Master Information Technology (IT) Services Invitation to Qualify (ITQ) Contract
Part I – Statement of Work

OVERVIEW

The purpose of this Master Information Technology (IT) Services Invitation to Qualify (ITQ) Contract, 4400004480, is to address IT service requirements of the Commonwealth of Pennsylvania's executive agencies. In addition, Local Public Procurement Units, defined by the Commonwealth Procurement Code as COSTARS Members, may use this contract in accordance with the COSTARS Provision contained in Section 57 of the terms and conditions.

This contract is for fixed price, deliverables-based IT services projects.

Time and Materials (T&M) type services may be included as part of a deliverables-based project under the following circumstances:

- The project involves updating and maintaining software,
- The project involves a portion of work that has no definitive timeline or deliverable that can be realistically projected, and
- The project involves the use of alternative maintenance or development that is not amenable to a deliverable-based format.

T&M type services cannot be greater than 40% of the original Purchase Order value.

This contract is administered by the Commonwealth of Pennsylvania, Office of Administration, Bureau of IT Procurement. All inquiries should be referred to:

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Bureau of IT Procurement, Finance Building Rm. 506
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SCOPE OF WORK TO BE PERFORMED

The various types of services that may be provided under this contract are divided into a series of defined IT service categories which appear in the table below. The following definitions apply to those service categories:

- Information Technology (IT): Includes all matters concerned with the furtherance of computer science and technology and with the design, development, installation, and implementation of information systems and applications.
- Telecommunications: Includes all matters concerned with carrier class and premises services for voice, video (broadband & conferencing), data, VPN and remote access, wireless networking, radio (terrestrial & satellite, and associated infrastructures.

Service Category	Description
Cabling Services	**Internal Premise Voice Wiring Support** Includes, but is not limited to: services pertaining to the internal building voice wiring (from demarc to jack) throughout the Commonwealth. These services can include, as needed, installation of new cabling, moves/adds/changes (MACs) as required by the Commonwealth for voice circuits and repair of existing voice cabling. Also included, as required, is the physical movement/placement of the devices associated with the wiring MAC. These devices include telephone handsets, key systems, or PBXs. Voice cabling support includes the ability to install, test, and troubleshoot all categories of wiring/cabling and connectors for voice. Voice circuits are typically used for POTS analog lines, Centrex and other Key systems, and digital ISDN. Circuits must be able to be tested according to the nature of the user device and the protocols it uses. May include approved materials such as cable, blocks, patch panels, connectors/jacks, adapter feed troughs, surface mount wire mold, conduit, raceways and racks, outlet boxes, and patch cords. **Internal Premise for Residential Voice and Data Wiring Support** Includes, but is not limited to: services pertaining to the internal building wiring (from demarc to jack) throughout the Commonwealth. These services can include, as needed, installation of new cabling, moves/adds/changes (MACs) as required by the Commonwealth for voice and data circuits and repair of existing cabling. Also included, as required, is the physical movement/placement of the devices associated with the wiring MAC. These devices include telephone handsets, NT1s, key systems, PBXs, modems, and routers. Cabling support includes the ability to install, test, and troubleshoot all categories of wiring/cabling and connectors for voice and data. Voice circuits are typically used for POTS analog lines, Centrex and other Key systems, and digital ISDN. Data circuits are typically dial up, digital ISDN, and, rarely, Frame Relay. Circuits must be able to be tested according to the nature of the user device and the protocols it uses. May include approved materials such as cable, blocks, patch panels, connectors/jacks, adapter feed throughs surface mount wire mold, conduit, raceways and racks, outlet boxes, and patch cords. **LAN Development/Upgrade and LAN Integration (Planning, Design, Implementation) both Hardwire and Wireless Technologies** Includes, but is not limited to: the development of planning documents pertinent to the building of a new LAN system, the upgrading of an existing LAN system, the integration of two or more LANs, or the integration of two or more LANs via a WAN. The definition of user requirements, outlining possible alternatives, and the

	recommendation of a solution may be included in this activity. The Commonwealth may require any of the following areas to be addressed: LAN business and technical requirements, connectivity and interoperability, feasibility and constraints, cost/benefit analysis, workforce requirements, organizational impact on business processes, security requirements, etc. In addition, this includes the development of design documents pertinent to the building of a new LAN, the upgrading of an existing LAN, the integration of two or more LANs, or the integration of two or more LANs via a WAN. Determination of logical relationships and physical specifications are to be included in this activity. The end result is formal conceptual and/or detailed design reports. These may include architectural design and structural design reports, each with network diagrams and other appropriate charts and documentation. Finally, this includes, but is not limited to, the services needed to develop and implement a new LAN system, the upgrade of an existing LAN, the services to integrate two or more LANs, or two or more LANs via a WAN. Connectivity and interoperability issues are to be addressed. This may include development, physical and logical installation; project scheduling, and timetable determination. Necessary materials such as cable/connectors (patch cords/cables and patch panels) may be included in the installation. The end result of this activity is an installed (upgraded), fully functional LAN or fully integrated, functional systems. LAN hardware (hardwire or wireless) beyond the patch panel must be purchased from the appropriate Department of General Services contract. **LAN/WAN Cable Locating, Survey and Marking** Includes, but is not limited to: the development of planning documents pertinent to the building of a new LAN system, the upgrading of an existing LAN system, the integration of two or more LANs, or the integration of two or more LANs via a WAN. The integration of LANs via a MAN will include services both internal and external to a physical location as well as between geographically diverse locations. The definition of user requirements, outlining possible alternatives and the recommendation of a solution may be included in this activity. **The Commonwealth may require any of the following areas to be addressed:** **Cable Locating & Survey and Documentation Services** The end result will be formal detailed findings design reports. These may include architectural design and structural design reports, each with network diagrams and other appropriate charts and documentation if required. **Cable Marking Services** The end result will be all requested utilities within the designated/requested area be marked using the "APWA/CGA Temporary Marking Color Code" specified in PA Act 287 * Note: The "Prevailing Minimum Wages" and "Union Labor" requirements that appear at the end of this table must be followed when securing services under this service category.
Commercial Off-The-Shelf (COTS) Software Services	Include the following functions as they relate to COTS software implementation, but are not limited to: planning, business process re-engineering and workflow analysis, data migration services, systems testing, integration testing, installation, configuration, set-up activities (including interfacing with other systems as specified by the COTS

	software vendor), performance tuning for production readiness, performance tuning for currently installed production COTS set-ups that are having performance problems, quality assurance, planning, testing and deployment of COTS software upgrades (version/release/patch actions necessitated by COTS vendor), re-configurations or re-installation of COTS software environment (caused by changes in interfacing systems), customization (gap analysis, requirements gathering, programming to meet agency functionality requirements), documentation, technical and end user training associated with the installation, performance tuning, and customization unique to the COTS software packages. Also includes ongoing software maintenance and support.
Consulting Services - IT General	**Customer Relationship Management (CRM)** Includes, but is not limited to: services such as feasibility studies, process or system gap analysis, organizational change readiness assessment, risk assessment, migration strategies and planning as they relate to consulting for **IT CRM projects.** **Electronic Document Management Systems (EDMS)** Includes, but is not limited to: services such as planning for implementation of EDMS systems to include risk assessment, workflow analysis, workload management, network design and security consulting, application prototyping, system migration strategies, initial project imaging/digitizing, planning for document conversion (hardcopy to electronic or electronic to new system/media), and document indexing/queuing; and performance monitoring/ measurement, benchmarking, and collaborative tools (implies BPR) as they relate to consulting for **EDMS projects.** **eGovernment** Includes, but is not limited to: services such as planning for implementation of web-based systems, including web site efficiency evaluations, accessibility reviews/audits, and security issues **as they relate to consulting for eGovernment (web-based) projects.** **Financial** Includes, but is not limited to: services such as financial planning, cost control, systems/EDP audits, and cost benefits/return-on-investments (ROI) analyses as they relate to consulting for **IT projects.** **Operational** Includes, but is not limited to: services such as risk assessment, work-flow analysis, application prototyping (for purposes of demonstration), scaling, facilities planning, performance monitoring/measurement, quality control benchmarks, efficiency reviews, and security issues as they relate to consulting for **IT operations.** **Organizational** Includes, but is not limited to: services such as change management, ergonomics, skills analysis, information distribution, organization restructuring, and impact analysis as they relate to consulting for **IT organizations.** **Planning** Includes, but is not limited to: services such as needs assessment, risk assessment, evaluations, migration strategies, project planning for systems development, and feasibility studies as they relate to consulting for **IT projects**. Includes planning for SAP Integrated Systems. **Research** Includes, but is not limited to: services such as research on specific **information technology** topics/initiatives and providing findings/solutions. Also includes providing access to information technology research resources through telephone consulting, videoconferencing, presentations, forecasting, white papers, workshops, technology briefings, CD-ROM, Internet, print, fax and other electronic

	media or desktop technology.
Consulting Services - IT Project Management	Include, but are not limited to: any services that assist agencies to govern, manage, measure, and resource their IT projects or portfolio of IT projects to improve overall business performance and support and maintain Commonwealth and industry project management standards and methodologies.
Consulting Services - IT Security	**Managed Security** Includes, but is not limited to: services include, but are not limited to: round-the-clock monitoring and management of intrusion detection systems and firewalls, overseeing patch management and upgrades, performing security assessments and security audits, and responding to emergencies. **Vulnerability Scan** Includes, but is not limited to: services include vulnerability scans of internal and external networked systems to identify potential areas of risk. **Ethical Hacking & Penetration Testing** Includes, but is not limited to: services include the process of attempting to circumvent and exploit know vulnerabilities within all aspects of network security. **Independent Services Assessments** Includes, but is not limited to: services include assessment of standards and controls related to Infrastructure Service Support and Delivery as defined by the Information Technology Infrastructure Library (ITIL) / ISO 20000. **Regulatory Compliance Solutions** Includes, but is not limited to: services include, but are not limited to: on-site audits, scanning and reporting of regulatory compliance requirements.
Consulting Services - IV&V	Include, but are not limited to: requirements validation and tracing, milestone review, metrics analysis, test witnessing, site acceptance testing, defect investigation, vendor analysis and selection, quality assurance and management, reporting and documentation review for **IT and telecommunications projects.**
Consulting Services - Network Services & Telcom Services	**Network Services** Include, but are not limited to: the development of planning documents pertinent to the building of a new LAN system, the upgrading of an existing LAN system or the integration of two or more LANs, or the integration of two or more LANs via a WAN. The definition of user, business and technical requirements, connectivity and interoperability issues, feasibility study, the identification of constraints, cost/benefit analysis, security requirements, the outlining of possible alternatives and the recommendation of a solution would be included in this activity. In addition, this includes, but is not limited to: the development of design documents, determination of logical relationships and the physical specifications. The end results are formal conceptual and/or detailed design reports that may include architectural design reports and structural design reports, each with network diagrams and other appropriate charts and documentation. Wireless LAN security pre and post installation reviews must follow all security standards established in the Commonwealth including the most current Wireless LAN Information Technology Bulletin. **It does not include the purchase or installation of hardware, software, cabling or other materials.** **Customer Relationship Management (CRM)** Includes, but is not limited to: services such as feasibility studies, process or system gap analysis, organizational change readiness assessment, risk assessment, and planning as they relate to consulting for **Telecommunications CRM projects.**

