversion Strategy
2. Data Mapping to proposed software application
3. Data Transformation Documentation
4. Conversion Software and Related Source Code ( ETL execution )
5. Data Load Results
6. Documentation of issue analysis and resolutions

Treasury Preference: The data present in the Microsoft SQL Server based system is expected to be integrated into the new proposed solution. The strategy for managing legacy data during the transition period will be as follows:

- Populate the new system with cleansed master data from Treasury's current unclaimed property system as required
- Extract, transfer, and load data from Treasury's current system and other systems where appropriate

#### **IV-7. Software Application – Optional Functions and Features**

- A. Ability to search imaged document text by keyword/data - OCR
- B. Integration of online claimant authentication
- C. Creation of paperless claims and the ability to send/receive/scan documents from various technology sources including email, cell phone, etc.
- D. Ability to interface with existing Siemens phone system
- E. Tool to extract and cross-reference data for identity verification for holders and property owners
- F. Data Cleansing Services, Tools and Conversion: Ability to identify unconverted data from legacy systems prior to UPS2000 including the 'State Street' system currently accessed by read-only queries. These software applications can no longer be independently supported by Treasury. Cleansing of data should include but not be limited to:
  1. Standardization of name and address data formats
  2. Identifying if record is paid or unpaid
  3. Identifying original reported share(s) and delivery date(s); and corporate actions such as dividends, mergers stock splits
  4. Rectifying data integrity issues
  5. Identifying and resolving data gaps

6. Translation of data values from legacy systems to the new system
  7. Validating and reconciling the successful load of data
  8. Other cleanup, as required
- G. Mail/Scanning – This imaging system will be responsible for the holding claim documents, holder reports, research documents, securities documents and imported web based documents. . It should have an interface for document creation, retrieval, display, print, email, fax, routing, image enhancement and indexing. It must provide for the electronic storage, retrieval, processing, import and export and routing of (objects) such as: Images (black & white, grayscale and color) and computer output reports data. Contractor must verify support for these features and describe any additional features: zooming in and out, redaction and reaction security, cut and paste, magnifying areas of a document, rotate and pan, inverting of document pages, document check-in/check-out, cascade and tiling, automatic scaling of images (height, width, fit to window or user defined), display black and white in grayscale, specify display fonts and print fonts, tab and toolbar features relic windows based buttons. The system must support viewing PDF files and files in native format (docx, xlsx, jpeg etc.) a full list of supporting viewing files will be required. It should be able to manipulate search result sets including sorting, printing, export and email. It should be able to read standard barcodes, have the ability to assign workflow, the ability to import images for web base applications. The system should be capable of generating reports to list a variety of daily, weekly and monthly reports and automatically store the reports in electronic format for retrieval. The security capabilities and functionality of the system such as user id-password authentications, roles and permissions to access the system, and security audit functionality must be documented. The system must support record retention for support of organizations records retention policies and standards and must have data protections and disaster recovery.

#### **IV-8. Knowledge Transfer**

Knowledge transfer is a continuous process designed to enable the Treasury IT staff to support the operation and continuous improvement of the Unclaimed Property application without the support of external consultants. The Offeror will be responsible for development of a knowledge transfer plan for the Treasury system administration team. Through mentoring relationships, the Offeror will be responsible for educating the Treasury system administration team in the skills specific to the application for ongoing maintenance of the system.

Treasury Preferences: The Treasury believes that knowledge transfer should be in integral part of the overall project plan incorporating one-on-one coaching and directed work experience. The plan should identify the knowledge and skills the team members need to acquire and the methods to be used to obtain these skills.

#### **IV-9. Reporting requirements**

[Appendix G](#) is the list of reports that are needed to manage the workflow for BUP. The most important function for any canned reports received from the vendor is the ability for end users to modify the report parameters, i.e. date ranges, users, report format, etc.

#### IV-10. Ongoing Maintenance – Minimum Service Levels

The contractor should have a support system that includes: 24 hour service line, provide on-site representation as required, on-going training availability and documented issue escalation process. To support user needs subsequent to the full conversion of the new system, Treasury requires the new system to track, maintain the status of and provide summary reporting to Treasury all change requests according to the following matrix:

| Level Assessed: | Response Time Required: | Resolution Time Required: |
|-----------------|-------------------------|---------------------------|
| Critical        | < 1 hour                | < 12 hours                |
| Priority        | < 6 hours               | < 5 business days         |
| Enhancements    | < 7 business days       | < 15 business days        |

All issues not meeting the above response times must be communicated in writing to Treasury with an explanation of the delay. This may result in a reduction of prepaid maintenance fees.

### LIST OF EXHIBITS & APPENDICES

| Section    | Title                                      | Description               |
|------------|--|---------------------------|
| Appendix A | IT Contract Terms and Conditions           |                           |
| Appendix B | Proposal Cover Sheet                       | Vendor response required. |
| Appendix C | Security Requirements                      |                           |
| Appendix D | Contractor Integrity Provisions            |                           |
| Appendix E | Contractor responsibility provisions       |                           |
| Appendix F | Nondiscrimination/Sexual harassment Clause |                           |
| Appendix G | Reporting requirements                     |                           |

| Section   | Title   | Description |
|-----------|---|-------------|
| Exhibit A | Commonwealth of Pennsylvania Business Associate Agreement |             |
| Exhibit B | Software License Requirements                             |             |

# **Appendix A**

## **IT CONTRACT TERMS AND CONDITIONS**

If an award is made to an Offeror, the Offeror shall receive a Contract that obligates the Offeror to furnish the awarded services in accordance with these IT Contract Terms and Conditions:

### **1. TERM AND SCOPE OF CONTRACT**

- (a) The term of the Contract shall commence on the Effective Date and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Effective Date shall be: a) the date the Contract has been fully executed by the Contractor and by the Pennsylvania Treasury Department (“Treasury”) and all approvals required by Commonwealth contracting procedures have been obtained or b) the date referenced in the Contract, whichever is later. The Contract shall not be a legally binding contract until after the fully-executed Contract has been sent to the Contractor.
- (b) Treasury reserves the right to execute the Contract, Purchase Orders or any follow-up Contract documents in ink or electronically. The Contractor understands and agrees that the receipt of an electronically-printed or ink signed Contract with the printed name or signature of Treasury official(s) constitute a valid, binding contract with the Treasury. The printed name or ink signature Treasury official(s) on the Contract represents the signature of that individual(s) who is authorized to bind the Treasury to the obligations contained in the Contract. The printed name or ink signature also indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- (c) The Contractor shall not start performance until all of the following have occurred: (1) the Effective Date has arrived; (2) the Contractor has received a copy of the fully executed Contract; and (3) the Contractor has received a Purchase Order or other written notice to proceed signed by the Contracting Officer. Treasury shall not be liable to pay the Contractor for any supply furnished or work performed or an expense incurred before the Effective Date or before the Contractor receives a copy of the fully executed Contract or before the Contractor has received a Purchase Order. No Treasury employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date.
- (d) The Contractor agrees to furnish the requested services to the Treasury as such services are defined in this Contract, the Request for Proposals (RFP) and the Contractor’s Proposal.

### **2. PURCHASE ORDERS**

- (a) Treasury 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. Contractors are not permitted to accept Purchase Orders which require performance in excess of those performance time periods specified in the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.
- (b) Purchase Orders may not include an ink signature by Treasury. The electronically-printed name of the purchaser represents the signature of the individual who has the authority, on behalf of Treasury, to authorize the Contractor to proceed.

- (c) Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor.
- (d) Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order.
- (e) Purchase Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.
- (f) Treasury and the Contractor specifically agree as follows:
  - (1) No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
  - (2) Upon receipt of a Purchase Order, the Contractor shall promptly and properly transmit an acknowledgement in return. Any order which is issued electronically shall not give rise to any obligation to deliver on the part of the Contractor, or any obligation to receive and pay for delivered products on the part of Treasury, unless and until Treasury transmit received an acknowledgement.
  - (3) The parties agree that no writing shall be required in order to make the order legally binding. The parties hereby agree not to contest the validity or enforceability of the Contract or a genuine Purchase Order or acknowledgement that have been issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements shall be in writing and signed by the party bound thereby. The Contract and any genuine Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of the Contract or any genuine Purchase Order or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
  - (4) Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.
- (g) Purchase Orders under five thousand dollars (\$5,000) in total amount may also be made in person or by telephone using a Commonwealth Procurement Card or Commonwealth Credit Card. When an order is placed by telephone, Treasury agency shall provide the agency name, employee name, credit card number, and expiration date of the card. The Contractor agrees to accept payment through the use of a Commonwealth Procurement Card or Commonwealth Credit Card.

### 3. DEFINITIONS

- (a) Contracting Officer. The person authorized to administer this Contract for Treasury and to make written determinations with respect to the Contract.
- (b) Days. Unless specifically indicated otherwise, days mean calendar days.

- (c) Developed Works or Developed Materials. Except for Contractor's internal communications relating to Services of this Contract that are not delivered to Treasury, all documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other literary works, works of authorship, or tangible material authored or prepared by Contractor in carrying out the obligations and services under this Contract, without limitation. The terms are used herein interchangeably.
- (d) Documentation. A term used to refer to all materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
- (e) Proposal. Contractor's response to a Request for Proposals (RFP) issued by the Issuing Agency.
- (f) Services. All Contractor activity necessary to satisfy the Contract.

#### 4. CONTRACT SCOPE

- (a) If the Contractor must perform work at a Commonwealth facility outside of the daily operational hours set forth by the Commonwealth, it must make arrangements with Treasury to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access, unless Treasury fails to or is unable to provide access and does not let Contractor of the failure or inability of Treasury to provide such access as set out in the RFP.
- (b) Except as set out in this Contract, the Contractor shall not offer for sale or provide Treasury with any hardware or software (i.e., personal computers, file servers, laptops, personal computer packaged software, etc.). Contractor may recommend the use of tools such as hardware and software, without requiring agencies to purchase those tools. Software tools that are NOT on statewide contract will be acquired through separately procured purchase agreements, and the Contractor shall not be considered for award of such agreements if it has recommended their use.
- (c) Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (OA/OIT) (located at: <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=416&PageID=210791&mode=2>), including the accessibility standards set out in IT Bulletin ACC001, IT Accessibility Policy or as otherwise specified by Treasury. The Contractor shall ensure that Services procured under this Contract comply with the applicable standards. In the event such standards change during Contractor's performance, and Treasury requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract. Please note as Treasury is an independent agency of the Commonwealth, Treasury reserves the right to change, alter or eliminate any or all applicable IT standards promulgated by OA/OIT and will apprise the Contractor of any changes.