	Call Center/IVR Includes, but is not limited to: services such as call center/IVR review, design and/or development; financial best practices; review and evaluation specific to current and future call centers/IVRs; procurement specification development (precludes contractor from bidding); on-site and remote call testing, voice recognition performance testing, application analysis and tuning, automated load and stress testing, positive and negative path testing, Customer Behavior Intelligence, network support, (e.g., traffic studies, network performance studies, etc.) data storage solutions, recommendations for skill set development tools and skill set assessments, and agent coaching. **Voice over IP (VOIP)** Includes, but is not limited to: services such as design, development, analysis, telecommuting, define risk, security, and standards compliance. **Financial** Includes, but is not limited to: services such as financial planning, cost control, audits, and cost benefits/return-on-investments (ROI) analyses as they relate to consulting for **Telecommunications projects.** **Multimedia** Includes, but is not limited to: services such as recording, audio-visual production, smart classrooms, web streaming, digital learning environments and video conferencing. **Operational** Includes, but is not limited to: services such as risk assessment, facilities planning, performance monitoring/measurement, quality control benchmarks, efficiency reviews, and security issues as they relate to consulting for **Telecommunications operations.** **Organizational** Includes, but is not limited to: services such as change management, information distribution, organization restructuring, and impact analysis as they relate to consulting for **Telecommunications.** **Planning** Includes, but is not limited to: services such as needs assessment, policy analysis, strategic planning, network engineering, and feasibility studies as they relate to consulting for **Telecommunications.** **Research** Includes, but is not limited to: services such as research on specific **telecommunications** technology topics/initiatives and providing findings/solutions. Also includes providing access to **telecommunications** technology research resources through telephone consulting, videoconferencing, presentations, forecasting, white papers, workshops, technology briefings, Internet, print, fax, CD-ROMs, and other electronic media or desktop technology.
Consulting Services - Radio Services	Include, but are not limited to: procurement specification generation, procurement response analysis, research and information gathering of candidate low profile sites, perform FCC Database research, analysis of alternate wireless technologies, analysis of wire line vs. wireless solutions, radio propagation analysis, microwave path surveys and analysis, microwave system design, two-way radio system design, mapping of targeted areas, attend project meetings and reviews, contacting site/land owners, coordinate design and rights of way with utility companies and landowners for site electrical and data line services and site access, field coverage surveys, field site surveys, grounding and bonding analysis, wireless needs analysis, system surveys, site planning and design, mobile data applications analysis and development, and quality assurance services relevant to wireless networking, installations and testing. **It does not include the purchase or installation of hardware, software or other materials.**

Disaster Recovery Services	Includes, but is not limited to: provision of disaster recovery services including off-site hosting, recovery, back-up and replication of data systems and associated data. Also includes consulting, designing, and planning of disaster recovery solutions in support of the agencies' business continuity plans. Also included are hot-site, warm-site, cold-site and mobile recovery facilities complete with redundant computing components that allow for the short notice restoration of data services. Contractors may offer a variety of pricing models based on services requested, including dedicated and subscription fee models.
Geospatial Technologies/ Geospatial Information Systems (GT/GIS) Services	Includes, but is not limited to: requirements definition, systems analysis, systems architecture design, application software design, programming, coding, testing (all levels), prototyping, systems integration, software configuration and implementation, QA/QC, workflow design and analysis, initial implementation training, mapping, debugging, capacity planning, systems utilization and usability studies, strategic planning, presentations, documentation, code and software security, global positioning system (GPS) functions, spatial data development and metadata creation, spatial data collection, spatial data modeling, digital imagery, digitizing, spatial data architecture functions, spatial data caching functions, project management, and database management **relevant to Geospatial Technologies/Geospatial Information Systems (GT/GIS)** that requires specialized skill sets and experience with enterprise systems, languages, and technologies. **It does not include the purchase of hardware, software or other materials.**
Help Desk & LAN Support	Provide IT Help Desk services to all Commonwealth agencies that require a technical service desk. The solution will accommodate service for IT hardware and software problems that require "Best Practice" recommendations and/or assistance for the resolution of issues that would prohibit an agency user from daily operations and normal function. Includes, but not limited to, the development, design, implementation and operation (on-site, off-site) of a Help Desk, including incident and problem identification and resolution, LAN technical support and LAN problem determination and diagnosis. This can also entail support, problem solving, providing information to other processes (Change and Asset Management) and Help Desk documentation including all media, project management and other Help Desk duties.
IT Integrator Services	Include, but are not limited to: multi-faceted integrated technology solutions or information systems to meet an agency's business requirements. These solutions may include hardware and software products from multiple suppliers. Creation of these information systems may include designing or building a customized application or architecture, and integrating it with new or existing hardware, packaged or custom software and a communications infrastructure. **However, the hardware and software used to provide the integrated solution may not be included in this contract. They must be purchased through an existing statewide contract or other appropriate procurement method.**
IT Training - Classroom/Non-Classroom	Includes, but is not limited to: on-site, off-site instructor-led IT training for commercially available IT courses. It also may include training needs assessment and needs analysis, skills gap analysis, training plans as they pertain to commercially available IT courses, and training management software tools **relevant to IT and telecommunications training.** Software tools used to perform the assessment must remain the property of the service provider. Includes, but is not limited to: Computer-Based Training (CBT), multi-media, video, audio, distance learning, Internet-provided services, instruction on client developed systems, course materials and train-the-trainer training. It also may include training needs assessment and needs analysis; skills gap analysis, training plans as they pertain

	to training for other than commercially available IT courses, and training management software tools **relevant to IT and telecommunications training.** Software tools used to perform the assessment must remain the property of the service provider.
Managed Print Services	Enables remote and secure installation, configuration, maintenance, monitoring, and management of a printing environment as specified below: • Assessment of current printing environment and infrastructure including recommendations. • Installation and configuration of printing devices. • Costs associated with printing devices. • Costs associated with remanufactured toner. • Use of print management software to manage the volume and nature of a printing environment and to authenticate users. • Use of device management software to monitor and manage the printing devices in an environment. • Use of discovery and design software to analyze and plan for the change required in implementing a managed print environment. • Use of scan routing software to route scans to various destinations including fax servers, network folders, email or workflows. • Proactive maintenance and technical support of printing devices. • Ongoing optimization of the printing environment throughout the contract life. Covers the following printing devices including software: printers, copiers, multifunction devices (MFDs) and other miscellaneous devices. * Note: All remanufactured toner must be purchased, by the contractor, through the Pennsylvania Industries for the Blind and Handicap (PIBH).
Modifiable Off-The-Shelf (MOTS) Software Services	A MOTS software product is typically a COTS software product whose source code can be modified. The product may be customized by the purchaser, by the vendor, or by another party to meet the requirements of the customer. Include the following functions as they relate to MOTS software implementation, but are not limited to: planning, business process re-engineering and workflow analysis, data migration services, systems testing, integration testing, installation, configuration, set-up activities (including interfacing with other systems as specified by the MOTS software vendor), performance tuning for production readiness, performance tuning for currently installed production MOTS set-ups that are having performance problems, quality assurance, planning, testing and deployment of MOTS software upgrades (version/release/patch actions necessitated by MOTS vendor), re-configurations or re-installation of MOTS software environment (caused by changes in interfacing systems), customization (gap analysis, requirements gathering, programming to meet agency functionality requirements), documentation, technical and end user training associated with the installation, performance tuning, and customization unique to the MOTS software packages. Also includes ongoing software maintenance and support.
Software Development Services	Include, but are not limited to: requirements definition, data modeling, prototyping, conceptual design, detail design, specifications construction, coding, testing (all levels), correcting, debugging, compiling, documentation, input/output functions, interfacing, data base design, systems conversion and/or migration, systems stress testing, workflow analysis, implementation, change management as it pertains to

	application changes and version control, initial implementation training, code security, data administration/warehousing, data architecture functions, data integration, data purification, mentoring during post implementation tuning/shakedown, knowledge transfer/initial maintenance and project management **relevant to IT software development projects**. Includes all forms of software development including **Electronic Document Management Systems (EDMS), and eGovernment (web-based) Systems. It does NOT include Biometrics.** **Specialized Software Development Services subcategories are specified below:** **Application Maintenance and Enhancements** includes ongoing maintenance and enhancements to existing applications. **SAP** includes meeting the services listed above within the description of Software Development Services as they relate to **SAP** software development. **JAVA** includes meeting the services listed above within the description of Software Development Services as they relate to **JAVA** software development. **.NET** includes meeting the terms listed above within the description of Software Development Services as they relate to **.NET** software development.
Subscription Based Web Application Services or Software as a Service (SaaS) Procurements	Include, but are not limited to, the following functions as they relate to Commercial **Subscription-Based Web Applications or Software as a Service (SaaS) procurements**: hosting of an application, database, component or service on the vendor's infrastructure, maintenance of the application and hosting of the infrastructure, application subscription services, distributed connectivity services, clustering services, disaster recovery services, customization and configuration activities and usage subscriptions based on the agency's actual usage of the service, bandwidth bursting services, providing end user support services, training of end users and backup and restoration services.

* PREVAILING MINIMUM WAGES

Where applicable, the Contractor is subject to and shall comply with the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. Sections 165-1 through 165-17 and its regulations 34 Pa. Code §§ 9.101 through 9.112, which are incorporated herein by reference as if fully set forth herein. The Contractor shall pay no less than the wage rates including contributions for employee benefits as determined by the Secretary of Labor and Industry (hereinafter referred to in this paragraph as "Secretary") for each craft or classification of all workers needed to perform this contract during the term hereof for the county in which the work is to be performed. In compliance with said Pennsylvania Prevailing Wage Act, the Prevailing Minimum Wage Predetermination, as approved by the Secretary, is attached hereto and made a part hereof.

a. The provisions of this paragraph shall apply to all work covered by the Prevailing Wage Act which will be performed on the contract by the Contractor and all subcontractors. The Contractor shall insert in each of its subcontracts all of these required contract provisions and stipulations contained in this paragraph and such other stipulations as may be required.

b. No worker may be employed on the public work except in accordance with the classifications set forth in the decisions of the Secretary. In the event that additional or different classifications are necessary, the procedure set forth in section 8 of the Act (43 P.S. § 165-8) and § 9.107 of the Act's Regulations (relating to petition for review of rates and hearings) shall be followed.

c. Workers employed or working on the public work shall be paid unconditionally, regardless of whether any contractual relationship exists or the nature of a contractually relationship which may be alleged to exist between a contractor, subcontractor and workers, at least once a week without deduction or rebate, on any account, either directly or indirectly, except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the contract, the Prevailing Wage Act or its Regulations prohibits the payment of more than the general prevailing minimum wage rates as determined by the Secretary to any worker or public work.

d. The Contractor and each subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of changes thereof, in a prominent and easily accessible place or places at the site of the work and at the place or places used by them to pay workmen their wages. The posted notice of wage rates shall contain the following information:

    (1) The name of project.
    (2) The name of public body of which it is being constructed.
    (3) The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determination for the particular project.
    (4) The general prevailing minimum wage rates determined for each craft and classification and the effective date of changes.

(5) A statement advising workers that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the Contractor or subcontractor are not complying with the act or the regulations in any manner whatsoever, the worker may file a protest in writing with the Secretary of Labor and Industry within 3 months of the date of the occurrence, objecting to the payment to a Contractor to the extent of the amount due or to become due to them as wages for work performed on the public work project.. A worker paid less than the rate specified in the contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action must be exercised within 6 months from the occurrence of the event creating the right.

e. The Contractor and subcontractors shall keep an accurate record showing the name, craft or classification, number of hours worked per day, and the actual hourly rate of wage paid including employee benefits, to each worker employed by the Contractor or subcontractor in connection with the public work. The record shall include deductions from each worker. The record shall be preserved for 2 years from the date of payment and shall be open at reasonable hours to the inspection of the public body awarding the contract and to the Secretary or the Secretary's authorized representatives.

f. Apprentices shall be limited to numbers in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with The Apprenticeship and Training Act (43 P.S. §§ 90.1 – 90.10), approved July 14, 1961 and the regulations issued thereto shall be employed on the public work project. A worker using the tools of a craft who does not qualify as an apprentice within the provisions of this subsection shall be paid the rate predetermined for journeymen in that particular craft or classification.

g. Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary of Labor & Industry has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workers.

h. Payment of compensation to workers for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act, regardless of the average hourly earnings resulting therefrom.

i. Each Contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the work on the contract with the contracting agency, under oath, and in form satisfactory to the Secretary, certifying that workers have been paid wages in strict conformity with the provisions of paragraph. If wages remain unpaid, to the Contractor or subcontractor shall set forth the amount of wages due and owing to each worker respectively. A copy of the form entitled "Contractor's or Subcontractor's Weekly Payroll Certification for Public Works Projects" is attached hereto.

j. Before final payment is made, a final wage certification must be submitted by all contractors and subcontractors.

*** <u>UNION LABOR</u>**

The Contractor must quote and use Prevailing Wage Rates and Union Labor for installation in areas/buildings that are Union covered.

Master Information Technology (IT) Services Invitation to Qualify (ITQ) Contract
Part II – Bid Requirements

Organizations interested in doing business with the Commonwealth through this Master Information Technology (IT) Services Invitation to Qualify (ITQ) Contract, 4400004480, must develop and submit an electronic bid along with all supporting documentation via the PASupplierPortal Website. The Commonwealth will evaluate the bid to determine whether the organization meets the minimum eligibility requirements. Organizations may submit a bid at any time during the duration of this contract for one, all, or any combination of the service categories listed in Part I – Statement of Work. Failure to meet any of these requirements will result in the disqualification.