#### 5. ORDER OF PRECEDENCE

If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence shall be:

- (a) This Contract; then
- (b) The proposal, as accepted by the Treasury; and then
- (c) The RFP.

## **6. CONTRACT INTEGRATION**

- (a) This Contract, including the Contract signature pages, together with the proposal and Best and Final Offer, if any, and the RFP and addenda thereto, if any, that are incorporated herein by reference, constitutes the final, complete, and exclusive Contract between the parties containing all the terms and conditions agreed to by the parties.
- (b) All representations, understandings, promises, and agreements pertaining to the subject matter of this Contract made prior to or at the time this Contract is executed are superseded by this Contract.
- (c) There are no conditions precedent to the performance of this Contract except as expressly set forth herein.
- (d) No contract terms or conditions are applicable to this Contract except as they are expressly set forth herein.

## **7. PERIOD OF PERFORMANCE**

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

## **8. OPTION TO EXTEND**

Treasury reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

## **9. SPECIAL REQUIREMENTS**

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

## **10. SUBCONTRACTS**

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

## **11. OTHER CONTRACTORS**

Treasury may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors, Commonwealth and Treasury employees, and coordinate its Services 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 or Treasury employees. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. Treasury shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

## 12. PRIME CONTRACTOR RESPONSIBILITIES

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.

## 13. COMPENSATION

- (a) The Contractor shall be required to perform at the price(s) quoted in the Contract. All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and performed to the satisfaction of Treasury. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.
- (b) Unless the Contractor has been authorized by Treasury for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an invoice itemized by Purchase Order line item to the address referenced on the Purchase Order promptly after items are satisfactorily delivered. The invoice should include only amounts due under the Contract/Purchase Order. The Purchase Order number must be included on all invoices.

In addition, Treasury shall have the right to require the Contractor to prepare and submit a —Work In Progress sheet that contains, at a minimum, the tasks performed, number of hours, hourly rates, and the purchase order or task order to which it refers.

## 14. PAYMENT

- (a) Treasury shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
  - (1) The date on which payment is due under the terms of the Contract; or
  - (2) Forty-five (45) calendar 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 Treasury accepts the service as satisfactorily performed).

The payment date shall be the date specified on the invoice if later than the dates established by (1) and (2) above.

- (b) Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract, if any payment is not made within fifteen (15) days after the required payment date, Treasury may pay interest as determined by Treasury 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. Treasury 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.
- (c) Electronic Payments

- (1) Treasury's preferred method to make contract payments is by ACH. Within ten (10) days of award of the Contract, the Contractor shall submit or must have already submitted its proper payment information to the Office of Comptroller 113 Finance Building Harrisburg, PA 17120.
- (2) The Contractor must submit a unique invoice number with each invoice submitted.
- (3) It is the responsibility of the Contractor to ensure that the ACH information provided to the Office of Comptroller is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

## 15. ASSIGNABILITY

- (a) Subject to the terms and conditions of this Section, the Contract is binding upon the parties and their respective successors and assigns.
- (b) The Contractor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of Treasury, which consent may be withheld at the sole and absolute discretion of Treasury.
- (c) For the purposes of the Contract, the term — “assign” shall include, but shall not be limited to, the sale, gift, assignment, encumbrance, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- (d) Any assignment consented to by Treasury shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- (e) Notwithstanding the foregoing, the Contractor may, without the consent of Treasury, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to Treasury together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Contract.
- (f) A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, is not considered to be an assignment. The Contractor shall give Treasury written notice of any such change of name.

## 16. INSPECTION AND ACCEPTANCE

- (a) Acceptance of Developed Materials will occur in accordance with the Deliverable Approval Plan submitted by the Contractor and approved by Treasury. Upon approval of the plan by Treasury, the Deliverable Approval Plan becomes part of this Contract. For contracts where the development of software, the configuration of software, or the modification of software is the deliverable, the Deliverable Approval Plan must include an Acceptance Test Plan. The Acceptance Test Plan will provide for a Final Acceptance Test, and may provide for Interim Milestone Acceptance Tests. Each Acceptance Test will be designed to demonstrate that the Developed Materials conform with the functional specification for the Developed Materials, if any, and/or the requirements of this Contract. Contractor shall notify Treasury when the deliverable is completed and ready for acceptance testing. Treasury will not unreasonably delay commencement of acceptance testing.
  - (1) For Projects that require software integration at the end of the Project, as set out in the

RFP, Treasury's acceptance of a deliverable or milestone shall be final unless at the time of Final Acceptance, the Developed Materials do not meet the acceptance criteria set forth in the Contract.

- (2) For Projects that do not require software integration at the end of the Project as set out in the RFP, Treasury's acceptance of a deliverable or milestone shall be complete and final.
- (b) Contractor shall certify, in writing, to Treasury when a particular Deliverable milestone, interim or final, is completed and ready for acceptance (hereinafter Acceptance). Unless otherwise agreed to by Treasury, the Acceptance period shall be ten (10) business days for interim milestones and thirty (30) business days for final milestones. On or before the 10th business day for interim milestones or 30th business day for the final milestone, following receipt by Treasury of Contractor's certification of completion of a particular milestone, Treasury shall, subject to Section 17(a) either:
- (1) Provide the Contractor with Treasury's written acceptance of the Developed Materials in the completed milestone, or
  - (2) Identify to Contractor, in writing, the failure of the Developed Materials to comply with the specifications, listing all such errors and omissions with reasonable detail.
- (c) If Treasury fails to notify the Contractor in writing of any failures in the Developed Materials within the applicable Acceptance period, the Developed Materials shall be deemed accepted.
- (d) If the Developed Materials do not meet an accessibility standard, the Contractor must provide written justification for its failure to meet the standard. The justification must provide specific details as to why the standard has not been met. Treasury may either waive the requirement as not applicable to Treasury business requirements or require that the Contractor provide an acceptable alternative. Any waiver of the requirement must be in writing.
- (e) Upon the Contractor's receipt of Treasury's written notice of rejection, which must identify the reasons for the failure of the Developed Materials in a completed milestone to comply with the specifications, the Contractor shall have fifteen (15) business days, or such other time as Treasury and Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected Developed Materials, certifying to Treasury, in writing, that the failures have been corrected, and that the Developed Materials have been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted Developed Materials and certification, Treasury shall have thirty (30) business days to test the corrected Developed Materials to confirm that they are in compliance with the specifications. If the corrected Developed Materials are in compliance with the specifications, then Treasury shall provide the Contractor with its acceptance of the Developed Materials in the completed milestone.
- (f) If, in the opinion of Treasury, the corrected Developed Materials still contain material failures, Treasury may either:
- (1) Repeat the procedure set forth above; or
  - (2) Proceed with its rights under Section 22 (TERMINATION).

## 17. DEFAULT

- (a) Treasury may, subject to the provisions of Section 19 (NOTICE OF DELAYS) and Section 53 (FORCE MAJEURE), and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in

Section 22 (TERMINATION) the whole or any part of this Contract for any of the following reasons:

- (1) Failure to begin Services within the time specified in the Contract or as otherwise specified;
- (2) Failure to perform the Services with sufficient labor, equipment, or material to insure the completion of the specified Services in accordance with the Contract terms;
- (3) Unsatisfactory performance of the Services;
- (4) Failure to deliver the awarded item(s) within the time specified in the Contract or as otherwise specified;
- (5) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract;
- (6) Failure or refusal to remove material, or remove, replace, or perform any Services rejected as defective or noncompliant;
- (7) Discontinuance of Services without approval;
- (8) Failure to resume Services, which has been discontinued, within a reasonable time after notice to do so;
- (9) Insolvency;
- (10) Assignment made for the benefit of creditors;
- (11) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due subcontractors for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
- (12) Failure to protect, to repair, or to make good any damage or injury to property;
- (13) Material breach of any provision of this Contract;
- (14) Failure to comply with representations made in the Contractor's Proposal; or
- (15) Failure to comply with applicable industry standards, customs, and practice.

## **18. NOTICE OF DELAYS**

Whenever the Contractor encounters any difficulty that delays or threatens to delay the timely performance of this Contract (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to Treasury stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by Treasury of any rights or remedies to which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with Section 21 (CHANGES).

## **19. CONDUCT OF SERVICES**

Following the Effective Date of the Contract, Contractor shall proceed diligently with all Services and shall perform such Services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

In determining whether or not the Contractor has performed with due diligence hereunder, it is agreed and understood that Treasury may measure the amount and quality of the Contractor's effort against the representations made in the Contractor Proposal. The Contractor's Services hereunder shall be monitored by Treasury and Treasury's designated representatives. If Treasury reasonably determines that the Contractor has not performed with due diligence, Treasury and the Contractor will attempt to reach agreement with respect to such matter. Failure of Treasury or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of Section 24 (CONTRACT CONTROVERSIES) of this Contract.

## 20. CHANGES

- a) At any time during the performance of the Contract, Treasury or the Contractor may request a change to the Contract. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If Treasury is the requestor of the change, the Contractor will inform Treasury if there will be any charges for the Contractor's services in investigating the change request prior to incurring such charges. If Treasury and the Contractor agree on the results of the investigation and any necessary amendments to the Contract, the parties must complete and execute a change notice to modify the Contract and implement the change. The change request will be evidenced by a Purchase Order issued by Treasury. No work may begin on the change request until the Contractor has received the Purchase Order. If the parties cannot agree upon the results of the investigation or the necessary amendments to the Contract, the change request will not be implemented and, if the Contractor initiated the change request it may elect to handle the matter in accordance with Section 24 (CONTRACT CONTROVERSIES) of this Contract.
- b) Changes outside the scope of this Contract shall be accomplished through the Commonwealth's normal procurement procedures, and may result in an amended Contract or a new contract. No payment will be made for services outside of the scope of the Contract for which no amendment has been executed, prior to the provision of the services.

## 21. TERMINATION

- (a) For Convenience
  - (1) Treasury may terminate this Contract without cause by giving Contractor thirty (30) calendar days prior written notice (Notice of Termination) whenever Treasury shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective.

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

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

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

Failure to agree on any termination costs shall be a dispute handled in accordance with Section 24 (CONTRACT CONTROVERSIES) of this Contract.

- (2) The Contractor shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such services performed during the thirty (30) calendar day notice period, if such services are requested by Treasury, for the collection, assembling, and transmitting to Treasury of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under this Contract.
  - (3) The above shall not be deemed to limit the Treasury's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.
- (b) Non-Appropriation

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

(c) Default

Treasury may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within thirty (30) days or, if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as Treasury may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

- (1) Subject to Section 30 (LIMITATION OF LIABILITY) of this Contract, in the event the Treasury terminates this Contract in whole or in part as provided in this Subsection 22(c), Treasury may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to Treasury for the difference between the Contract price for the terminated portion of the services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.
- (2) Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism, and unusually severe weather. The

Contractor shall notify the Contracting Officer promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.

- (3) Nothing in this Subsection 22 (c) shall abridge Treasury's right to suspend, debar, or take other administrative action against the Contractor.
  - (4) If it is later determined that Treasury erred in terminating the Contract for default, then the Contract shall be deemed to have been terminated for convenience under Subsection (a).
  - (5) If this Contract is terminated as provided by this Subsection 22(c), Treasury may, in addition to any other rights provided in this Subsection, and subject to Section 36 (OWNERSHIP RIGHTS) of this Contract, require the Contractor to deliver to Treasury in the manner and to the extent directed by the Contracting Officer, such reports and other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Payment for such reports and documentation will be made consistent with the Contract.
- (d) The rights and remedies of Treasury provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
  - (e) Treasury's failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by Treasury of its rights and remedies in regard to the event of default or any succeeding event of default.
  - (f) Following exhaustion of the Contractor's administrative remedies as set forth in Section 24 (CONTRACT CONTROVERSIES), the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **22. 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 and/or Treasury IT 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 <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access and on an annual basis thereafter.
- (b) Before Treasury 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 an employee of the Contractor or an employee of a subcontractor of the Contractor has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth or Treasury facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless Treasury consents to the access, in writing, prior to the access. Treasury may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to cure any single failure to the satisfaction of Treasury may result in the Contractor being deemed in default of its Contract.
- (c) Treasury specifically reserves the right to conduct or require background checks over and above that described herein.

## 23. 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.
- (b) The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 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 Treasury shall compensate the Contractor pursuant to the terms of the Contract.

## 24. CONFIDENTIALITY

- (a) The Contractor agrees to protect the confidentiality of Treasury and the Commonwealth's confidential information. Treasury agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as —confidential in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration of this Contract). Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to Section 22.c (DEFAULT), in addition to other remedies available to the non-breaching party.
- (b) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:
  - (1) Already known to the recipient at the time of disclosure other than through the contractual relationship;

- (2) Independently generated by the recipient and not derived from the information supplied by the disclosing party;
  - (3) Known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
  - (4) Disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
  - (5) Required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- (c) The Contractor shall use the following process when submitting information to Treasury it believes to be confidential and/or proprietary information or trade secrets:
- (1) Prepare an un-redacted version of the appropriate document, and
  - (2) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
  - (3) Prepare a signed written statement that states:
    - i) The attached document contains confidential or proprietary information or trade secrets;
    - ii) The Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
    - iii) The Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
  - (4) Submit the two documents along with the signed written statement to Treasury.
  - (5) This information may be subject to Right-to-Know Law as such Section 53 would apply/

## 25. INSURANCE

- (a) The Contractor shall procure and maintain at its expense and require its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:
- (1) Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act* (77 P.S. § 101, *et seq.*).
  - (2) Public liability and property damage insurance to protect, Treasury, the Commonwealth, the Contractor, and any and all Subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any Subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall

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

- (b) Prior to commencing Services under the Contract, the Contractor shall provide Treasury with a copy of each current certificate of insurance. These certificates shall contain a provision that coverage afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this Paragraph until at least thirty (30) days prior written notice has been given to Treasury.
- (c) The Contractor agrees to maintain such insurance for the life of the Contract.
- (d) Upon request to and approval by Treasury, contractor's self-insurance of the types and amounts of insurance set for above shall satisfy the requirements of this Section 26 (INSURANCE), provided Treasury may request from Contractor evidence each year during the term of the contract that Contractor has sufficient assets to cover such losses.

## 26. CONTRACTOR RESPONSIBILITY PROGRAM

- (a) The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.
- (b) The Contractor must also certify, in writing, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.
- (c) The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform Treasury if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- (d) The failure of the Contractor to notify Treasury of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with Treasury.
- (e) The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by Commonwealth for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and Treasury, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- (f) The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building

Harrisburg, PA 17125  
Telephone No. (717) 783-6472  
FAX No. (717) 787-9138

## **27. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS**

The Contractor agrees that Treasury 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.

## **28. TAXES-FEDERAL, STATE, AND LOCAL**

Treasury is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. Treasury is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this Section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

## **29. LIMITATION OF LIABILITY**

- (a) The Contractor's liability to Treasury under this Contract shall be limited to the greater of \$250,000 or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this Section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to damages for:
  - (1) Bodily injury;
  - (2) Death;
  - (3) Intentional injury;
  - (4) Damage to real property or tangible personal property for which the Contractor is legally liable; or
  - (5) The Contractor's indemnity of Treasury and/or the Commonwealth for patent, copyright, trade secret, or trademark protection.
- (b) In no event will the Contractor be liable for consequential or incidental damages unless otherwise specified in the RFP. Except as set out in Section 32 (VIRUS; MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING), the Contractor will not be liable for damages due to lost records or data, unless otherwise specified in the RFP. Notwithstanding the foregoing, the Contractor shall provide reasonable assistance to Treasury in restoring such lost records or data to their most recent backup copy.

## **30. COMMONWEALTH HELD HARMLESS**

- (a) The Contractor shall hold the Treasury and/or Commonwealth harmless from and indemnify Treasury and/or the Commonwealth against any and all third party claims, demands and actions

based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided Treasury and/or the Commonwealth gives Contractor prompt notice of any such claim of which it learns.

- (b) Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. Treasury may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

### **31. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING**

- (a) Notwithstanding any other provision in this Contract to the contrary, if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into Treasury's and/or the Commonwealth's software or computer networks and has failed to comply with Treasury's and/or the Commonwealth's software security standards, and provided further that Treasury and/or the Commonwealth can demonstrate that the virus or malicious, mischievous or destructive programming was introduced by the Contractor or any of its employees, subcontractors or consultants, the Contractor shall be liable for any damage to any data and/or software owned or licensed by Treasury and/or the Commonwealth. The Contractor shall be liable for any damages incurred by Treasury and/or the Commonwealth including, but not limited to, the expenditure of Treasury and/or Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that result from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor, its servants, agents or employees through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.). In the event of destruction or modification of software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore Treasury's and/or the Commonwealth's software, and be liable to Treasury and/or the Commonwealth for any resulting damages. The Contractor shall be responsible for reviewing Treasury and/or Commonwealth software security standards in effect at the commencement of the Contract and complying with those standards. The Contractor shall not be liable to the extent that any such damages are caused by Treasury's and/or the Commonwealth's failure to fully comply with its own software security standards.
- (b) The Contractor shall perform a security scan on any software or computer program developed by the Contractor or its subcontractors in a country other than the United States of America that may come in contact with Treasury's and/or the Commonwealth's software or computer networks. Contractor shall perform such security scan prior to introducing any such software or computer program into a Treasury and/or Commonwealth development environment, test environment or production environment. The results of these security scans will be provided to Treasury and maybe shared with the Commonwealth prior to installing into any Treasury or Commonwealth development environment, test environment or production environment. Treasury or the Commonwealth may perform, at its discretion, additional security scans on any software or computer program prior to installing in a Treasury and/or Commonwealth environment as listed above.
- (c) Treasury and/or Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the Contractor to provide services to Treasury that will be connected to a Commonwealth network for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not

be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made. Treasury shall not install any software or monitoring tools on the Contractor's equipment without the Contractor's written consent to do so.

- (d) The Contractor may use the anti-virus software used by Treasury and/or the Commonwealth to protect Contractor's computing devices used in the course of providing services to Treasury. It is understood that the Contractor may not install the software on any computing device not being used to provide services to Treasury, and that all copies of the software will be removed from all devices upon termination of this Contract.
- (e) Neither Treasury nor the Commonwealth will be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of Treasury's or the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

### **32. PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET PROTECTION**

- (a) The Contractor shall hold Treasury harmless from any suit or proceeding which may be brought by a third party against Treasury, the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. Treasury agrees to give Contractor prompt notice of any such claim of which it learns. No settlement which prevents Treasury from continuing to use the Developed Materials as provided herein shall be made without Treasury's prior written consent. In all events, Treasury shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that Treasury to provide support to the Contractor in defending any such claim, the Contractor shall reimburse Treasury for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by Treasury and/or the Commonwealth for such support. The Contractor will, at its expense, provide whatever cooperation Treasury requests in the defense of the suit.
- (b) The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all works produced under this Contract do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that work produced for Treasury under this contract shall be free and clear from all claims of any nature.
- (c) If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs awarded therein against Treasury and/or the Commonwealth. If information and assistance are furnished Treasury at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.
- (d) If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense, substitute functional equivalents for the alleged infringing products,

materials, reports, studies, or computer programs or, at the Contractor's option and expense, obtain the rights for Treasury to continue the use of such products, materials, reports, studies, or computer programs.

- (e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- (f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay Treasury:
  - (1) Any amounts paid by Treasury less a reasonable amount based on the acceptance and use of the deliverable;
  - (2) Any license fee less an amount for the period of usage of any software; and
  - (3) The prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (g) The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.
- (h) Notwithstanding the above, except to the extent specifically recommended, approved or authorized by Contractor, Contractor shall have no obligation for:
  - (1) Modification of any product, service, or deliverable provided by Treasury;
  - (2) Any material provided by Treasury to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
  - (3) Use of the product, service, or deliverable in other than its specified operating environment;
  - (4) The combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
  - (5) Infringement of a non-Contractor product alone;
  - (6) Treasury's distribution, marketing or use beyond the scope contemplated by the Contract; or
  - (7) Treasury's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.
    - i) The obligation to indemnify Treasury and/or the Commonwealth, under the terms of this Section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

### **33. SENSITIVE INFORMATION**

- (a) The Contractor shall not publish or otherwise disclose, except to Treasury or the Contractor's subcontractors and except matters of public record (which is to be determined entirely in the

discretion of Treasury), any information or data obtained hereunder from private individuals, organizations, or public agencies.