- The organization must be registered with the Commonwealth as a Procurement Supplier. For more information about registration, please view the Registration Guide.
- The organization must submit their bid in accordance with Part III - Open Enrollment Process.
- The organization must complete the Supplier Profile.
- The organization must submit the following additional required documentation.
  - **Financial Information**: Attach the most recent two (2) year's financial reports which must include: Income Statements and Balance Sheets. These reports should be certified and/or audited. If your organization is publicly traded, you may attach the direct link to your financial website.
  - **Years in Business Verification:** Attach documentation verifying that your organization has been in business more than two (2) years. Examples include: Articles of Incorporation, Income Tax Return, Dunn & Bradstreet Report, etc.
  - **COSTARS Designation:** Complete and attach the COSTARS Designation Form. There is **NO ADMINISTRATIVE FEE** associated with this contract.
- The organization must submit three (3) quality references for each service category for which they are attempting to qualify. The organization must provide a detailed description of the scope of the IT project along with a description of how the IT project is relevant to the service category, and how it directly relates to the service category description.
  - The organization must demonstrate it is or was responsible for managing all aspects of an IT project.
  - Each IT project must have ended within no more than three (3) years prior to bid submission.
  - The organization may use the same reference and IT project for multiple service categories if the project scope warrants.
  - The organization may use the same reference in the same service category as long as the scopes of the IT projects are clearly different.

Master Information Technology (IT) Services Invitation to Qualify (ITQ) Contract
Part III – Enrollment Process

Any organization registered with the Commonwealth as a Procurement Supplier may submit a bid at any time during the duration of this contract. Organizations can submit bids to become qualified contractors for one, all, or any combination of the service categories listed in Part I –Statement of Work. An organizations qualifications will be valid until the termination of this contract.

The bid evaluation and contract execution process may take an estimated 30-60 business days to complete. Please note these processes may take longer to complete than estimated depending on the volume of bids received and the availability of Commonwealth resources.

Master Information Technology (IT) Services Invitation to Qualify (ITQ) Contract
Part IV – Terms and Conditions

A supplier, prior to submitting its electronic bid, must agree to the terms and conditions for this Master IT Services ITQ Contract, 4400004480. These terms and conditions are non-negotiable. A supplier's failure to agree to these terms and conditions will result in the inability to submit its electronic bid.

CONTRACT FOR

INFORMATION TECHNOLOGY SERVICES

BETWEEN

COMMONWEALTH OF PENNSYLVANIA,

Acting by and through the

DEPARTMENT OF GENERAL SERVICES

AND

<COMPANY NAME>

CONTRACT NO. 4400004480

THIS CONTRACT, made at Harrisburg, Pennsylvania, in the county of Dauphin, Commonwealth of Pennsylvania, by and between the COMMONWEALTH OF PENNSYLVANIA, acting by and through the Department of General Services, with offices at Harrisburg, Pennsylvania, hereinafter called the Commonwealth and <COMPANY NAME>, hereinafter called the Contractor, acting through its proper officials;

WITNESSETH THAT:

WHEREAS, the Commonwealth has need for Information Technology (IT) Services (the "Services"); and

WHEREAS, the Commonwealth issued an Invitation to Qualify (ITQ) for the Master IT Services ITQ through an Invitation for Bids (IFB) and the Contractor submitted a bid in response to the ITQ; and

WHEREAS, the Commonwealth has the authority to enter into this Contract for the Services on a multiple award basis according to Section 517 of the Commonwealth Procurement Code, 62 Pa.C.S. §517; and

WHEREAS, the Commonwealth has evaluated the Contractor's Proposal and determined that the Contractor has met the qualification requirements of the ITQ.

NOW, THEREFORE, for and in consideration of the foregoing premises and mutual promises hereinafter set forth, the parties hereto agree, with the intention of being legally bound, as follows:

1. GENERAL

a. Upon determination that the Contractor meets the ITQ requirements, the Commonwealth will issue a contract to the Contractor in accordance with Section 55 hereof.

b. Upon receipt of a Purchase Order (PO) issued under this Contract, the Contractor agrees to furnish the requested services to the Commonwealth agency issuing the PO.

2. COST

The total cost for Services provided for each PO under this Contract shall be the amount stated in each PO. The Issuing Agency will establish a payment schedule with the Contractor and the Contractor agrees that payment shall be made in accordance with such payment schedule. No separate reimbursement will be made for travel, lodging or subsistence. All costs for travel, lodging or subsistence must be included in the costs provided to the Issuing Agency and incorporated into the PO.

3. OVERVIEW

The purpose of this multiple award Contract is to provide agencies of the Commonwealth with the Services that are within the scope of this Contract.

4. DEFINITIONS

a. Contact Person. The individual designated by the Issuing Agency to administer and monitor POs issued by the Issuing Agency under this Contract. The Contact Person is authorized to issue POs and amendments to POs and to terminate POs.

b. Contracting Officer. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract (as opposed to individual POs, which shall be administered and monitored by the Issuing Agency) is the DGS Chief Procurement Officer. The Contracting Officer is NOT authorized to sign this Contract or any amendment, but is authorized to terminate this Contract.

c. Days. Unless specifically indicated otherwise, days mean Commonwealth business days.

d. Developed Materials or Developed Works. Except for Contractor's internal communications relating to Services of this Contract that are not delivered to the Commonwealth, all documents, data, records, software, samples or any other literary works or other works of authorship produced by Contractor in carrying out the obligations and Services under this Contract, without limitation. Developed Materials and Developed Works are used interchangeably in this Contract and have the same meaning.

e. 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.

f. Contract Effective Date. The date that the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.

g. Issuing Agency. The Commonwealth agency issuing the PO under the terms and conditions of this Contract.

h. Proposal. Contractor's response to a Request for Quotations (RFQ) issued by the Issuing Agency.

i. Services. All activity necessary to satisfy the PO as defined by the Issuing Agency in the Statement of Work (SOW) incorporated into the PO.

5. CONTRACT SCOPE

a. This Contract will include various IT service categories. All of the categories are described more fully via the ITQ web site at http://www.itqrp.state.pa.us

b. The ITQ web site is the place that shows the specific service categories for which the Contractor has been found qualified.

c. If the Contractor must perform work outside of the daily operational hours set forth by the Issuing Agency, it must make arrangements with the Issuing Agency to assure access to the facility and equipment has been arranged. The Contractor must take such access into consideration when it is putting together its Proposal. No additional payment will be made on the basis of lack of access unless the Issuing Agency fails to provide access as agreed to between the Issuing Agency and the Contractor.

d. Unless specifically provided for in the PO, the Contractor shall not offer for sale or provide Commonwealth agencies with any hardware or software (i.e., personal computers, file servers, laptops, personal computer packaged software, etc.). If the PO does not specifically include the provision of software, Contractors may recommend the use of hardware and software, without requiring agencies to purchase the recommended hardware and software. Software and hardware that is NOT on statewide contract will be acquired through separately procured purchase agreements, and the Contractor shall not be considered for award of such agreements.

e. 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. 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 of a PO, and the Issuing Agency 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 PO.

6. ORDER OF PRECEDENCE

a. 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:

   i. This Contract;

   ii. The data resident on the ITQ web site at http://www.itqrp.state.pa.us and incorporated herein by reference at the date of execution of the Contract or issuance of an RFQ off of this Contract, whichever is later, including but not limited to the promises and certifications the Contractor made in qualifying for the Contract;

b. If any conflicts or discrepancies should arise in interpretation of a PO, the order of precedence shall be:

   i. This Contract;

   ii. The PO and any attachment thereto, including: (1) the Contractor's Proposal, as accepted by the Commonwealth; (2) the RFQ.

7. CONTRACT INTEGRATION

a. This Contract, including the Contract signature pages, together with the data resident on the ITQ web site at http://www.itqrp.state.pa.us, as described in Section 6, constitutes the final, complete, and exclusive Contract between the parties containing all the terms and conditions agreed to by the parties. The Contract itself contemplates the issuance of RFQs and POs, and Technical and Cost proposal responses by the Contractor, the content of which will augment the Contract when issued and executed as anticipated under this Contract.

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.

8. PURCHASE ORDERS (POs)

a. Prior to issuing a PO against this Contract, Issuing Agencies must follow the solicitation requirements and evaluation process established for this Contract and available at http://www.itq.state.pa.us. DGS may modify these procedures by posting revised procedures at the website specified above and which will become effective for subsequent projects not already in the solicitation process.

b. All documents issued by the Issuing Agency and all responses submitted by the Contractors must be in electronic format and that format must be compatible with Microsoft™ Office. Documents may be read only, but may not be in .pdf format. The Issuing Agency may, at its option, also require that all documents be submitted in paper format.

c. Issuing agencies may issue POs against this Contract. A PO constitutes the Contractor's authority to perform Services. Each PO will be deemed to incorporate the terms and conditions set forth in this Contract. In no event will the performance time period specified in a Purchase Order extend longer than ninety (90) days after the expiration date of the Contract term. The Contractor will be required to adhere to the requirements and/or specifications of the PO.

d. Purchase Orders under five thousand dollars ($5,000) in total amount may also be made in person or by telephone using a Commonwealth Procurement VISA Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. The Contractor agrees to accept payment through the use of the Commonwealth Procurement VISA card.

9. PERIOD OF PERFORMANCE

The Contractor, for the life of this Contract, shall complete all services as specified under the terms of this Contract and any PO resulting from this Contract. In no event shall the Commonwealth 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.

10. TERM OF CONTRACT

The term of the Contract shall commence on the Effective Date and shall end on June 30, 2014, with three optional one-year renewals. The option may be exercised, in the Commonwealth's sole discretion as three one year renewals, as one multiple year renewal, or as a one year renewal and a multiple year renewal.

11. OPTION TO EXTEND

The Commonwealth reserves the right to extend this Contract or any part of this Contract up to three (3) months, or as necessary to prevent a lapse in Contract coverage.

12. SPECIAL REQUIREMENTS

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

13. SUBCONTRACTS

The Contractor may subcontract any portion of the Services described in this Contract to third parties selected by Contractor and approved in writing by the Issuing Agency, 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, the Issuing Agency's issuance of a PO is deemed to be approval of all named subcontractors and a separate approval is not required. The existence of any subcontract shall not change the obligations of Contractor to the Issuing Agency under this Contract. Upon request of the Issuing Agency, the Contractor must provide the Issuing Agency with a copy of the subcontract agreement(s) between the Contractor and the subcontractor(s). Contractor will require all of its subcontractors to adhere to the terms and conditions of this Contract.

14. OTHER CONTRACTORS

The Commonwealth may undertake or award other contracts or PO's for additional or related work, and the Contractor shall fully cooperate with other Contractors and Commonwealth 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 employees. This Section shall be included in the Contracts of all Contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this Section as to all Contractors to prevent the imposition of unreasonable burdens on any Contractor.

15. PRIME CONTRACTOR RESPONSIBILITIES

The Contractor will be responsible for all services required under a PO issued under this Contract whether or not it provides them directly. The Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the PO.

16. INVOICES

a. Unless otherwise specified in a PO, subject to Issuing Agency review and acceptance, the Contractor shall invoice the Issuing Agency for Services performed only after acceptance of the Services in accordance with the PO. Invoices will be submitted as specified in the PO.

For services provided on a time-and-materials basis, the Contractor shall invoice the Commonwealth on a monthly basis as services are provided.

For services provided on a fixed-price basis, and subject to Commonwealth review and acceptance, the Contractor shall invoice the Commonwealth for services performed only after acceptance of the services in accordance with Section 18 (INSPECTION AND ACCEPTANCE).

b. At a minimum, the following information shall be furnished on all invoices, as applicable:

(1) A unique invoice number;

(2) The Contract number;

(3) PO number;

(4) The Contractor's SAP/SRM Vendor Number;

(5) The period covered;

(6) For expenditure of manpower resources, including that of subcontractors (solely related to Time and Materials invoices only; not required for Deliverables invoices):

(i) Position;

(ii) Rate per hour; and

(iii) Hours and cost thereof, itemized by tasks.