- (b) The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Contract for any purpose not connected with the parties' Contract responsibilities except with consent pursuant to applicable state and federal law and regulations. All documents associated with direct disclosures of this kind must be announced to and open for inspection by the Treasury.
- (c) Contractor will comply with all federal or state laws related to the use and disclosure of information, including information that constitutes Protected Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA). Further, by signing this Contract, the Contractor agrees to the terms of the Business Associate Agreement, which is incorporated into this Contract as Exhibit A. It is understood that Exhibit A is only applicable if indicated in the procurement documents.
- (d) Rights and obligations of the parties under this Section 34 survive the termination of this Contract

#### **34. CONTRACT CONSTRUCTION**

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

#### **35. OWNERSHIP RIGHTS**

- (a) Ownership of Properties
  - (1) All —Developed Works shall be owned according to the provisions set forth in this Section 36.
  - (2) All software owned by Treasury or its licensors (—Treasury Software) as of the Effective Date, shall be and shall remain the exclusive property of Treasury or its licensors, and Contractor shall acquire no rights or interests in the Treasury Software or Tools or that of its licensors by virtue of this Contract except as described in this Section or in another provision set forth in this Contract. The Contractor shall not use any Treasury Software, Treasury Tools or software or tools of its licensors for any purpose other than for completion of work to be performed under this Contract. In the use of Treasury Software, Treasury Tools or software or tools of its licensors, Contractor will be bound by the confidentiality provisions of this Contract.
- (b) Definitions
  - (1) Software—For the purposes of this Contract, the term —"software" means a collection of one or more programs, databases or micro-programs fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).
  - (2) Data—For the purposes of this Contract, the term — "data" means any recorded information, regardless of form, the media on which it may be recorded, or the method of recording.

- (3) Technical Data—For purposes of this Contract, the term —”technical data” means any specific information necessary for the development, production or use of the Treasury Software.
- (c) Treasury Property—Non-Exclusive, License Grant and Restrictions
- During the term of this Contract, Treasury grants to Contractor for the limited purpose of providing the Services covered under this Contract, a limited, nonexclusive, nontransferable, royalty-free right (subject to the terms of any third party agreement to which the Commonwealth is a party) to do the following:
- (1) Obtain access to and use of Treasury Software in accordance with the terms of this Contract.
  - (2) Reproduce Treasury Software for archival purposes or for other purposes expressly provided for under this Contract.
  - (3) Modify Treasury Software consistent with the terms and conditions of this Contract provided that Contractor agrees to assign to Treasury, its rights, if any, in any derivative works resulting from Contractor’s modification of the Treasury Software. Contractor agrees to execute any documents required to evidence this assignment and to waive any moral rights and rights of attribution provided for in Section 106A of Title 17 of the United States Code, the Copyright Act of 1976.
  - (4) Allow the Contractor’s subcontractors approved by Treasury to obtain access to Treasury Software for the purposes of complying with the terms and conditions of this Contract; provided, however, that neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Treasury Software. Treasury hereby represents that it has the authority to provide the license grant and rights set forth in this Section.
  - (5) To the extent that Contractor uses Treasury Software, Treasury Tools or software or tools of its licensor, Contractor agrees to protect the confidentiality of these works and maintain these proprietary works with the strictest confidence.
- (d) Impact of Third Party Agreements
- Subject to the terms of any third party agreement to which the Treasury is a party, (i) Treasury shall, at no cost to Contractor, provide Contractor with access to the Treasury Software in the form in use by Treasury as of the Effective Date of this Contract and, (ii) Contractor, as part of the Services to be rendered under this Contract, shall compile and, as changes are made, update a list of all of the Treasury Software then in use by Contractor or any of its subcontractors in connection with Contractor’s performance of the Services required by this Contract.
- (e) Reservation of Rights
- All rights, not expressly granted here to Contractor on a nonexclusive basis, including the right to grant non-exclusive licenses and other rights are reserved by Treasury.
- (f) Termination of Treasury License Grant
- Upon the expiration or termination for any reason of Contractor’s obligation to provide the Services under this Contract, all rights granted to Contractor in this Section 36 (OWNERSHIP RIGHTS) shall immediately cease. Contractor shall, at no cost to Treasury, deliver to Treasury all of Treasury Software and Tools (including any related source code then in Contractor’s possession or under its control) in the form in use as of the Effective Date of such expiration or termination. Within fifteen (15) calendar days after termination, Contractor shall provide

Treasury with a current copy of the list of Treasury Software in use as of the date of such expiration or termination. Concurrently therewith, Contractor shall destroy or erase all other copies of any of the Treasury Software then in Contractor's possession or under its control unless otherwise instructed by Treasury, in writing; provided, however, that Contractor may retain one archival copy of such Treasury Software and Tools, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.

(g) Effect of License Grant Termination

Consistent with the provisions of this Section, Contractor shall refrain from manufacturing, copying, marketing, distributing, or use of any Treasury Software or any other work which incorporates Treasury Software. The obligations of this Section 36 (OWNERSHIP RIGHTS) shall survive any termination of this Contract.

(h) Use of Contractor-Owned Software

All software owned by Contractor (Contractor Software) and tools owned by Contractor (Contractor Tools, as defined in paragraph (i) below) prior to the Effective Date of this Contract shall be and shall remain the exclusive property of Contractor. Treasury shall acquire no rights or interests in the Contractor Software or the Contractor Tools by virtue of this Contract except as set forth in this Section.

(i) Definition of Contractor Tools

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

(j) Required Reports, Records and Inventory of Contractor Tools and Contractor Software

(1) Contractor must provide a list of all Contractor Tools and Contractor Software to be delivered in connection with the deliverables or Developed Materials prior to commencing any work under the Contract. Contractor must also provide a list of all other Contractor Tools and Contractor Software intended to be used by Contractor to provide the services under this Contract but will not become part of or necessary for the use of the Developed Materials. All Contractor Tools and Contractor Software necessary to use deliverables or Developed Materials shall be delivered to Treasury along with the license set forth in Section 36(k). Contractor may amend these lists from time to time while the Contract is being carried out or upon its completion. In the event that the Contractor fails to list a Contractor Tool, but can demonstrate that such tool was independently developed by Contractor prior to the Contract on which it was used, Contractor shall nevertheless retain complete ownership of such Contractor Tool that is necessary to use the deliverables or Developed Materials, provided that notice is given to Treasury prior to its use on the Contract. Any Contractor Tools or Contractor Software not included on the lists will be deemed to have been created under this Contract.

(2) As part of its response to a RFP, the Contractor will provide a list of all software and tools that are commercially available and which are required to support the deliverables or Developed Materials.

(3) During the term of this Contract, Contractor shall maintain at its principal office books of account and records showing its actions under this Contract. Upon reasonable notice by

Treasury, Contractor shall allow Treasury to inspect these records and accounts for purposes of verifying the accuracy of such accounts and records.

- (4) In the event that Contractor fails to list a Contractor Tool or Contractor Software, but is able to demonstrate that such tool or software was independently developed by Contractor prior to the Effective Date of this Contract, Contractor shall retain complete ownership of such Contractor Tool or Contractor Software that is necessary to use the deliverables or Developed Works, provided that notice is given to Treasury prior to use on the Contract.
- (k) Expiration or Termination Non-Exclusive License Grant—Non-Commercial Contractor Tools and Software

Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, and at the request of Treasury, Contractor shall (i) grant to Treasury a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works and unless Treasury terminates this Contract without cause, grant to third parties engaged by Treasury the right to use, modify, and prepare derivative works based upon all or any portion of the non-commercially available Contractor Software and the non-commercially available Contractor Tools owned by Contractor and used by Contractor in connection with the Services, the foregoing rights being granted to the extent reasonably necessary to facilitate Treasury's or such third party's completion of and maintenance of the Services to be provided by Contractor under this Contract immediately prior to such expiration or termination and (ii) deliver to Treasury the object code version of such non-commercially available Contractor Software and such non-commercially available Contractor Tools in the form used by Contractor in connection with the Services immediately prior to such expiration or termination to allow Treasury to complete and maintain such work. If Treasury enters into a contract that allows for the use of the Contractor Software or Contractor Tools for which a license is granted under this Section 36 (OWNERSHIP RIGHTS), Treasury will include a provision in that contract that limits the use of the Contractor Software or Contractor Tools as delineated in this Section.

- (l) Rules of Usage for Developed Works
- (1) If Developed Works modify, improve, or enhance application software programs or other materials generally licensed by the Contractor, then such Developed Works shall be the property of the Contractor, and Contractor hereby grants Treasury an irrevocable, nonexclusive, worldwide, fully paid-up license (to include source code and relevant documentation) in perpetuity to use, modify, execute, reproduce, display, perform, prepare derivative works from and distribute, within the Commonwealth, of such Developed Works. For purposes of distribution under the license grant created by this section, Commonwealth includes any government agency, department, instrumentality, division, unit or other office that is part of the Commonwealth of Pennsylvania, together with the State System of Higher Education (including any of its universities), any county, borough, commonwealth, city, municipality, town, township special purpose district, or other similar type of governmental instrumentality located within the geographical boundaries of the Commonwealth of Pennsylvania. If federal funds are used in creation of the Developed Works, the Commonwealth also includes any other state government as well as the federal government.
  - (2) If Developed Works modify, improve, or enhance application software or other materials not licensed to Treasury by the Contractor, then such modifications, improvements and enhancements shall be the property of the Treasury or its licensor. To the extent Treasury

owns the software or other materials, it hereby grants to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform, prepare derivative works from, and distribute copies of such Developed Works. To the extent Treasury has a license to the software or other materials, and to the extent that it, in its sole discretion determines it is able to do so Treasury will grant to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform and distribute copies of such Developed Works.

- (3) If Developed Works have been funded by Treasury, to any extent, with either Commonwealth or federal funds, and the Developed Works do not include pre-existing materials generally licensed by the Contractor, then Treasury shall have all right, title, and interest (including ownership of copyright and trademark) to such Developed Works and Treasury hereby grants to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform, prepare derivative works from, and distribute copies of such Developed Works. Treasury shall exclusively own all software products first developed under the terms of this contract by the Contractor, its subcontractors or other third party vendors that are specifically developed for, engineered and integrated into the Developed Works.
  - (4) When the Developed Work is a report provided by a research company that was provided under this Contract, but which was not developed specifically for Treasury under this Contract, the ownership of the Developed Work will remain with the Contractor, provided, however, that Treasury has the right to copy and distribute the Developed Work within the Commonwealth.
- (m) Copyright Ownership—Developed Works Developed as Part of the Scope of Work for the Project, including Developed Works developed by Subcontractors, are the sole and exclusive property of Treasury and shall be considered —works made for hire under the United States Copyright Act of 1976, as amended, 17 United States Code. In the event that the Developed Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, Contractor agrees to assign and, upon their authorship or creation, expressly and automatically assigns all copyright interests, proprietary rights, trade secrets, and other right, title, and interest in and to such Developed Works to Treasury. Contractor further agrees that it will have its Subcontractors assign, and upon their authorship or creation, expressly and automatically assign all copyright interest, proprietary rights, trade secrets, and other right, title, and interest in and to the Developed Works to Treasury. Treasury shall have all rights accorded an owner of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Developed Works in multiple copies, the right to distribute, copies by sales or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the Developed Works and the right to display the Developed Works. The Contractor further agrees that it will include this requirement in any subcontractor or other agreement with third parties who in any way participate in the creation or development of Developed Works. Upon completion or termination of this Contract, Developed Works shall immediately be delivered by Contractor to Treasury. Contractor warrants that the Developed Works are original and do not infringe any copyright, patent, trademark, or other intellectual property right of any third party and are in conformance with the intellectual property laws of the United States.
- (n) Patent Ownership