(7) Tasks completed by the Contractor during the billing period and approved by the Issuing Agency to the date of the invoice, and percentage of the phase represented thereby;

(8) Amounts invoiced to date and approved to date;

(9) Location, including address to which payment is to be made; and

(10) Invoices received by the Contractor from any subcontractor.

c. The Issuing Agency shall use its best efforts to pay all properly prepared and submitted invoices within forty five (45) calendar days from the date of receipt of such invoice by the Issuing Agency. Interest on late payments may only be paid if the contractor qualifies for such payment pursuant to the provisions of 4 Pa. Code § 2.31, *et seq*.

d. The Commonwealth or Issuing Agency may deduct from amounts due under an invoice any amounts owed to the Commonwealth under Section 29, Offset Provision for Commonwealth Contracts and Section 52, Liquidated Damages.

e. Electronic Payments

(1) The Commonwealth will make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the Contract or PO, the Contractor must submit or must have already submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).

(2) The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.

(3) It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

17. ASSIGNABILITY

a. Subject to the terms and conditions of this Section, the Contract is binding upon the parties and their respective successors and assigns.

b. The Contractor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Commonwealth, which consent may be withheld at the sole and absolute discretion of the Commonwealth.

c. Notwithstanding the foregoing, the Contractor may, without the consent of the Commonwealth, assign its rights to payment to be received under the Contract or a PO, provided that the Contractor provides written notice of such assignment to the Issuing Agency together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Contract.

d. For the purposes of the Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

e. Any assignment consented to by the Commonwealth shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned. The assignment form is provided via the ITQ web site at http://www.itqrp.state.pa.us.

f. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, is not considered to be an assignment. The Contractor shall give the Issuing Agency and the Contracting Officer written notice of any such change of name.

18. INSPECTION AND ACCEPTANCE

a. Acceptance of Developed Materials will occur in accordance with the Deliverable Approval Plan and/or criteria set forth in the SOW. For PO's 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 specifications for the Developed Materials, if any, and/or the requirements of the SOW. Contractor shall notify the Issuing Agency when the deliverable is completed and ready for acceptance testing. The Issuing Agency will not unreasonably delay commencement of acceptance testing.

(1) For Projects that require software integration a the end of the Project, as set out in the PO, the Commonwealth'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 SOW.

(2) For Projects that do not require software integration at the end of the Project as set out in the PO, the Commonwealth's acceptance of a deliverable or milestone shall be complete and final.

b. Contractor shall certify, in writing, to the Issuing Agency when a particular milestone, interim or final, is completed and ready for acceptance (hereinafter Acceptance). Unless otherwise set out in a SOW or PO, the Acceptance period shall be ten (10) days for interim milestones and thirty (30) days for final milestones. On or before the 10th day for interim milestones or 30th day for the final milestone, following receipt by the Issuing Agency of Contractor's certification of completion of a particular milestone, the Issuing Agency shall, subject to Section 18(a) either: (1) provide the Contractor with its 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 the Issuing Agency 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 as set out in Section 5(e), the Contractor must provide written justification for its failure to meet the standard. The justification must provide specific details as to why the standard has not been met. The Issuing Agency may either waive the requirement as not applicable to the Issuing Agency's business requirements or require that the Contractor provide an acceptable alternative. Any waiver of the requirement must be in writing.

e. Upon Contractor's receipt of the Issuing Agency'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) days, or such other time as the Issuing Agency and Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected Developed Materials, certifying to the Issuing Agency, in writing, that the failures have been corrected, and that the Developed Materials have been brought in compliance with the specifications. Upon receipt of such corrected and resubmitted Developed Materials and certification, the Issuing Agency shall have thirty (30) 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 the Issuing Agency shall provide the Contractor with its acceptance of the Developed Materials in the completed milestone.

f. If, in the opinion of the Issuing Agency, the corrected Developed Materials still contain material failures, the Issuing Agency shall have the option either to:

(1) Repeat the procedure set forth above; or

(2) Proceed with its rights under Section 22.

19. NOTICE OF DELAYS

Whenever the Contractor encounters any difficulty which is delaying or threatens to delay the timely performance of this Contract or any PO issued under this Contract (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to the Contact Person 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 the Commonwealth or the Issuing Agency 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.

20. CONDUCT OF SERVICES

a. Following the acceptance of Contractor's Proposal and the issuance of a PO, 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 PO.

b. In determining whether or not the Contractor has performed with due diligence hereunder, it is agreed and understood that the Issuing Agency may measure the amount and quality of the Contractor's effort against the representations made in any Contractor Proposal accepted by way of a PO resulting from this Contract. The Contractor's Services hereunder shall be monitored by the Issuing Agency and designated representatives. If the Issuing Agency determines that the Contractor has not performed with due diligence, the Issuing Agency and the Contractor will attempt to reach agreement with respect to such matter. Failure of the Issuing Agency or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of Section 25 (DISPUTES) of this Contract.

21. CHANGES

a. At any time during the performance of a PO, the Issuing Agency or the Contractor may request a change to the PO, including the SOW, within the scope of the PO. 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 PO. If the Issuing Agency is the requestor of the change, the Contractor will inform the Issuing Agency if there will be any charges for the Contractor's services in investigating the change request prior to incurring such charges. If the Issuing Agency and the Contractor agree on the results of the investigation and any necessary amendments to the PO, the parties must complete and execute the Change Notice Form, which is attached hereto as Appendix B, to modify the PO and implement the change. The Issuing Agency and Contractor will only request changes to the PO by way of the Change Notice Form. If the parties cannot agree upon the results of the investigation or the necessary amendments to the PO, 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 25 (DISPUTES) of this Contract.

b. Changes outside the scope of a PO shall be accomplished through the Commonwealth's normal procurement procedures, and may result in an amended PO or a new PO (if the additional services are awarded to the Contractor).

22. DEFAULT

a. The Commonwealth may, subject to the provisions of 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 23, Termination Provisions) the whole or any part of this Contract or any PO for any of the following reasons:

(1) Failure to begin Services within the time specified in the Contract or Purchase Order or as otherwise specified;

(2) Failure to perform the Services with sufficient labor, equipment, or material to cause the completion of the specified Services in material accordance with the Contract or Purchase Order terms;

(3) Unsatisfactory performance of the Services;

(4) Failure to deliver the awarded item(s) within the time specified in the Contract or PO or as otherwise specified;

(5) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or PO;

(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 or as otherwise allowed pursuant to the Contract or PO;

(8) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so (unless the failure to resume is pursuant to the Contract or PO);

(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 the Contract;

(14) Failure to comply with representations made in the Contractor's bid/Proposal; or

(15) Failure to comply with applicable industry standards, customs, and practice.

23. TERMINATION

a. For Convenience

(1) The Commonwealth may terminate this Contract and any or all POs issued under it without cause by giving Contractor thirty (30) days prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). The Notice of Termination shall specify which, if any, POs will terminate with termination of the Contract. 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. Any PO not so specified in the Notice of Termination shall continue in effect for the term stated in the PO.

Any Issuing Agency may terminate any PO issued by that agency, without cause, by giving Contractor Notice of Termination prior to the effective date of termination.

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

(i) All Services performed consistent with the terms of the PO prior to the effective date of termination;

(ii) All actual and reasonable costs incurred by Contractor in terminating the PO; 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 25 (DISPUTES) 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) day notice period, if such services are requested by the Issuing Agency under any POs being terminated, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under the terminating POs.

(3) The above shall not be deemed to limit the Commonwealth's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable statuary law or regulations.

b. Non-Appropriation

Any payment obligation or portion thereof of the Commonwealth created by this Contract or any PO issued pursuant to this Contract is conditioned upon the availability and appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the PO. 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

The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract or any PO in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under a PO and does not cure such failure within the time specified in the PO or, if no time is specified in the PO, 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 the Commonwealth may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. For POs, the Contact Person shall provide any notice of default or written cure notice for the Issuing Agency. The Issuing Agency is authorized to terminate only a PO issued by the agency pursuant to this Contract. Termination of a PO for default shall not affect work on other POs under which the Contractor is not in default. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

(1) Subject to the Limitation of Liability in Section 31 of this Contract, in the event the Commonwealth terminates this Contract in whole or in part as provided in this Subsection (c), the Commonwealth may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the services and the actual and reasonable cost (but in no event greater than the fair market value) of 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 and the Issuing Agency promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.

(3) Nothing in this Subsection (c) shall abridge the Commonwealth's right to suspend, debar, or take other administrative action against the Contractor.

(4) If it is later determined that the Commonwealth erred in terminating the Contract for default, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under Subsection (a).

d. If this Contract or a PO is terminated as provided by this Subsection (c), the Commonwealth may, in addition to any other rights provided in this Subsection, and subject to Section 37 (OWNERSHIP RIGHTS) of this Contract, require the Contractor to deliver to each Issuing Agency in the manner and to the extent directed by the Contact Person, such reports and other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or PO as has been terminated. Payment for such reports and documentation will be made consistent with the Contract or PO.

e. The rights and remedies of the Commonwealth provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

f. The Commonwealth's failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

g. Following exhaustion of the Contractor's administrative remedies as set forth in Section 25, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

24. BACKGROUND CHECKS

The Contractor is to, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Commonwealth facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4451&&PageID=458621&level=2&css=L2&mode=2. The background check is to be conducted prior to initial access by Contractor and annually thereafter.

Before the Commonwealth will permit Contractor access to Commonwealth facilities, the Contractor is to 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 of the Contractor or an employee of a subcontractor of the Contractor 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, the Contractor is not to assign that employee to any Commonwealth facilities, is to remove any access privileges already given to the employee, and is not to permit that employee remote access to Commonwealth facilities or systems, unless the agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of the Contractor to comply with the terms of this paragraph may result in default of the Contractor under its contract with the Commonwealth.

The Commonwealth specifically reserves the right to conduct or require background checks over and above that described herein.

25. DISPUTES

a. Contract Disputes

(1) 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.

(2) 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 Commonwealth.

(3) 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 performance under the Contract in a manner consistent with the determination of the Contracting Officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

b. PO Disputes

(1) In the event of a controversy or claim arising from a PO, the Contractor must, within six months after the cause of action accrues, file a written claim with the Issuing Agency 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.

(2) The Issuing Agency 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 Issuing Agency and the Contractor. The Issuing Agency shall send his/her written determination to the Contractor. If the Issuing Agency fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Issuing Agency's determination shall be the final order of the Issuing Agency.

(3) 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 Issuing Agency and the Issuing Agency shall compensate the Contractor pursuant to the terms of the PO.

c. The Issuing Agency will provide the Contracting Officer with a copy of all determinations made by the Issuing Agency. The Contractor will provide the Contracting Officer with a copy of any appeal of an Issuing Agency decision that is filed by the Contractor.

26. CONFIDENTIALITY

The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. 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 23.c (DEFAULT), in addition to other remedies available to the non-breaching party.

Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:

a. Already known to the recipient at the time of disclosure;

b. Independently generated by the recipient and not derived from the information supplied by the disclosing party;

c. Known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;

d. Disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or

e. Required to be disclosed by the recipient by law, regulation, court order, or other legal process.

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

27. INSURANCE

a. The Contractor shall procure and maintain at its expense and/or 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 of 1915* and any supplements or amendments thereof.

(2) Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than $500,000 each person and $2,000,000 each occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for the Commonwealth.

b. Prior to commencing Services under any PO, the Contractor shall provide the Issuing Agency with a copy of each current certificate of insurance. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days prior written notice has been given to the Commonwealth.

c. The Contractor agrees to maintain such insurance for the life of any PO under which it is working.

d. Contractor's self-insurance of the types and amounts of insurance set for the above shall satisfy the requirements of this Section 27 (INSURANCE).

28. CONTRACTOR RESPONSIBILITY PROGRAM

a. As indicated in Management Directive 215.9, *Contractor Responsibility Program*, the Commonwealth of Pennsylvania has established a system to monitor Contractor performance. If a Contractor has not performed as required by the Contract or PO, the Issuing Agency will notify the Contracting Officer. The information provided will be reviewed, and if deemed to be appropriate, will be entered in the central Contractor Responsibility File. This information will be used by the Commonwealth to assist in determining if a Contractor is responsible. If it is determined a Contractor is not responsible, it will be ineligible for contract awards.

b. The Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Contractor cannot so certify, then it agrees to submit along with the bid/Proposal a written explanation on why such certification cannot be made.

c. If the Contractor enters into any subcontracts or employs under this Contract any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this Contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the Contractor to terminate such subcontracts or employment.

d. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth which results in the suspension or debarment of the Contractor. Such costs shall include, but 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 which do not result in the Contractor's suspension or debarment.

e. The Contractor may obtain the current list of suspended and debarred Contractors by contacting the:

Department of General Services
Office of Chief Counsel
North Office Building Room 603
Harrisburg, PA 17120
Phone: (717) 787-5599
Fax: (717) 787-9138

29. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS

The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

30. TAXES-FEDERAL, STATE, AND LOCAL

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania 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.

31. LIMITATION OF LIABILITY

The Contractor's liability to the Commonwealth under any PO issued under this Contract shall be limited to the greater of $250,000 or the value of the PO (including any amendments), unless a limitation between $250,000 and the value of the PO is otherwise specified in the PO. 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:

a. Bodily injury or death;

b. Damage to real property or tangible personal property for which the Contractor is legally liable; or

c. The Contractor's indemnity of the Commonwealth for patent, copyright, trade secret or trademark protection.

In no event will the Contractor be liable for consequential and indirect damages unless otherwise stated and agreed to by the Commonwealth and the Contractor in the Statement of Work attached to the PO. Except as set out in Section 33 (VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING) in no event will the Contractor be liable for damages due to lost records or data, unless otherwise specified in the PO. Notwithstanding the foregoing, the Contractor shall provide reasonable assistance to the Commonwealth in restoring such lost records or data to their most recent backup copy.

32. COMMONWEALTH HELD HARMLESS

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

Notwithstanding the above, the Contractor shall not enter into any settlement without the Commonwealth's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

33. 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 the Commonwealth's software or computer networks and has failed to comply with the Commonwealth software security standards, and provided further that 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 the Commonwealth. The Contractor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that result from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor, 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 the Commonwealth's software, and be liable to the Commonwealth for any resulting damages. The Contractor shall be responsible for reviewing Commonwealth software security standards in effect at the commencement of a PO and complying with those standards. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.

b. The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the Contractor to provide services to the Commonwealth 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. The Commonwealth shall not install any software or monitoring tools on the Contractor's equipment without the Contractor's written consent to do so.

c. The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing services to the Commonwealth. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contractor or the PO under which services are being provided.

d. Neither the Commonwealth nor the Issuing Agency will be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

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

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

b. The Contractor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

c. 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 or foreign 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, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at the Contractor's option and expense, obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.

d. 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.

e. If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:

(1) Any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;

(2) Any license fee less an amount for the period of usage of any software; and

(3) The prorated portion of any service fees representing the time remaining in any period of service for which payment was made

f. The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.

g. Notwithstanding the above, the Contractor shall have no obligation for:

(1) Modification of the product, service, or deliverable provided by the Commonwealth;

(2) Any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;

(3) Use of the product, service, or deliverable in other than its specified operating environment;

(4) The combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;

(5) Infringement of a non-Contractor product alone;

(6) The Commonwealth's distribution, marketing or use beyond the scope contemplated by the SOW or PO; or

(7) The Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.

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

35. SENSITIVE INFORMATION

a. The Contractor shall not publish or otherwise disclose, except to the Commonwealth or the Contractor's subcontractors, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a way that allows the information or data furnished by or about any particular person or establishment to be identified,.

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, or as outlined in the Issuing Agency SOW.

c. Contractor, as directed, shall comply with all federal or state laws and regulations related to the use of information that constitutes protected health information (PHI) as defined by the regulations promulgated pursuant to the *Health Insurance Portability and Accountability Act* (HIPAA). By signing this Contract, the Contractor agrees to the terms of the Business Associates Agreement, which is incorporated into this Contract as Appendix A. If the Issuing Agency, or relevant portion thereof, is a Covered Entity as defined in HIPAA, and the Contractor is performing the work of a Business Associate (which determination will be made solely in the discretion of the Issuing Agency), the Issuing Agency it will fill in the blanks in the attached Appendix as part of the PO. It is understood that Appendix A is only applicable if the Issuing Agency so indicates, and, if not applicable to the entire Issuing Agency, is only applicable with respect to the internal entities indicated by the Issuing Agency expressly in the PO.

36. 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.

37. OWNERSHIP RIGHTS

a. Ownership of Properties

(1) All "Developed Works" shall be owned according to the provisions set forth in this Section 37.

(2) All software owned by the Commonwealth or its licensors ("Commonwealth Software") as of the Effective Date, or by the effective date of a PO, whichever is later, shall be and shall remain the exclusive property of the Commonwealth or its licensors, and Contractor shall acquire no rights or interests in the Commonwealth Software or Tools or that of its licensors by virtue of this Contract or any PO or SOW except as described in this paragraph or elsewhere in this Contract or any PO or SOW. The Contractor shall not use any Commonwealth Software, Commonwealth Tools or software or tools of its licensors for any purpose other than to complete work under a PO. In the use of Commonwealth Software, Commonwealth Tools or software or tools of its licensors, Contractor will be bound by the confidentiality provisions of this Contract.

b. Definitions

(1) Software: For purposes of this Contract, the term "software" means a collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).

(2) Data: For 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 Commonwealth Software.

c. Commonwealth Property—Non-Exclusive, License Grant and Restrictions

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

(1) Obtain access to and use of the Commonwealth Software in accordance with the terms of this Contract.

(2) Reproduce the Commonwealth Software for archival purposes or for other purposes expressly provided for under this Contract.

(3) Modify the Commonwealth Software consistent with the terms and conditions of this Contract provided that Contractor agrees to assign to the Commonwealth, its rights, if any, in any derivative works resulting from Contractor's modification of the Commonwealth 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 the Commonwealth to obtain access to the Commonwealth Software for the purposes of complying with the terms and conditions of this Contract; provided, however, that neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Software. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this Section.

(5) To the extent that Contractor uses Commonwealth Software, Commonwealth Tools or software or tools of its licensor, Contractor agrees to protect the confidentiality of these works and maintain these proprietary works with the strictest confidence.

d. Impact of Third Party Agreements

Subject to the terms of any third party agreement to which the Commonwealth is a party: (i) the Commonwealth shall, at no cost to Contractor, provide Contractor with access to the Commonwealth Software in the form in use by Commonwealth as of the Contract Effective Date or the effective date of a PO, whichever is later, and (ii) Contractor, as part of the Services to be rendered under this Contract, shall compile and, as changes are made, update a list of all of the Commonwealth Software then in use by Contractor or any of its subcontractors in connection with Contractor's performance of the Services.

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 the Commonwealth.

f. Termination of Commonwealth License Grant

Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract or under a PO, all rights granted to Contractor in this Section 37 (OWNERSHIP RIGHTS) shall immediately cease. Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Software and Tools (including any related source code then in Contractor's possession or under its control) in the form in use as of the Effective Date of such expiration or termination. Within fifteen (15) calendar days after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Software in use as of the date of such expiration or termination. Concurrently therewith, Contractor shall destroy or erase all other copies of any of the Commonwealth Software then in Contractor's possession or under its control unless otherwise instructed by Commonwealth, in writing; provided, however, that Contractor may retain one archival copy of such Commonwealth Software and Tools, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.

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 Commonwealth Software or any other work which incorporates the Commonwealth Software. The obligations of this Section 37 (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) prior to the Effective Date of this Contract or the effective date of a PO, whichever is later, shall be and shall remain the exclusive property of Contractor. The Commonwealth shall acquire no rights or interests in the Contractor Software or the Contractor Tools by virtue of this Contract or any PO or SOW except as set forth in this paragraph or in the PO or SOW.

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 starting work on a PO. 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 the PO 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 the Commonwealth along with the license set forth in Section 37(f). Contractor may amend these lists from time to time while the PO 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 PO 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 the Issuing Agency prior to its use on the PO. 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 SOW, 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 Commonwealth, Contractor shall allow Commonwealth 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 the Commonwealth prior to use on the Contract.

k. Expiration or Termination NonExclusive 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 Commonwealth, Contractor hereby (i) grants to Commonwealth a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works and unless Commonwealth terminates this Contract without cause, grant to third parties engaged by Commonwealth 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 Commonwealth's or such third party's completion of and maintenance of the Services to be provided by Contractor under this Contract immediately prior to such expiration or termination and (ii) will deliver to Commonwealth 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 the Commonwealth to complete and maintain such work. If Commonwealth enters into a contract that allows for the use of the Contractor Software or Contractor Tools for which a license is granted under this Section 37 (OWNERSHIP RIGHTS), the Commonwealth will include a provision in that contract that limits the use of the Contractor Software or Contractor Tools as delineated in this Section.

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 Commonwealth an irrevocable, nonexclusive, worldwide, fully paid-up license (to include source code and relevant documentation) in perpetuity to use, modify, execute, reproduce, display, perform, prepare derivative works from and distribute, within the Commonwealth, 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 the Commonwealth by the Contractor, then such modifications, improvements and enhancements shall be the property of the Commonwealth or its licensor. To the extent Commonwealth owns 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 Commonwealth has a license to the software or other materials, and to the extent that it, in its sole discretion determines it is able to do so the Commonwealth will grant to Contractor 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 Commonwealth, to any extent, with either Commonwealth or federal funds, and the Developed Works do not include pre-existing materials generally licensed by the Contractor, then the Commonwealth shall have all right, title, and interest (including ownership of copyright and trademark) to such Developed Works and the Commonwealth 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. The Commonwealth shall exclusively own all software products first developed under the terms of this contract by the Contractor, its subcontractors or other third party vendors that are specifically developed for, engineered and integrated into the Developed Works.

(4) When the Developed Work is a report provided by a research company that was provided under this contract or a PO, but which was not developed specifically for the Commonwealth or Issuing Agency under this contract or a PO, the ownership of the Developed Work will remain with the contractor, provided, however, that the Commonwealth or Issuing Agency has the right to copy and distribute the Developed Work within the Commonwealth.

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

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 Commonwealth shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. Commonwealth may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. Commonwealth understands and agrees that any third party disclosure will not confer any license to such Patentable Items.

(2) Contractor shall not use any computer program, code, or any works developed by or for Contractor independently of this Contract ("Pre-Existing Materials") in the performance of the Services under this Contract, without the express written consent of the Commonwealth. Any Pre-Existing Materials used by Contractor for performance of Services under this Contract without Commonwealth consent shall be deemed to be Developed Works as that term is used in this Section. In the event that Commonwealth provides such consent, Contractor shall retain any and all rights in such Pre-Existing Materials.

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. § 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 Commonwealth (alone or jointly with the Commonwealth) develops or learns in connection with Contractor's provision of Services to Commonwealth under this Contract.

q. Commonwealth Intellectual Property Protection

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

r. Contractor Intellectual Property Protection

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

s. Source Code and Escrow Items Obligations

Simultaneously with delivery of the Developed Works to Commonwealth, Contractor shall deliver a true, accurate and complete copy of all source codes relating to the Developed Works. 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 the Commonwealth.

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 Commonwealth of Pennsylvania. All Rights Reserved." This notice shall appear on all tangible versions of the Developed Works delivered under this Contract and any associated documentation. It shall also be programmed into any all Developed Works delivered hereunder so that it appears at the beginning of all visual displays of such Developed Works.

u. Commercial Software

If a deliverable under this Contract is commercially available software, the Contractor hereby agrees that, before it incorporates such software into a deliverable it will inform the licensor of the software, if the Contractor is not the licensor of the software, that it will be required to enter into a license with the Commonwealth which is acceptable to the Commonwealth. The license agreement in the form attached hereto as Appendix "C" is in a form that is acceptable to the Commonwealth. The Issuing Agency may negotiate the terms of the license agreement as appropriate to the Issuing Agency's use of the software.

38. PUBLICATION RIGHTS AND/OR COPYRIGHTS

a. Except as otherwise provided in Section 37 (OWNERSHIP RIGHTS), the Contractor shall not publish any of the results of the work without the written permission of the Issuing Agency. The publication shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the Commonwealth of Pennsylvania." The Contractor shall not include in the documentation any copyrighted matter, unless the Contractor provides the Commonwealth with written permission of the copyright owner.

b. Subject to Section 37 (OWNERSHIP RIGHTS) and the confidentiality provisions of Section 26 (CONFIDENTIALITY), the Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the Commonwealth as part of the performance of a PO.

c. Rights and obligations of the parties under this Section 38 survive the termination of this Contract or any PO issued under it.

39. CHANGE OF OWNERSHIP

In the event that the Contractor should change ownership for any reason whatsoever, the Commonwealth 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.