- (1) Contractor and its subcontractors shall retain ownership to patentable items, patents, processes, inventions or discoveries (collectively, the Patentable Items) made by the Contractor during the performance of this Contract. Notwithstanding the foregoing, the Treasury shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. Treasury may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. Treasury understands and agrees that any third party disclosure will not confer any license to such Patentable Items.
  - (2) Contractor shall not use any computer program, code, or any works developed by or for Contractor independently of this Contract (—Pre-Existing Materials) in the performance of the Services under this Contract, without the express written consent of the Treasury. Any Pre-Existing Materials used by Contractor for performance of Services under this Contract without Treasury consent shall be deemed to be Developed Works as that term is used in this Section. In the event that Treasury provides such consent, Contractor shall retain any and all rights in such Pre-Existing Materials.
- (o) Federal Government Interests
- It is understood that certain funding under this Contract may be provided by the federal government. Accordingly, the rights to Developed Works or Patentable Items of Contractors or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. Section 401, and other applicable statutes.
- (p) Usage Rights for Know-How and Technical Information
- Either Party, in the ordinary course of conducting business, may use any ideas, concepts, know-how, methodologies, processes, components, technologies, algorithms, designs, modules or techniques not otherwise covered by this Section relating to the Services which Contractor or Treasury (alone or jointly with the Commonwealth) develops or learns in connection with Contractor’s provision of Services to Treasury under this Contract.
- (q) Treasury’s Intellectual Property Protection
- Contractor acknowledges Treasury’s exclusive right, title and interest, including without limitation copyright and trademark rights, in and to Treasury Software, Treasury Tools and the Developed Works developed under the provisions of this Section, shall not in any way, at any time, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title, and interest, and shall not use or disclose Treasury’s Software, Treasury Tools, or the Developed Works without Treasury’s written consent, which consent may be withheld by the Treasury for any reason. Further, Contractor shall not in any manner represent that Contractor has any ownership interest in the Treasury Software, Treasury Tools, or the Developed Works. This provision is a material part of this Section.
- (r) Contractor Intellectual Property Protection
- Treasury acknowledges that it has no ownership rights in the Contractor Software or Contractor Tools other than those set forth in this Contract, or as may be otherwise granted in writing.
- (s) Source Code and Escrow Items Obligations
- Simultaneously with delivery of the Developed Works to Treasury, Contractor shall deliver a true, accurate and complete copy of all source codes relating to the Developed Works. To the extent that the Developed Works include application software or other materials generally

licensed by the Contractor, then the source code shall be placed in escrow, subject to the terms and conditions of an Escrow Agreement to be executed by the Parties and an Escrow Agent that is acceptable to Treasury.

(t) Contractor's Copyright Notice Obligations

Contractor will affix the following Copyright Notice to the Developed Works developed under this Section and all accompanying documentation: —Copyright [year] by the Pennsylvania Treasury Department, Commonwealth of Pennsylvania. All Rights Reserved. This notice shall appear on all tangible versions of the Developed Works delivered under this Contract and any associated documentation. It shall also be programmed into any and all Developed Works delivered hereunder so that it appears at the beginning of all visual displays of such Developed Works.

(u) Commercial Software

If a product or deliverable under this Contract is commercially available software or requires commercially available software for use and the Contractor is the licensor of the software, Contractor shall enter into a license agreement with Treasury that incorporates Exhibit C (Software License Requirements) as a material part of the software license agreement. If a product or deliverable under this Contract is commercially available software or requires commercially available software for use and the Contractor is not the licensor of the software, the Contractor hereby agrees that, before it incorporates such software into a deliverable, Contractor will inform the licensor of the software that it will be required to enter into a software license agreement with the Treasury that incorporates Exhibit C (Software License Requirements) as a material part of the licensor's software license agreement.

### **36. PUBLICATION RIGHTS AND/OR COPYRIGHTS**

- (a) Except as otherwise provided in Section 36 (OWNERSHIP RIGHTS), the Contractor shall not publish any of the results of the work without the written permission of the Treasury. The publication shall include the following statement: —The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the Pennsylvania Treasury Department, Commonwealth of Pennsylvania. The Contractor shall not include in the documentation any copyrighted matter, unless the Contractor provides Treasury with written permission of the copyright owner.
- (b) Except as otherwise provided in Section 36 (OWNERSHIP RIGHTS) and the confidentiality provisions of Section 25 (CONFIDENTIALITY), Treasury shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to Treasury as part of the performance of the Contract.
- (c) Rights and obligations of the parties under this Section 37 survive the termination of this Contract.

### **37. CHANGE OF OWNERSHIP OR INSOLVENCY**

In the event that the Contractor should change ownership for any reason whatsoever, Treasury shall have the exclusive option of continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract, or continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs, or immediately terminating this Contract. Nothing in this section limits Treasury's exercise of any rights that Treasury may have under Section 22 (TERMINATION).

### **38. OFFICIALS NOT TO BENEFIT**

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

### **39. INDEPENDENT CAPACITY OF CONTRACTOR**

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

### **40. COMPLIANCE WITH LAWS**

The Contractor shall comply with all federal, state, and local laws applicable to its Services, including, but not limited to, all statutes, regulations and rules that are in effect as of the Effective Date of the Contract and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation.

### **41. THE AMERICANS WITH DISABILITIES ACT**

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

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

### **42. EXAMINATION OF RECORDS**

- (a) The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence

pertaining to the charges under this Contract to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.

- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in Section 43(c) below, any of the records for inspection, audit, or reproduction by any authorized Treasury representative. To the extent allowed by law, Treasury agrees to maintain any documents so provided in accordance with the confidentiality provisions in Section 25 (CONFIDENTIALITY).
- (c) The Contractor shall preserve and make available its records for a period of three (3) years from the date of final payment under this Contract:
  - (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three (3) years from the date of any resulting final settlement.
  - (2) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.
- (d) Except for documentary evidence retained pursuant to Section 43(c)(2) above, the Contractor may in fulfillment of its obligation to retain its records as required by this Section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two (2) years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Treasury with the concurrence of its auditors.
- (e) The provisions of this Section shall be applicable to and included in each subcontract hereunder. The term —subcontract as used in this contract only, excludes purchase orders not exceeding \$1,000 and subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

#### **43. SINGLE AUDIT ACT OF 1984**

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

- (a) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in *Government Auditing Standards*, 1994 Revisions (Yellow Book).
- (b) The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, 31 U.S.C. § 7501, et seq., and all rules and regulations promulgated pursuant to the Act.
- (c) The Treasury reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
- (d) The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984*.

#### 44. ENVIRONMENTAL PROTECTION

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

#### 45. NONDISCRIMINATION CLAUSE/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

- (a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- (b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
- (c) The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- (d) The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
- (e) The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the —Initial Contract Compliance Data form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the —Monthly Contract Compliance Report for Construction Contractors, each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
- (f) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- (g) Treasury may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

#### 46. CONTRACTOR INTEGRITY PROVISIONS

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

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

- (a) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
- (b) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with Treasury, the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
- (c) Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Treasury employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.* and the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*, or to breach any other state or federal law or regulation.
- (d) Contractor will require all of its employees on this project to read and review, Treasury's Policy and Procedure Manual ("Manual"). Commonwealth will provide the Contractor all sections of said Manual that will be applicable to Contractor's employees. Contractor and its employees shall sign the applicable acknowledgement forms contained therein including but not limited to: the Information Technology Use and Security Policy and Confidentiality Policy. Contractor and its employees may be responsible for signing other Commonwealth acknowledgement forms or policies.
- (e) Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
- (f) Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Treasury, Commonwealth official or employee or to any other person, the acceptance of which would any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
- (g) Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Treasury or Commonwealth official or employee.
- (h) Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
- (i) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Treasury in writing and Treasury consents to Contractor's financial interest prior to Treasury's execution of the contract. Contractor shall disclose the financial interest to Treasury

at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

(j) Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of Treasury, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from Treasury or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

- (1) Approved in writing by Treasury prior to its disclosure; or
- (2) Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Treasury approval; or
- (3) Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
- (4) Necessary for purposes of Contractor's internal assessment and review; or
- (5) Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than Treasury; or
- (6) Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
- (7) Otherwise required by law.

(k) Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify Treasury's contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

- (1) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- (2) Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
  - i. Obtaining;
  - ii. Attempting to obtain; or
  - iii. Performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- (3) Violation of federal or state antitrust statutes.
- (4) Violation of any federal or state law regulating campaign contributions.

- (5) Violation of any federal or state environmental law.
- (6) Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- (7) Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- (8) Violation of any federal or state law prohibiting discrimination in employment.
- (9) Debarment by any agency or department of the federal government or by any other state.
- (10) Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that Treasury may, in its sole discretion, terminate the contract for cause upon such notification or when Treasury otherwise learns that Contractor has been officially notified, charged, or convicted.

- (l) If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641 of the Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
  - (1) Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
  - (2) Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

- (m) Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
- (n) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Treasury policy, or in these provisions has occurred or may occur, including but not limited to contact by Treasury officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify Treasury's Chief Counsel in the Office of Chief Counsel 127 Finance Building Harrisburg, PA 17120 in writing.
- (o) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.

- (p) Contractor shall cooperate with the Commonwealth in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Commonwealth, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Commonwealth to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.
- (q) For violation of any of these Contractor Integrity Provisions, Treasury may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and seek to have the Contractor debarred and/or suspended from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those Treasury may have under law, statute, regulation, or otherwise.
- (r) For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph (q).
- (1) Confidential information” means information that:
    - a) is not already in the public domain;
    - b) is not available to the public upon request;
    - c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality;
    - d) has not become generally known to the public through an act or omission of Contractor; or
    - e) has not been independently developed by Contractor without the use of confidential information of Treasury.
  - (2) “Consent” means written permission signed by a duly authorized officer or employee of Treasury, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, Treasury shall be deemed to have consented by virtue of execution of this contract.
  - (3) “Contractor” means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
  - (4) “Financial interest” means:
    - i. Ownership of more than a five percent interest in any business; or
    - ii. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - (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..

- (6) "Immediate family" means a spouse and any un-emancipated child.
- (7) "Non-bid basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or Offeror.
- (8) "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

#### **47. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS**

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

#### **48. WARRANTIES**

The Contractor warrants that the Services and Developed Works will conform in all material respects to the functional specifications for the Developed Works and/or the requirements of the Contract. The warranty period for the Services and Developed Works shall be ninety (90) days from final acceptance. The Contractor shall correct any non-conformity within the warranty period specified herein.