40. OFFICIALS NOT TO BENEFIT

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

41. INDEPENDENT CAPACITY OF CONTRACTOR

a. The parties to this Contract agree that the Services performed by the Contractor under the terms of this Contract are performed as an independent Contractor. The Services performed by the Contractor are performed neither as an employee of the Commonwealth of Pennsylvania nor as a partnership or joint venture between the Commonwealth and the Contractor.

b. Except as otherwise provided by the terms of this Contract, the Commonwealth shall have no control over the manner in which the contractual Services are performed by the Contractor, or any subcontractor. Any job specifications or standards of work attached to or incorporated into this Contract or any subcontracting restrictions contained in this Contract shall not be construed as the Commonwealth's direction or control over the manner of the performance of Services provided by the Contractor.

42. 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 date of the issuance of the PO and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation.

43. *THE AMERICANS WITH DISABILITIES ACT*

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

a. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R.§ 35.101, *et seq.*, the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through Contracts with outside Contractors.

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from losses, damages, expenses claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of Subsection a. above.

44. EXAMINATION OF RECORDS

a. Unless otherwise specified in a PO, 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 any PO to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.

b. The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in Subsection c. below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by law, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in Section 26 (CONFIDENTIALITY).

c. Except as otherwise provided below or specified in a PO, 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 Subsection 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 Commonwealth 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 POs not exceeding $1,000 and subcontracts or POs for public utility services at rates established for uniform applicability to the general public.

45. *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 Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.

d. The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984.*

46. 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.

47. NONDISCRIMINATION CLAUSE/SEXUAL HARASSMENT CLAUSE

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

a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

c. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

e. The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

f. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

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

48. CONTRACTOR INTEGRITY PROVISIONS

a. Definitions.

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

(2) Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, Proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Contract.

(3) Contractor means the individual or entity that has entered into this Contract with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a five percent (5%) interest.

(4) Financial Interest means:

(i) ownership of more than a 5% interest in any business; or

(ii) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(5) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

b. The Contractor shall maintain the highest standards of integrity in the performance of this Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

c. The Contractor shall not disclose to others any confidential information gained by virtue of this Contract.

d. The Contractor shall not, in connection with this or any other Contract with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

e. The Contractor shall not, in connection with this or any other Contract with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Contract except as provided therein.

g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material on this project.

h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

i. The Contractor, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form which refer to or concern this contract. Such information shall be retained by the Contractor for a period of three (3) years beyond the termination of the Contract unless otherwise provided by law.

k. For violation of any of the above provisions, the Commonwealth may terminate this and any other Contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

49. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS

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

50. DB OR DBE COMPLIANCE

The Contractor must comply with the current Disadvantaged Business Program (DB) or Disadvantaged Business Enterprise (DBE) requirements as stated at http://www.itqrp.state.pa.us or included in the SOW by the Issuing Agency. DGS may modify these procedures by posting revised procedures at the website specified above and which will become effective for subsequent projects not already in the solicitation process.

The Contractor must meet and maintain any DB or DBE commitment it makes in its Proposal throughout the term of the contract unless a change is approved by the Issuing Agency upon recommendation by BWMBO. If the Contract is assigned to another contractor, the new contractor must maintain the DB or DBE participation of the original contract.

51. WARRANTIES

If the PO or SOW does not set out warranty requirements, this Section governs any questions related to warranties. The Contractor warrants that the Services and Delivered Materials will conform in all material respects to the functional specifications for the Delivered Materials and/or the requirements of the PO or SOW. If the PO or SOW does not set forth a warranty period, the warranty period for the Services and Delivered Materials shall be ninety (90) days from final acceptance. The Contractor shall correct any non-conformity within the warranty period specified herein or in the PO or SOW. The agency may include additional warranty requirements in the SOW.

a. The Contractor hereby represents and warrants to the Commonwealth that it shall not cause, or take any action that may directly or indirectly cause a disruption of the Commonwealth's operations.

b. In the event of any nonconformity with the foregoing warranties or any warranty set out in a PO or SOW, the Commonwealth or the Issuing Agency will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the Commonwealth, shall within ten days notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the Commonwealth of the Issuing Agency, until such time as the deliverable conforms, in all material respects, to the functional specifications of the Developed materials set forth in the PO. The Contractor shall have no obligation with respect to nonconformities arising out of: (a) modifications to Developed Materials made by the Issuing Agency, (b) use of the Developed Materials not in accordance with the documentation or specifications applicable thereto, (c) failure by the Issuing Agency 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 Commonwealth against Contractor pertaining to these warranties, Contractor may raise any defenses that it may have.

52. LIQUIDATED DAMAGES

a. Each PO under this Contract has its own performance standards and requirements. By accepting the PO, the Contractor agrees to the performance standards and requirements of that particular project. If performance standards and requirements under an individual PO are not met, the failure will interfere with the Commonwealth's program. In the event of any such failure, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. The Commonwealth and the Contractor therefore agree that, in the event of failures as outlined in the PO, the amount of damage shall be the amount set forth in this Section 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. Major Deliverables shall be identified by Contractor in its Proposal to the Commonwealth. The Commonwealth and Contractor shall agree on Major Deliverables for which liquidated damages shall be applicable in the event of delay and identify the Major Deliverables in the PO. If Major Deliverables are not identified in the PO, liquidated damages shall apply to the total cost of the PO.

c. The amount of liquidated damages shall be as set out in the PO. If no amount is set out in the PO, the amount of liquidated damages for work not completed by the deliverable schedule set out in the PO 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 satisfactorily completes all required work for such Major Deliverable, up to a maximum of thirty (30) calendar days. Contractor shall recoup the amount of liquidated damages assessed against previous deliverables if the Contractor accelerates progress towards future deliverables and meets the final project completion date set out in the PO.

d. If, at the end of the thirty (30) day period specified in Subsection b. above, the Contractor has not met the schedule for completion of the PO, then the Commonwealth, at no additional expense and at its option, may either:

(1) Immediately terminate the PO and all software, documentation, reports, Developed Materials and any other materials provided for or created for the Commonwealth as a result of the PO shall be given to the Commonwealth, and the Commonwealth shall be entitled to its remedies under Section 23.c (TERMINATION) of this Contract; or

(2) Order the Contractor to continue with no decrease in effort until the work is completed in a manner acceptable to the Issuing Agency or until the Commonwealth terminates the PO. If the PO is continued, the liquidated damages will also continue until the work is completed.

e. At the conclusion of the project, liquidated damages shall be paid by the Contractor and collected by the Commonwealth by deducting them from the final invoices submitted under the PO, 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 the Commonwealth, 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.

53. FORCE MAJEURE

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

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

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

54. 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 set forth below or to such other address as such party may designate by notice given pursuant to this section:

Commonwealth: Chief Procurement Officer
Bureau of Procurement, Department of General Services
555 Walnut Street
Forum Place 6Th Floor
Harrisburg, PA 17125

Contractor:

55. ELECTRONIC SIGNATURES

The Commonwealth may issue this Contract and any subsequent change, and Commonwealth agencies may issue Purchase Orders against this Contract, electronically in accordance with the following terms:

a. The Contract may not include "ink" signatures by the Commonwealth. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of DGS to legally bind the Commonwealth to this Contract.

b. Purchase Orders against this contact may not include "ink" signatures by the Issuing Agency. The electronically printed name of the purchaser represents the signature of the individual who has the authority on behalf of the Issuing Agency to authorize the Contractor to perform the Services specified in the Purchase Order.

c. Purchase Orders may be issued electronically or through facsimile equipment. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. The electronic transmission or facsimile of a Purchase Order shall require acknowledgement of receipt of the transmission by the Contractor.

d. The Commonwealth and the Contractor specifically agree as follow:

(1) No handwritten signature shall be required in order for the Contract and Purchase Order to be legally enforceable.

(2) Upon receipt of a Purchase Order, the Contractor shall promptly and properly acknowledge its receipt. Any order which is issued electronically or via facsimile 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 the Commonwealth, unless and until the Issuing Agency has properly received an acknowledgment.

(3) The parties agree that no writing shall be required in order to make the Contract or Purchase Order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a Contract or Purchase Order or acknowledgment issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements must be in writing and signed by the party bound thereby. The Contract and any Purchase Order or acknowledgment issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceeding, 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 Purchase Orders 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 acknowledgment were not in writing or signed by the parties.

56. RIGHT-TO-KNOW LAW

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract.

b. Unless the Contractor provides the Commonwealth, in writing, with the name and contact information of another person, the agency shall notify the Contractor using the Contractor information provided by the Contractor in SRM if the agency needs the Contractor's assistance in any matter arising out of the Right to Know Law ("RTKL"). The Contractor shall notify the agency in writing of any change in the name or the contact information within a reasonable time prior to the change.

c. Upon notification from the Commonwealth that the Commonwealth requires the Contractor's assistance in responding to a RTKL request for records in the Contractor's possession, the Contractor shall provide the Commonwealth, within fourteen (14) calendar days after receipt of such notification, access to, and copies of, any document or information in the Contractor's possession which arises out of the Contract that the Commonwealth requests ("Requested Information") and provide such other assistance as the Commonwealth may request in order to comply with the RTKL. If the Contractor fails to provide the Requested Information within fourteen (14) calendar days after receipt of such request, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

d. The Commonwealth's determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. Contractor agrees not to challenge the Commonwealth's decision to deem the Requested Information a Public Record. 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, the Contractor will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL within seven (7) calendar days of receiving the request. If, upon review of the Contractor's written statement, the Commonwealth still decides to provide the Requested Information, Contractor will not challenge or in any way hold the Commonwealth liable for such a decision.

e. The Commonwealth will reimburse the Contractor for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

f. Contractor agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania Courts. The Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL. 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.

57. COSTARS PROGRAM (If elected by Contractor)

Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 ("Section 1902"), authorizes local public procurement units and state-affiliated entities (together, "COSTARS Purchasers") to participate in Commonwealth procurement contracts that DGS may choose to make available to COSTARS Purchasers. DGS has identified this Contract as one suitable for COSTARS Purchaser participation.

a. Only those COSTARS Purchasers registered with DGS may participate as COSTARS Purchasers in a Commonwealth contract. Several thousand COSTARS Purchasers are currently registered with DGS; therefore, the Contractor agrees to permit **only** to DGS-registered COSTARS members to make COSTARS purchases from this Contract.

(1) A "local public procurement unit" is:

- ☐ Any political subdivision;
- ☐ Any public authority;
- ☐ Any tax exempt, nonprofit educational or public health institution or organization;
- ☐ Any nonprofit fire, rescue, or ambulance company; and
- ☐ To the extent provided by law, any other entity, including a council of governments or an area government that expends public funds for the procurement of supplies, services, and construction.

(2) A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education.

b. COSTARS Purchasers have the option to purchase from a Contract awarded under this procurement, from any DGS contract established exclusively for COSTARS Purchasers in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that any prospective COSTARS Purchaser will place an order under this Contract, and that it is within the sole discretion of the registered COSTARS Purchaser whether to procure from this Contract or to use another procurement vehicle.

c. DGS is acting as a facilitator for COSTARS Purchasers who may wish to purchase under this Contract. Registered COSTARS Purchasers who participate in this Contract and issue purchase orders ("POs") to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a Purchaser unless substantial interests of the Commonwealth are involved.

d. Registered COSTARS Purchasers electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.

e. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.

(1) Until such time as DGS may provide the Contractor written notice of automated report filing, the Contractor shall either e-mail the reports to GS-PACostars@state.pa.us or send the reports on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101. When DGS has instituted automated reporting, the Contractor shall comply with DGS's written notice and instructions on automated Contract reports. DGS will provide these instructions with sufficient advance time to permit the Contractor to undertake automated reporting.

(2) The Contractor shall include on each report the Contractor's name and address, the Contract number, and the period covered by the report. For each PO received, the Contractor shall include on the report the name of each COSTARS-Registered Purchaser that has used the Contract along with the total dollar volume of sales to the specific Purchaser for the reporting period.

(3) DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

f. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at http://www.dgsweb.state.pa.us/COSTARSReg/RegForm.aspx.

(1) If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at http://www.dgsweb.state.pa.us/COSTARSReg/RegForm.aspx, where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently registered COSTARS member entities, please visit the COSTARS website.

(2) Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101
Telephone: 1-866-768-7827
E-mail GS-PACostars@state.pa.us

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA
BUSINESS ASSOCIATE APPENDIX

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

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

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

1. **Definitions.**

   a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including but not limited to, 45 CFR § 160.103.

   b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Privacy Regulations, including, but not limited to, 45 CFR § 160.103.

   c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Privacy Regulations, including, but not limited to 45 CFR § 164.501.

   d. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160—164.

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

3. **Stated Purposes For Which Business Associate May Use Or Disclose PHI.** The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided or made available from Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity which are specified in the PO and RFQ to which this Appendix applies, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity..

4. **Additional Purposes For Which Business Associate May Use Or Disclose Information.** In addition to the Stated Purposes, Business Associate may use or disclose PHI provided or made available from Covered Entity for the following additional purposes(s), unless the Covered Entity indicates otherwise:

   a. **Disclosure of Information for Management, Administration and Legal Responsibilities.** Business Associate is permitted to disclose PHI received from Covered Entity for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, provided the disclosure is required by law.

   b. **Data Aggregation Services.** Business Associate is also permitted to use or disclose PHI to provide data aggregation services, as that term is defined by 45 CFR § 164.501, relating to the health care operations of Covered Entity, if such services are included in the Scope of Work..

5. **BUSINESS ASSOCIATE OBLIGATIONS:**

   a. **Limits on Use and Further Disclosure Established By Appendix and Law.** Business Associate hereby agrees that the PHI provided or made available by Covered Entity shall not be further used or disclosed other than as permitted or required by the Appendix or as required by law.

   b. **Appropriate Safeguards.** Business Associate will establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Appendix.

   c. **Reports of Improper Use or Disclosure.** Business Associate hereby agrees that it shall report to Covered Entity Program Administrator **within two (2) days of discovery** any use or disclosure of PHI not provided for or allowed by this Appendix.

   d. **Subcontractors and Agents.** Business Associate hereby agrees that anytime PHI is provided or made available to any subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and must enter into a subcontract or contract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Appendix.

e. **Right of Access to PHI.** Business Associate hereby agrees to make available to an individual who is the subject of the PHI the right to access and copy that individual's PHI, at the request of the individual or of the Covered Entity, in the time and manner designated by the Covered Entity. This right of access shall conform with and meet all of the requirements of 45 CFR § 164.524 and 45 CFR § 164.504(e)(2)(ii)(E).

f. **Amendment and Incorporation of Amendments.** Business Associate agrees to make any amendments to PHI that have been agreed to by the Covered Entity, at the request of Covered Entity or of the individual, in the time and manner designated by Covered Entity, in accordance with 45 CFR § 164.526 and 45 CFR § 164.504(e)(2)(ii)(F).

g. **Provide Accounting.** Business Associate agrees to document and make available to Covered Entity or to the individual, any information necessary to provide an accounting of disclosures in accordance with 45 CFR § 164.528 and 45 CFR § 164.504 (e)(2)(ii)(G), within 30 days of receipt of a request for an accounting, in the manner designated by the Covered Entity.

h. **Access to Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Privacy Regulations. 45 CFR § 164.504(e)(2)(ii)(H).

i. **Return or Destruction of PHI.** At termination or expiration of the PO to which this Appendix is applicable, Business Associate hereby agrees to return or destroy all PHI received from, or created or received by Business Associate on behalf of, Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination or expiration of the PO to which this Appendix is applicable. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Appendix to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed. 45 CFR § 164.504(e)(2)(ii)(I).

j. **Mitigation Procedures.** Business Associate agrees to establish and to provide to the Program and Department upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Appendix or the HIPAA Privacy Regulations. 45 CFR § 164.530(f). Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Appendix.

k. **Sanction Procedures.** Business Associate agrees that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Appendix or the HIPAA Privacy Regulations. 45 CFR § 164.530(e)(1).

l. **Property Rights.** The PHI shall be and remain the property of Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of its relationship with the program or department.

m. **Grounds for Breach.** Any non-compliance by Business Associate with this Appendix or the HIPAA Privacy Regulations will automatically be considered to be grounds for breach pursuant to the underlying agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to report and cure the non-compliance.

n. **Termination by Commonwealth.** Business Associate authorizes termination of the underlying contract by the Commonwealth if the Commonwealth determines, in its sole discretion, that the Business Associate has violated a material term of this Appendix.

o. **Privacy Practices.** The Covered Entity shall provide and Business Associate shall immediately begin using, any form, including but not limited to, any for used for Consent, Notice of Privacy Practices, Accounting for Disclosures, or Authorization, designated as effective by the Program or Department at any given time. The Program and Department retain the right to change the applicable privacy practices and documents. The Business Associate must implement changes as soon as practicable, but not later than 45 days from the date of notice of the change.

6. OBLIGATIONS OF COVERED ENTITY:

a. **Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as changes to such notice.

b. **Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such change affect Business Associate's permitted or required uses and disclosures.

c. **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR § 164.522.

7. 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.

APPENDIX B

CHANGE NOTICE FORM

MASTER INFORMATION TECHNOLOGY SERVICES CONTRACT # 4400004480

Commonwealth of PA – (Agency)

&

(Contractor)

PO Number: _____

A. Introduction

This Change Notice to Purchase Order #_____ is made this _____ day of _____, 20__ ("Effective Date"), by and between the Commonwealth of PA –_____ ("Commonwealth") and _____ ("Contractor").

The Commonwealth and Contractor are responsible for promptly obtaining all required consents necessary to authorize the Contractor to perform the Services set forth in this Change Notice.

B. Project Overview and Tasks

Contractor will perform the following tasks (the "Project"):

(Contractor to insert exact description of work to be performed)

Commonwealth Requirements:

(Any requirements for the agency must be inserted here)

C. Time Estimates / Delivery Schedule

The Delivery Schedule for the Project will be as follows:

(Ensure dates are provided)

D. Change Notice Cost

Change Notice Cost: $

(Ensure an exact costing breakdown is provided)

E. SOW Acceptance

This Change Notice is acceptable to the Commonwealth and the Contractor. Intending to be legally bound, the Commonwealth and Contractor agree to modify the Statement of Work attached to the Purchase Order as outlined in this Change Notice.

Approved (date): _____
(entered by Commonwealth)

Contractor	**Commonwealth of PA – "Agency"**
_____	_____
Authorized Contractor Signature	Authorized Agency Signature
_____	_____
Printed Name	Printed Name
_____	_____
Title Date	Title Date

F. Project Completed and Accepted

The Project was completed in accordance with this Change Notice. The parties hereby accept as completed all work indicated in this Change Notice.

Approved (date): _____
(entered by Commonwealth)

Contractor	**Commonwealth of PA – "Agency"**
_____	_____
Authorized Contractor Signature	Authorized Agency Signature
_____	_____
Printed Name	Printed Name
_____	_____
Title Date	Title Date

PLEASE ATTACH HARD COPY OF PURCHASE ORDER
REFERENCING THIS CHANGE NOTICE

APPENDIX C

SOFTWARE LICENSE AGREEMENT

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

TERMS AND CONDITIONS

A. Definitions.

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

B. Grant and Scope of License

1. ***The parties agree that more than one agency of Licensee may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the Licensed Product. For purposes of this Agreement, Licensee includes any public procurement unit as defined by the Commonwealth Procurement Code, 62 Pa.C.S. §1901. The parties agree that, if the Licensee is a "Commonwealth Agency" as defined by the Commonwealth Procurement Code, 62 Pa.C.S. §103, the terms and conditions of this Agreement apply to any purchase of products made by Licensee, when the purchase document issued by Licensee includes a reference to this Agreement, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree that the terms of this Agreement supersedes and take precedence over the terms included in any purchase order, terms of any shrink wrap agreement included with the Licensed Product, terms of any click through agreement included with the Licensed Product, or any other terms purported to apply to the Licensed Product. If the Licensee is a public procurement unit as defined by the Commonwealth Procurement Code, 62 Pa.C.S. §1901 that is not a Commonwealth Agency, the fees set out in this Agreement apply to the purchase, but the Licensor must enter into a separate agreement with Licensee, which includes the same terms and conditions and this Agreement.***

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

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

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

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

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

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

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

C. Fees

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

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

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

D. Confidentiality

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

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

E. Term and Termination

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

2. In accordance with applicable regulations, either party may terminate this Agreement with written notice if the other party fails to comply with any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of receipt of notice of such breach, provided, however, that Licensor may not terminate this agreement for reasons of nonpayment.

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

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

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

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

F. Warranties and Disclaimer; Limitation of Liability; Indemnification

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

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

3. Licensor agrees to indemnify and defend Licensee and its elected and appointed officers, officials, employees and agents from and against any action, claim, demand, or liability, including reasonable attorney's fees and costs, arising from or relating to a claim the Licensed Product infringes upon any United States or foreign patents, copyrights, or trademarks of a third party and in any such suit or proceeding will satisfy any final award for such infringement, including costs. Licensee agrees to give Licensor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act* 71 P.S. § 732-101, *et. seq.*, the Office of Attorney General (OAG) has the sole authority to represent Licensee in actions brought against Licensee. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If OAG delegates the defense to Licensor, Licensee will cooperate with all reasonable requests of Licensor made in the defense of such suit. If OAG does not delegate its right of defense, Licensor may request that OAG seek to join Licensor as a third party. If OAG does not agree to seek to join Licensor as a third party, then Licensor may seek to intervene in the matter. If Licensor is not joined as a third party either through the OAG's joinder or through Licensor's intervention, there will be no contractual obligation on the part of Licensor to indemnify. No settlement which imposes any liability or damages of any kind on Licensee shall be made without Licensee's prior written consent, which shall not be unreasonably withheld or delayed. In all events, Licensee shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by Licensor that, in the event it requests that Licensee provide support to Licensor in defending any such claim, Licensor shall reimburse Licensee for all expenses (including attorneys' fees, if such are made necessary by Licensor's request) incurred by Licensee for such support Licensor shall pay all damages and

costs awarded therein against Licensee arising from Licensor's indemnification obligation under this paragraph. If information and assistance are furnished by Licensee at Licensor's written request, it shall be at Licensor's expense, but the responsibility for such expense shall be only that within Licensor's written authorization.

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

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

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

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

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

G. Maintenance and Support

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

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

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

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

H. Virus, Malicious, Mischievous or Destructive Programming

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

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

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

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

Licensee may, at any time, audit, by a means deemed appropriate by Licensee, any computing devices being used by representatives of Licensor to provide services to Licensee for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to Licensee's network until the proper installations have been made.

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

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

I. Background Checks

Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Licensee's IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4451&&PageID=458621&level=2&css=L2&mode=2. The background check must be conducted prior to initial access by an IT employee and annually thereafter.

Before Licensee will permit an IT Employee access to Licensee's facilities, Licensor must provide written confirmation to the office designated by the agency that the background check has been conducted. If, at any time, it is discovered that an IT Employee has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, Licensor shall not assign that employee to any Licensee facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Licensee facilities or systems, unless the agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of Licensor to comply with the terms of this paragraph may result in default of Licensor under its contract with Licensee.

J. Incorporation of Exhibits and Appendices

The following Appendices and Exhibits are attached hereto and incorporated into this Agreement by this reference:

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

K. Purchase Orders

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

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

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

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

5. The Licensee and Licensor specifically agree as follows:

i. No handwritten signature by Licensee shall be required in order for the Document to be legally enforceable.

ii. Upon receipt of a Document, Licensor shall promptly and properly transmit an acknowledgement in return. Any order which is issued electronically shall not be considered accepted by Licensor, nor give rise to any obligation to deliver on the part of Licensor, or give rise to any obligation to receive and pay for delivered products on the part of the Licensee, unless and until the electronic order has been acknowledged.

iii. The parties agree that no writing shall be required in order to make the order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Document or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Document or acknowledgement issued electronically, if introduced as

evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of genuine Documents or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement were not in writing or signed by the parties. A Document or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

L. General

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

M. Glossary

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

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

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

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

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

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

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

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

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

Appendix A

A. Licensed Product:

The Licensed Product includes _____.

B. Installation Fees:

Licensor will assist Licensee with all installations and configurations, the costs of which are included in the License Fees and consist of Technical and Project Management support in the amount specified below. Additional hours may be purchased in accordance with Licensor's current Commercial Price List for such services.

Project Management/Technical Implementation Hours	**[Fill in hours]**

C. License and Other Fees:

Licensor acknowledges the License Fee will be paid to Licensor by Licensee as set forth in Table 1 or Table 2 of Appendix F of the Agreement. The License Fee includes _____ as outlined in **Section D**, below.