- (a) The Contractor hereby represents and warrants to Treasury that the Contractor will not cause, or take any action that may directly or indirectly cause a disruption of Treasury's operations.
- (b) In the event of any nonconformity with the foregoing warranties, Treasury will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to Treasury, shall within ten (10) days notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to Treasury, until such time as the deliverable conforms, in all material respects, to the functional specifications of the Developed Works set forth in this Contract. The Contractor shall have no obligation with respect to nonconformities arising out of: (a) modifications to Developed Materials made by Treasury, (b) use of the Developed Materials not in accordance with the documentation or specifications applicable thereto, (c) failure by Treasury to implement any corrections or enhancements made available by the Contractor, (d) combination of the Developed Materials with any items not supplied or approved by the Contractor, or (e) the failure of any software licensed under a separate license agreement to conform to its specifications or documentation.
- (c) Contractor warrants that it has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Developed Materials under this Contract.
- (d) THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (e) All warranties shall survive final acceptance.

- (f) In the event of an action or complaint by Treasury against Contractor pertaining to these warranties, Contractor may raise any defenses that it may have.

#### 49. LIQUIDATED DAMAGES

- (a) By accepting this Contract, the Contractor agrees to the delivery and acceptance requirements of this Contract. If a Contract schedule is not met, the delay will interfere with Treasury's program. In the event of any such delay, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. Treasury and the Contractor therefore agree that, in the event of any such delay the amount of damage shall be the amount set forth in this Section 50 and agree that the Contractor shall pay such amount as liquidated damages, not as a penalty. Such liquidated damages are in lieu of all other damages arising from such delay.
- (b) Treasury and Contractor agree that the Deliverables identified in the Payment Schedule set forth in this Contract as —Major Deliverables (the —Major Deliverables!) shall be those for which liquidated damages shall be applicable in the event of delay of their completion beyond the delivery date specified in the Contract. If Major Deliverables are not identified in the Contract, liquidated damages shall apply to the total value of the Contract.
- (c) The amount of liquidated damages for any such Major Deliverable not completed by the deliverable schedule set out in the Contract shall be three-tenths of a percent (.3%) of the price of the specifically identified Major Deliverable for each calendar day following the scheduled completion date of such Major Deliverable. Liquidated damages shall be assessed each calendar day until the date on which the Contractor completes such Major Deliverable, up to a maximum of thirty (30) calendar days. Contractor may recoup the total amount of liquidated damages assessed against previous Major Deliverables if the Contractor accelerates progress towards future Major Deliverables and meets the final project completion date set out in the Contract.
- (d) If, at the end of the thirty (30) day period specified in Section 50(c) above, the Contractor has not met the schedule for completion of the Major Deliverable, then Treasury, at no additional expense and at its option, may either:
  - (1) Immediately terminate the Contract and all software, documentation, reports, Developed Materials and any other materials provided for or created for Treasury as a result of this Contract shall be given to Treasury, and Treasury shall be entitled to its remedies under Section 22(c); or
  - (2) Order the Contractor to continue with no decrease in effort until the work is completed in accordance with the Contract and accepted by Treasury or until Treasury terminates the Contract. If the Contract is continued, any liquidated damages will also continue until the work is completed.
- (e) At the end of the Contract term, or at such other time(s) as identified in the Contract, liquidated damages shall be paid by the Contractor and collected Treasury by deducting them from the invoices submitted under this Contract or any other contract Contractor has with the Commonwealth, by collecting them through the performance security, if any, or by billing the Contractor as a separate item.
- (f) To the extent that the delay is caused by Treasury, no liquidated damages will be applied.
- (g) If the delays are caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without their fault or

negligence, the Contractor shall not be liable for liquidated damages for delays, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

#### **50. FORCE MAJEURE**

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

The Contractor shall notify Treasury 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 Treasury may reasonably request. After receipt of such notification, Treasury may elect to cancel the contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

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

#### **51. NOTICE**

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

#### **52. RIGHT-TO-KNOW LAW**

- (a) The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (—RTKL) applies to this Contract. .
- (b) If Treasury needs the Contractor's assistance in any matter arising out of the Tr provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- (c) Upon written notification from Treasury that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (—Requested Information), the Contractor shall:
  - (1) Provide Treasury, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that Treasury reasonably believes is Requested Information and may be a public record under the RTKL; and

- (2) Provide such other assistance as Treasury may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify Treasury and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) Treasury will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless Treasury determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should Treasury determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of Treasury's determination.
- (f) If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold Treasury harmless for any damages, penalties, costs, detriment or harm that Treasury may incur as a result of the Contractor's failure, including any statutory damages assessed against Treasury.
- (g) Treasury will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under Treasury's Right-to-Know Policy or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- (h) The Contractor may file a legal challenge to any Treasury decision to release a record to the public with Treasury's Prothonotary, or in the Pennsylvania Courts, however, the Contractor shall indemnify Treasury for any legal expenses incurred by Treasury as a result of such a challenge and shall hold Treasury harmless for any damages, penalties, costs, detriment or harm that Treasury may incur as a result of the Contractor's failure, including any statutory damages assessed against Treasury, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of Treasury's disclosure of Requested Information pursuant to the RTKL.
- (i) The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.
- (j) The decision whether to release information rests with Treasury.

### **53. GOVERNING LAW**

This Contract shall be interpreted in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without giving effect to its conflicts of law provisions. Except as set forth in Section 24 (CONTRACT CONTROVERSIES), Treasury and Contractor agree that the courts of the Commonwealth of Pennsylvania and the federal courts of the Middle District of Pennsylvania shall have exclusive jurisdiction over disputes under this Contract and the resolution thereof. Any legal action relating to this Contract must be brought in Dauphin County, Pennsylvania, and the parties agree that jurisdiction and venue in such courts is appropriate.

## 54. RECYCLED MATERIALS

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

- PAPER PRODUCTS
- RECYCLED CONTENT

### (A) REQUIREMENT

All paper offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer content as shown below for the applicable products:

| Item                               | Notes  | Post-Consumer Content (%) |
|------------------------------------|--|---------------------------|
| <b>Printing and Writing Papers</b> |  |                           |
| Reprographic                       | Business papers such as bond, electrostatic, copy, mimeo, duplicator and reproduction  | 30                        |
| Offset                             | Used for book publishing, commercial printing, direct mail, technical documents, and manuals   | 30                        |
| Tablet                             | Office paper such as note pads and notebooks   | 30                        |
| Forms bond                         | Bond type papers used for business forms such as continuous, cash register, sales book, unit sets, and computer printout, excluding carbonless | 30                        |
| Envelope                           | Wove   | 30                        |
| Kraft,                             | white and colored (including manila)   | 10                        |
| Kraft,                             | unbleached Excludes custom envelopes   | 10                        |
| Cotton fiber                       | High-quality papers used for stationery, invitations, currency, ledgers, maps, and other specialty items                                       | 30                        |
| Text and cover                     | Premium papers used for cover stock, books, and stationery and matching envelopes  | 30                        |
| Supercalendered                    | Ground wood paper used for advertising and mail order inserts, catalogs, and some magazines  | 10                        |
| Machine finished groundwood        | Ground wood paper used in magazines and catalogs   | 10                        |
| Papeteries                         | Used for invitations and greeting cards  | 30                        |
| Check safety                       | Used in the manufacture of commercial and government checks  | 10                        |
| Coated                             | Used for annual reports, posters, brochures, and magazines. Have gloss, dull, or matte finishes  | 10                        |
| Carbonless                         | Used for multiple-impact copy forms  | 30                        |
| File folders                       | Manila or colored  | 30                        |

|  |  |    |
|--|--|----|
| Dyed filing products                       | Used for multicolored hanging folders and wallet files   | 20 |
| Index and card stock                       | Used for index cards and postcards   | 20 |
| Pressboard                                 | High-strength paperboard used in binders and report covers   | 20 |
| Tags and tickets                           | Used for toll and lottery tickets, licenses, and identification and tabulating cards                             | 20 |
| <b>Newsprint</b>                           |  |    |
| Newsprint                                  | Ground wood paper used in newspapers   | 20 |
| <b>Commercial Sanitary Tissue Products</b> |  |    |
| Bathroom tissue                            | Used in rolls or sheets  | 20 |
| Paper towels                               | Used in rolls or sheets  | 40 |
| Paper napkins                              | Used in food service applications  | 30 |
| Facial tissue                              | Used for personal care   | 10 |
| General-purpose Industrial wipers          | Used in cleaning and wiping applications   | 40 |
| <b>Paperboard and Packaging Products</b>   |  |    |
| Corrugated containers                      | Used for packaging and shipping a variety of goods (<300 psi)  | 25 |
|  | (300 psi)  | 25 |
| Solid fiber boxes                          | Used for specialized packaging needs such as dynamite packaging and army ration boxes                            | 40 |
| Folding cartons                            | Used to package a wide variety of foods, household products, cosmetics, pharmaceuticals, detergent, and hardware | 40 |
| Industrial paperboard                      | Used to create tubes, cores, cans and drums  | 45 |
| Miscellaneous                              | Includes —chipboard pad backings, book covers, covered binders, mailing tubes, game boards, and puzzles          | 75 |
| Padded mailers                             | Made from kraft paper that is usually brown but can be bleached white  | 5  |
| Carrierboard                               | A type of folding carton designed for multipack beverage cartons   | 10 |
| Brown papers                               | Used for bags and wrapping paper   | 5  |
| <b>Miscellaneous Paper Products</b>        |  |    |
| Tray liners                                | Used to line food service trays. Often contain printed information.  | 50 |

Post-consumer content is —material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer content is part of the broader category of recovered material.¶

The Commonwealth of Pennsylvania recognizes that paper products are universally made with scrap material recovered from the manufacturing process; use of such materials is a standard practice, both

efficient and economical for the paper maker; therefore, bidders of paper products need not certify that their products are made with —pre-consumer,|| —recovered.|| or —secondary|| paper fiber.

**(B) BIDDER'S CERTIFICATION**

Bidder certifies that the paper product(s) which the bidder is offering contains the required minimum percentage of post-consumer content as shown above for the product.

**(C) MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a mill certification must be completed and signed by the mill before payment will be made to the successful bidder for the delivered items. The enclosed *Manufacturer/Mill* Certification form must be used. Bidders are not required to submit the completed and signed *Manufacturer/Mill* Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

**(D) ENFORCEMENT**

Awarded bidders may be required, after delivery of the paper product(s), to provide the Commonwealth with documentary evidence that the paper product(s) were in fact produced with the required minimum percentage of post-consumer content.

**Appendix B**  
**PROPOSAL COVER SHEET**  
**PENNSYLVANIA DEPARTMENT OF TREASURY**  
**RFP14-003**

**Enclosed in Three separately sealed submittals is the proposal of the Vendor identified below for the above-referenced RFP:**

| <b>Vendor Information:</b>        |  |
|-----------------------------------|--|
| Vendor Name                       |  |
| Vendor Mailing Address            |  |
| Vendor Website                    |  |
| Vendor Contact Person             |  |
| Contact Person's Phone Number     |  |
| Contact Person's Facsimile Number |  |
| Contact Person's E-mail Address   |  |
| Vendor Federal ID Number          |  |

| <b>Submittals Enclosed and Separately Sealed:</b> |                                  |
|---|----------------------------------|
| <input type="checkbox"/>                          | Technical Submittal              |
| <input type="checkbox"/>                          | Disadvantaged Business Submittal |
| <input type="checkbox"/>                          | Cost Proposal                    |

| <i>Signature</i>   |  |
|--|--|
| Signature of an official Authorized to bind the Vendor to the provisions contained in the Vendor's proposal: |  |
| <b>Printed Name:</b>   |  |
| <b>Title:</b>  |  |

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE VENDOR'S PROPOSAL MAY RESULT IN THE REJECTION OF THE VENDOR'S PROPOSAL

## **Appendix C**

### **SECURITY REQUIREMENTS**

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#### **DEFINITIONS**

- (a) Personal Information - defined as set forth in the Commonwealth Breach of Personal Information Notification Act at 73 P.S. § 2302.

#### **LIMITATION OF LIABILITY**

- (a) The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of \$250,000 or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this Section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to damages for:
- (1) bodily injury;
  - (2) death;
  - (3) intentional injury;
  - (4) damage to real property or tangible personal property for which the Contractor is legally liable;
  - (5) the Contractor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection.
  - (6) costs associated with a data breach caused by Contractor under Commonwealth law, or any other applicable law, including the actual costs incurred with notification and mitigation as required by applicable law; or
  - (7) actual costs associated with Personal Information loss or damage caused by Contractor.
- (b) In no event will the Contractor be liable for consequential or incidental damages, except for actual damages sustained as a result of a data breach, loss, or damage of Personal Information caused by Contractor or any of its employees, agents, and/or subcontractors. The Contractor's liability for damages in any breach or data loss incident shall not exceed a maximum of \$10,000,000.

#### **DATA BREACH**

Contractor shall comply with all State and Federal data breach notification laws, including but not limited to the Commonwealth Breach of Personal Information Notification Act (73 P.S. § 2301 *et seq.*), and provide timely notification and credit monitoring services to individuals that may be impacted by a breach or unauthorized access, use, release, or disclosure of Personal Information. In addition to the notification requirements of the Breach of Personal Information Notification Act, Contractor shall report any security incidents or data breaches to the Issuing Officer, the Treasury Project Director, and the Treasury's Chief Information Officer within one (1) hour of first suspecting or confirming any incidents or occurrences of unauthorized access, use, release, or disclosure of Personal Information. Subject to Section 30 (Limitation of Liability), Contractor shall be solely responsible for any costs, losses or damages incurred by the Commonwealth due to Personal Information being accessed, used, released, disclosed and/or acquired in an unauthorized manner while in the possession and control of the Contractor or its employees, agents, and/or subcontractors.

**SECURITY COMPLIANCE**

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

**SERVICE LEVEL AGREEMENTS**

| STANDARD   | PERFORMANCE  | DAMAGES   |
|--|--|---|
| Data Security  | The Contractor shall utilize industry best practices to prevent breaches of security that result in Personal Information of customers being shared with any entity other than the Commonwealth, those approved by the Commonwealth, or as otherwise permitted by the terms of this Contract and/or applicable law. | The Contractor will provide timely notification and credit monitoring services to individuals that may be impacted by the unauthorized access, use, release, or disclosure of Personal Information. |
| Unauthorized access, use, release, or disclosure of Personal Information | Contractor shall notify the Commonwealth within one (1) hour of when the Contractor knows or suspects an incident or occurrence of unauthorized access, use, release, or disclosure of Personal Information specifically related to the Commonwealth.  | The Contractor will credit the Commonwealth \$10,000 if timely notification is not provided and \$5,000 per day thereafter until notification is provided.  |

| STANDARD                        | PERFORMANCE  | DAMAGES   |
|---------------------------------|--|---|
| PCI DSS Letter of Certification | A PCI DSS letter of certification must be provided on an annual basis at Contractor's expense. | If notified of failure to renew certificate, the Contractor will have 90 days to remediate any outstanding issues, at which point, Contractor will credit the Commonwealth \$10,000 per month until the certification is delivered to the Commonwealth. |

# Appendix D

## CONTRACTOR INTEGRITY PROVISIONS

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

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

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the [\*Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.\*](#), or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the [\*Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.\*](#) or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of the contract signed by Contractor.

9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
  - a. Approved in writing by the Commonwealth prior to its disclosure; or
  - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
  - c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  - d. Necessary for purposes of Contractor's internal assessment and review; or
  - e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
  - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
  - g. Otherwise required by law.
  
10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
  - a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
    - (1) Obtaining;
    - (2) Attempting to obtain; or
    - (3) Performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.
  - c. Violation of federal or state antitrust statutes.
  - d. Violation of any federal or state law regulating campaign contributions.
  - e. Violation of any federal or state environmental law.

- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

- 11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
  - a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
  - b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

- 12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
- 13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
- 14. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.
- 15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance

with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.

16. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.
  - a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
  - b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
  - c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
  - d. "Financial interest" means:
    - (1) Ownership of more than a five percent interest in any business; or
    - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - e. "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [\*Governor's Code of Conduct, Executive Order 1980-18\*](#), the *4 Pa. Code §7.153(b)*, shall apply.
  - f. "Immediate family" means a spouse and any un-emancipated child.
  - g. "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.

- h. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

## **Appendix E**

### **CONTRACTOR RESPONSIBILITY PROVISIONS**

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Commonwealth for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

## Appendix F

### NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Contracts]

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

# **Appendix G**

## **Reports Requirements**

### **Required Reports – Must be configurable**

Claim Status – Real time data of claim detail in selected statuses.

Claim Detail - List of property detail in a selected claim ID.

Claims Approved in Error - Detailed list of claims at a denied status that were previously approved.

Claims by Source- Summary or detailed listing of claims by selected criteria , source, value, type, etc.

Claims Paid - Summary or detailed list of claims paid by date range, value, payee name, warrant number, county, etc.

Claims Presented for Payment - Provides detailed list of claims submitted for payment.

Claims Status Global – Global report that should display financial information by claim including liquidated stock and liquidated safekeeping items.

Holder Outreach - List of active holder mailing addresses, telephone number and email addresses for outreach.

Holder Property Detail - Detailed list of reported property information by holder.

Holder Reported by Batch – list of holder and reported property in an import batch.

Holder Reporting by Property Type - Summary or detailed list of reported property by type.

Holder Reporting Summary - Provides reported property information by holder by a selected date range, FEIN.

Holders Reporting by Industry - Summary or detailed list of property submitted by NAICS type.

Legislative Outreach - Detailed list of advertisable property sorted by congressional districts.

Property Paid on a Report - List of property and claim ID, claim status by holder report.

Receipt Detail – Detailed list of receipts in a given date range.

Receipt Distribution – for Securities info used to identify stock issues.

Receipts by Type – List of receipts by report type: Annual report, Audit report, etc.

Report vs Receipts – List of holder reports with detailed accounting of all applied receipts.

Reports Reconciled - List of reports that are balanced and available for claiming.

Reports Unreconciled - List of reports that are in-process.

Securities Received - List of securities received in a specified date range.

Tangible - Property listing by location - Detailed list of all tangible items in a specified location.

Tangible Inventory by Holder - Detailed list of all owner information and inventoried property by holder.

Tangible Property on Hold - List of tangible items with an open claims.

Tangible Returned Property - Detailed list of claimed property once final approval status is applied.

Third party reporting fees - detailed fees paid to a third party for collection and submission of holder/property.

Third Party reports - Detailed financial history of report by property and fees by reporting agency.

User Productivity - Summary/detailed reporting for determining department productivity. Tracks when claims statuses where applied by user.

Wildcard Search - List of all records meeting criteria for owner name, email, telephone number, address.

**EXHIBIT A**  
**COMMONWEALTH OF PENNSYLVANIA**  
**BUSINESS ASSOCIATE AGREEMENT**

**WHEREAS**, the *[name of program and/or Department]* (Covered Entity) and Contractor (Business Associate) intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009), the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, and the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164, and all other applicable laws; and

**WHEREAS**, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI can be used or disclosed only in accordance with this Agreement and the standards established by applicable laws; and

**WHEREAS**, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity that is in electronic form, which PHI must be handled in accordance with this Agreement and the standards established by HIPAA and the Security Rule and other applicable laws; and

**NOW, THEREFORE**, the parties to this Agreement set forth the following as the terms and conditions of their understanding.

**1. Definitions.**

- a. "Breach" shall have the meaning assigned to such term at 42 USCS § 17921 and HIPAA regulations at 45 C.F.R. § 164.402.
- b. "Business Associate" shall have the meaning given to such term under the Privacy and Security Rules, including but not limited to, 45 C.F.R. §160.103.
- c. "Covered Entity" shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 C.F.R. §160.103.
- d. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- e. "Privacy Rule" shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164.
- f. "Protected Health Information" or "PHI" shall have the meaning given to such term under HIPAA and the HIPAA Regulations in 45 C.F.R. Parts 160, 162 and 164, including, but not limited to 45 C.F.R. §160.103.
- g. "Security Rule" shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164.
- h. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of

Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009), the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, and the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164.

**2. Stated Purposes For Which Business Associate May Use Or Disclose PHI.**

The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided by or obtained on behalf of Covered Entity for purposes state in Appendix A, except as otherwise stated in this Agreement.

**NO OTHER USES OR DISCLOSURES OF PHI ARE PERMITTED.**

**3. BUSINESS ASSOCIATE OBLIGATIONS:**

- a) **Security and Privacy Provisions Applicable to Business Associate.** Business Associate shall abide by the security and privacy provisions applicable to Covered Entities which are made applicable to the Business Associate by 42 USCS § 17931 and 17934.
- b) **Limits on Use and Further Disclosure Established By Agreement and Law.** Business Associate hereby agrees that the PHI provided by, or created or obtained on behalf of Covered Entity shall not be further used or disclosed other than as permitted or required by this Agreement or as Required by Law.
- c) **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity.
- d) **Reports of Improper Use or Disclosure.** Business Associate hereby agrees that it shall report to the Covered Entity's Privacy Officer, or his designee, and the Covered entity's legal office, within two (2) days of discovery any Breach or use or disclosure of PHI not provided for or allowed by this Agreement (unless some more stringent standard applies under this Contract). Business Associate agrees to conduct reasonable diligence to discover improper use or disclosure of PHI.

Such notification shall be written and shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the improper use or disclosure or Breach. An improper use or disclosure or Breach shall be treated as discovered by the Business Associate on the first day on which it is known to the Business Associate (including any person other than the person committing the Breach, that is an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate (or such person) to have occurred.

- e) **Reports Of Security Incidents.** In addition to following the Breach notification requirements in section 13402 of the HITECH Act and related regulations and guidance, Business Associate shall report to Covered Entity's Privacy Officer, or his designee, within two (2) days of discovery any Security Incident of which it becomes aware.
- f) **Subcontractors And Agents.** Business Associate hereby agrees that any time PHI is provided or made available to any subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and shall first enter into a subcontract or contract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Agreement.

- g) **Right Of Access To PHI.** Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within five (5) business days of receiving a written request from the Covered Entity or individual. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity of same within two (2) business days. Business associate shall further conform with and meet all of the requirements of 45 C.F.R. §164.524, 42 USCS § 17936(e), and other applicable laws.
- h) **Amendment And Incorporation Of Amendments.** Within five (5) business days of receiving a request from Covered Entity for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available and incorporate the amendment to enable Covered Entity to comply with 45 C.F.R. §164.526 and other applicable laws. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity within five (5) business days.
- i) **Provide Accounting Of Disclosures.** Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 C.F.R. §164.528, 42 USCS § 17935(c), and other applicable laws. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, the purpose of the disclosure, and shall include disclosures made on or after the date that is six (6) years prior to the request or April 14, 2003, whichever is later. Business Associate shall make such record available to the individual or the Covered Entity within five (5) business days of a request for an accounting of disclosures, or within such other time as may be dictated by applicable law.
- j) **Access To Books And Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Privacy Regulations.
- k) **Return Or Destruction Of PHI.** At termination of this Agreement, Business Associate hereby agrees to return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Agreement. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Agreement to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.
- l) **Maintenance of PHI.** Notwithstanding Section 5(j) of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under §5(h) of this Agreement for a period of six (6) years after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise.
- m) **Mitigation Procedures.** Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Agreement or the Privacy Rule. Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement or the Privacy Rule.
- n) **Training.** Business Associate will train all members of its workforce on its policies and procedures with respect to PHI as necessary and appropriate for the workforce members to carry out the functions required by this contract.

- o) **Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement or other applicable laws.
- p) **Grounds For Breach by Covered Entity.** Upon Business Associate's knowledge of a material breach by Commonwealth of this Business Associate Agreement, Business Associate shall notify Commonwealth of such breach and Commonwealth shall have at least thirty (30) days to cure such breach. In the event Commonwealth does not cure the breach, Business Associate shall have the right to report the violation to the Secretary. Notwithstanding any other language in this Agreement, the parties agree that termination by the Business Associate is infeasible.
- q) **Grounds For Breach.** Any non-compliance by Business Associate with this Agreement or the Privacy or Security Rules will automatically be considered to be a breach of the Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance. Business Associate shall have thirty (30) days to cure such breach from the date of notice to cure by the Commonwealth. In the event Business Associate does not cure the breach, the Commonwealth shall have the right to immediately terminate this Agreement and the underlying agreement. If termination is infeasible, the Commonwealth shall report the violation to the Secretary.
- r) **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion, that the Business Associate has violated a material term of this Agreement.
- s) **Failure to Perform Obligations.** In the event Business Associate fails to perform its obligations under this Agreement, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Agreement and applicable law.
- t) **Privacy Practices.** The Department will provide and Business Associate shall immediately begin using any applicable form, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date designated by the Program or Department. The Department retains the right to change the applicable privacy practices, documents and forms. The Business Associate shall implement changes as soon as practicable, but not later than 45 days from the date of notice of the change.

#### 4. OBLIGATIONS OF COVERED ENTITY:

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

5. **MISCELLANEOUS:**

- a) **Regulatory References.** A reference in this Appendix to a section in the Privacy or Security Rules means the section as in effect or as amended as reasonably determined by the Covered Entity.
- b) **Amendment.** The Parties agree to take such action as is necessary to amend this Appendix from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c) **Survival.** The respective rights and obligations of Business Associate under section 5(i) of this Appendix shall survive the termination of the Agreement.
- d) **Interpretation.** Any ambiguity in this Appendix shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules as reasonably determined by the Covered Entity.
- e) **Changes in Law.** Business Associate shall comply with all applicable privacy and security rules and regulations, including but not limited to HIPAA regulations and the HITECH Act and HITECH regulations which are now in effect or which take effect during the term of this contract.

## **Appendix A to Commonwealth of Pennsylvania Business Associate Agreement**

### **Permitted Uses and Disclosures of Protected Health Information**

1. Purpose of Disclosure of PHI to Business Associate: To allow \_\_\_\_\_ to meet the requirements of Contract # \_\_\_\_\_.
2. Information to be Disclosed to Business Associate: \_\_\_\_\_.
3. Use to Effectuate Purpose of Agreement: \_\_\_\_\_ may use and disclose PHI to the extent contemplated by Contract # \_\_\_\_\_, and as permitted by law with Commonwealth approval and guidance.

## **EXHIBIT B**

### **SOFTWARE LICENSE REQUIREMENTS**

This Exhibit shall be attached to and made a material part of Software Publisher's Software License Agreement (collectively the "Agreement") between Licensor and the Commonwealth of Pennsylvania ("Commonwealth"). The terms and conditions of this Exhibit shall supplement, and to the extent a conflict exists, shall supersede and take precedence over the terms and conditions of Software Publisher's Software License Agreement.

1. **Enterprise Language:** The parties agree that more than one agency of the Commonwealth may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "Commonwealth Agency" as defined by the Commonwealth Procurement Code, 62 Pa.C.S. § 103, the terms and conditions of this Agreement apply to any purchase of products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software. The parties acknowledge that as Treasury is an independent agency that additional paperwork will have to be executed by other Commonwealth agencies in order to license products under this agreement.
2. **Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to principles of conflict of laws.
3. **Indemnification:** The Commonwealth does not have the authority to and shall not indemnify any entity. The Commonwealth agrees to pay for any loss, liability or expense, which arises out of or relates to the Commonwealth's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Commonwealth is established by a court of law or where settlement has been agreed to by the Commonwealth. This provision shall not be construed to limit the Commonwealth's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the Commonwealth.
4. **Patent, Copyright, Trademark, and Trade Secret Protection:**
  - a) The Licensor shall, at its expense, defend, indemnify and hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the —Claim|), including all licensed products provided by the Licensor. For the purposes of this Agreement, —indemnify and hold harmless| shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the Commonwealth for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily

incurs in handling the Claim. The Commonwealth agrees to give Licensor prompt notice of any such claim of which it learns.

Licensor shall not without the Commonwealth's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the Commonwealth has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the Commonwealth to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the Commonwealth to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the Commonwealth. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at its own expense and without derogation of Licensor's authority to control the defense and settlement of a Claim. It is expressly agreed by the Licensor that, in the event it requests that the Commonwealth to provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the Commonwealth for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the Commonwealth for such support.

- b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties.
- c) If the right of defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the Commonwealth or agreed to by Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.
- d) If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the Commonwealth to continue the use of such licensed products.
- e) If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.
- f) If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the Commonwealth the license fee paid for the infringing licensed products, pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.

- g) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.
- h) Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:
  - (1) modification of any licensed products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;
  - (2) any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare the product;
  - (3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;
  - (4) use of the licensed products in other than its specified operating environment;
  - (5) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
  - (6) infringement of a non-Licensor product alone;
  - (7) the Commonwealth's use of the licensed product beyond the scope contemplated by the Agreement; or
  - (8) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Licensor at no charge.
- i) The obligation to indemnify the Commonwealth, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

5. **Virus, Malicious, Mischievous or Destructive Programming:** Licensor warrants that the licensed product as delivered by Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a "Virus").

The Commonwealth's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the licensed products with a copy that does not contain Virus, and (b) if the Commonwealth, has suffered an interruption in the availability of its computer system caused by Virus contained in the licensed product, reimburse the Commonwealth for the actual reasonable cost to remove the Virus and restore the Commonwealth's most recent back up copy of data provided that:

- The licensed products have been installed and used by the Commonwealth in accordance with the Documentation;
- The licensed products has not been modified by any party other than Licensor;
- The Commonwealth has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the Commonwealth for loss of the Commonwealth's data arising from the failure of the licensed products to conform to the warranty stated above.

6. **Limitation of Liability:** The Licensor's liability to the Commonwealth under this Agreement shall be limited to the greater of (a) the value of any purchase order issued; or (b) \$250,000. This limitation does not apply to damages for:

- (1) bodily injury;
- (2) death;
- (3) intentional injury;
- (4) damage to real property or tangible personal property for which the Licensor is legally liable;  
or
- (5) Licensor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection.

In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement. Licensor will not be liable for damages due to lost records or data.

7. **Termination:**

- a) Licensor may not terminate this Agreement for non-payment.
- b) The Commonwealth may terminate this Agreement without cause by giving Licensor thirty (30) calendar days prior written notice whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth.

8. **Background Checks:** Upon prior written request by the Commonwealth, Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have on site access to the Commonwealth's IT facilities. Background checks are to be conducted via the Request for Criminal Record check form and procedure found at

<http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4451&&PageID=458621&level=2&css=L2&mode=2> If the employee worked or lived outside Pennsylvania for any period of time within the last twenty (25) years whether or not on temporary assignment for the Contractor, the Contractor, at its expense, must arrange for each of its employees that fall into such category to get Federal Bureau of Investigation background checks. The background check must be conducted prior to initial access by an IT employee and annually thereafter.

Before the Commonwealth will permit an employee access to the Commonwealth's facilities, Licensor must provide written confirmation to the office designated by the agency that the background check has been conducted. If, at any time, it is discovered that an employee has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, Licensor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or



**APPROVED:**

\_\_\_\_\_ [Signature Affixed Electronically]  
Comptroller Date

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_ [Signature Affixed Electronically]  
Office of Chief Counsel Date

\_\_\_\_\_ [Signature Affixed Electronically]  
Office of General Counsel Date

\_\_\_\_\_ [Signature Affixed Electronically]  
Office of Attorney General Date