D. Support Fees and Services:

Support Fees for the Licensed Product are included in the License Fees are set forth in Section C **of this Appendix A and consist of** _____ **for a period of** [insert years,] **years following the Effective Date** ("*Initial Support Term*"). **The Support Services shall be renewable beyond the Initial Support Term according to the provisions set forth in** Section E **of this Appendix.**

Subject to Licensee's payment of any outstanding License Fees, Licensor will make the following Support Services available to the Licensee:

Standard Maintenance and Support Services

The Licensee shall receive **[Insert Hours]** hours of Licensee support by phone, email, or if necessary, site visits free-of-charge per year. Time shall be debited in quarter-hour increments. Requests due to failure of or defect in the Licensed Product shall not be charged. Except for defects in the Licensed Product, requests over the allocated hour limit shall be charged on a time and materials basis at the then current rate published in Licensor's Commercial Price List, currently a rate of **[insert current rate]** per hour in quarter-hour increments plus travel expenses. A request shall only be billable or count towards the allocated free-of-charge hours if Licensor is able to resolve the problem.

Standard updates are included in the Service Fee and will be delivered to the Licensee electronically, in a manner agreed upon by the parties (e.g., email attachment, web download,) or by sending a CD-Rom. Licensee may request that a Licensor technician install the Updates, either on-site, or remotely, in which case, such support shall be offered to Licensee on a time and materials basis at the then current rate published in Licensor's Commercial Price List, currently a rate of **[insert current rate]**per hour in quarter-hour increments plus travel expenses as described in **Attachment 1**.

Licensee may at its option allow Licensor technical staff to log into the Licensee's system remotely in order to install Updates or to resolve technical problems.

Enhanced Maintenance and Support Services

The terms of the Enhanced Maintenance and Support Services are set forth in **Appendix B** of this Agreement.

E. Renewal of Support Services

The Licensee may renew the Support Services set forth in **Section D** of this Appendix, including Standard Maintenance and Support and Enhanced Maintenance and Support (if applicable), by paying an Annual Support Services Renewal Fee each year subsequent to the Initial Support Term. The Annual Support Services Renewal Fee shall be due within thirty (30) days of the Annual Support Services Renewal Date and Licensee's receipt of a proper invoice. The Annual Support Services Renewal Date shall be the same day each year, beginning the day one (1) year following the Effective Date.

The Support Services Renewal Fee for the first year following the Initial Support Term shall be as follows:

Standard Maintenance and Support: **[$$$$$]** Enhanced Maintenance and Support: **[$$$$$$]**

The cost for renewals of Standard Maintenance and Support Services and Enhanced Maintenance and Support Services, if applicable, beyond the first year following the Initial Support Term shall be at the prevailing price at the time of purchase, provided, however, that it may not exceed the previous year cost for renewal by more than 3%.

Appendix B

Enhanced Maintenance and Support Services

NOTE: Enhanced Maintenance and Support Services applicable only if elected by Licensee in accordance with **Appendix A**, **Section D** of the Contract.

SECTION 1: Statement of Work

The Licensee has requested additional support services related to the Licensed Product. **Appendix A, Section D** of the Contract provides for certain support fees and support services, and additional services.

As part of the Enhanced Maintenance and Support Services, Licensor shall make several contacts available to the Licensee in three ways, as follows:

Primary Technical Contact:
Primary Number:
Secondary Number:
Primary email:

Secondary Technical Contact:
Primary Number:
Secondary Number:
Primary email:

Lead Account Contact:
Primary Number:
Secondary Number:
Primary email:

Secondary Account Contact:
Primary Number:
Secondary Number (pager):
Primary email:

During normal business hours, Monday through Friday from 8:30 AM EST to 5:30 PM EST Licensee shall use the primary email address to contact an individual, and/or the primary number. For after hour, weekend and holiday support, Licensee shall call _____ or e-mail _____

In order to deal efficiently with multiple problems reported to Licensor by the Licensee, a problem ticket will be created for each problem and one of 3 priority codes will be allocated.

- Level 1: Major Impact - Directly causing a total loss of the Licensee's ability to Use the Licensed Product
- Level 2: Significant Impact - Directly reducing a number of features of the Licensed Product
- Level 3: No Immediate Impact - causing only inconvenience to Licensee, and may include scheduled network changes to Licensee's network architecture

The target maximum times for response for each level are:

Level 1: as soon as possible, targeting a response time of 1 hour (during normal business hours) or 3 hours (during non-business hours) from initial notification to Licensor by the Licensee

Level 2: 24 hours

Level 3: 3 days

SECTION 2. Summary of Enhanced Maintenance and Support:

Licensor has used its experience and best estimates available to provide a summary of various enhanced maintenance and support services as follows:

This appendix B shall remain valid until superseded by a revised addendum mutually endorsed by both parties. It shall be reviewed every six months.

Appendix C

Hardware Specifications (if any)

Appendix D

Service Level Agreement

THE OBLIGATIONS OF LICENSOR UNDER THIS SECTION ARE MATERIAL. LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Service Levels

Provided Licensee maintains and supplies remote access capability to Licensor's system, Licensor will use commercially reasonable efforts to correct and/or provide a work-around for any Software error, or hardware error if Licensor-provided hardware, reported by Licensee in accordance with the priority level reasonably assigned to such error by Licensee and the associated response obligations set forth below:

Priority 1
Urgent
Defined as a product Error that renders Licensor's system inoperative or causes the system to fail. Licensor promptly initiates the following procedures: (1) initial response to Licensee within thirty (30) minutes; (2) performs escalation procedures as reasonably determined by Licensor's support team (3) provides a work-around solution and/or Error correction within twenty-four (24) hours from initial response.

Priority 2
Minor – system remains operative
Defined as a product Error that causes only minor impact on the use of Licensor's system. Licensor promptly initiates the following procedures: (1) initial response to Licensee within thirty (30) minutes; (2) performs escalation procedures as reasonably determined by Licensor's support team (3) provides a fix for the Error no later than the next scheduled major release of Licensor's products.

If Licensee experiences a Priority 1 Error and Licensor's products remain inoperative for more than the amount of time specified in the table below during a single calendar month, Supplier will credit the applicable percentage of any prepaid support fees ("SLA Credit") for that calendar month to Licensee's account.

Unavailable Hours	SLA Credit
	0%
	25%
	50%
	100%

The notification of an Error to Licensor (or by Licensor) shall represent the start time for measuring unavailable hours. Service outage end time is based on Licensor's delivery of an acceptable work-around solution and/or Error correction or by Licensor's determination and communication to Licensee that the reported Error qualifies as a Priority 2 error as defined above.

If Licensee experiences a Priority 2 error and Licensor does not resolve the error for more than the amount of time specified in the table below during a single calendar month, Supplier will credit the applicable percentage of any prepaid support fees ("SLA Credit") for that calendar month to Licensee's account.

Unavailable Hours	SLA Credit
	0%
	25%
	50%
	100%

Appendix E

Pricing Tables

Table 1 – Commonwealth Pricing for State Agencies, Boards and Commissions under the Governor's Jurisdictions

Appendix F

Table 2 – COSTAR's and Organizations Not Covered under Appendix E - Table 1

Appendix G

Electronic Purchase Orders

Exhibit A

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

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

a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract an account of gender, race, creed, or color.

c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. The Contractor 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.

e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

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

Exhibit B

CONTRACTOR INTEGRITY PROVISIONS

a. For purposes of this clause only, the words "confidential information," "consent", "contractor," "financial interest," and "gratuity" shall have the following definitions.

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

2) **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.

3) **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.

4) **Financial interest** means:

a) Ownership of more than a five percent interest in any business; or

b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

b. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.

d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth,

e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.

g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or farm which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.

k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

Exhibit C

CONTRACTOR RESPONSIBILITY PROVISIONS

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

b. The Contractor also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.

c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at **http://www.dgs.state.pa.us** or contacting the:

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

Exhibit D

Tax Offset Clause

The Contractor authorizes the Commonwealth to offset any past due state and local tax liabilities of the Contractor relating to amounts other than payable in the ordinary course and other than in good faith dispute or under contest or appeal by Contractor, as well as, any other amount due to the Commonwealth from the Contractor, against any payment due to the Contractor under this or any other contract with the Commonwealth.

Exhibit E

AMERICANS WITH DISABILITIES ACT

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, in performing its services under this Contract, it shall not cause any individual with a disability to be excluded from performance of the Contractor's services in this Contract on the basis of the disability. As a condition of accepting this Contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title I of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors. For purposes of clarity, the foregoing shall not be understood to the utility or functionality of any software to be provided by the Contractor under this Contract.

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph a above.

BOTH PARTIES HAVE READ AND AGREE TO BE LEGALLY BOUND BY ALL OF THE FOLLOWING TERMS AND CONDITIONS, ALL OF WHICH ARE INCORPORATED FULLY INTO THIS AGREEMENT.

LICENSOR

BY: _____

Name:

Title:

Date:

The Commonwealth of Pennsylvania

BY: _____

CERTIFICATION AS TO AVAILABILITY OF FUNDS

_____
COMPTROLLER

APPROVED AS TO FORM AND LEGALITY

_____
OFFICE OF CHIEF COUNSEL

_____
OFFICE OF GENERAL COUNSEL

_____
OFFICE OF ATTORNEY GENERAL

Master Information Technology (IT) Services Invitation to Qualify (ITQ)
Amendment #1 to Contract Terms and Conditions

The Master IT Services ITQ Contract, 4400004480, has been amended to include terms and conditions related to the Federal American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. The amendment, titled "ARRA Addendum," follows:

The following ARRA Addendum has been added to the Master IT Services ITQ Contract Terms and Conditions on October 2, 2009:

ARRA ADDENDUM

Implementation of the American Recovery and Reinvestment Act of 2009

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, ("ARRA") was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

This agreement addendum addresses additional requirements applicable to ARRA funds. Subject to further guidance by the applicable Federal awarding agency, the following terms and conditions are consistent with the mandatory requirements for agreements funded by ARRA.

Be advised that ARRA funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of ARRA and related guidance. For projects funded by other sources in addition to ARRA funds, Contractors must keep separate records for ARRA funds and must ensure those records comply with the requirements of the ARRA.

The federal Government has not fully developed the implementing instructions of ARRA, particularly concerning specific procedural requirements for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of ARRA. In the event there is any inconsistency between these ARRA requirements and current award terms and conditions, the ARRA requirements will take precedence.

Contractor agrees that in consideration of receipt of Federal ARRA Funds, it will comply with all of the terms, conditions, requirements and limitations set forth below:

Definitions

A. "ARRA funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

B. "Contractor" is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

ARRA Terms & Conditions

1. **Revisions to Requirements. Contractor acknowledges that this Addendum may be revised pursuant to ongoing guidance from the relevant Federal or Commonwealth agency regarding requirements for ARRA funds. Contractor agrees to abide by any such revisions upon receipt of written notification from the Commonwealth of the revisions, which will automatically become a material part of this Addendum, without the necessity of either party executing any further instrument.**

2. Reporting Requirements. Not later than 5 days after the end of each calendar quarter, or more frequently as directed by the Commonwealth, the Contractor shall submit a report to the Commonwealth that contains:

(a) The total amount of ARRA funds received;

(b) The amount of ARRA funds received that were expended or obligated to projects or activities;

(c) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:

- i) the name of the project or activity;
- ii) a description of the project or activity;
- iii) an evaluation of the completion status of the project or activity;
- iv) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
- v) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment;

(d) Detailed information on any subcontracts or subgrants awarded by the Contractor must include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget;

(e) If required by the Commonwealth, Contractor agrees to separately identify the expenditures for each award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the Contractor reports required by ARRA;

(f) If required by the Commonwealth, Contractor shall submit backup documentation for expenditures of ARRA funds including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Commonwealth.

3. Registrations and Identification Information

(a) Contractor must maintain current registrations in the Center Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(b) If applicable, the Contractor agrees to separately identify to each sub-contractor and document at the time of award of contract or approval of application and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds.

4. Flow Down Requirement. Contractor must include these ARRA Terms and Conditions in any subcontract.

5. Prohibition on Use of Funds. No ARRA funds may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or any other items prohibited by ARRA.

6. Required Job Posting. To ensure Pennsylvanians have the utmost opportunity to be hired for jobs created through the receipt of ARRA funding, all Contractors shall post jobs they create or seek to fill as a result of receiving ARRA funding to the PA CareerLink® system at www.pacareerlink.state.pa.us . Contractors can locate their local PA CareerLink® office through the same website or by calling 1-866-858-2753. Staff at local PA CareerLinks® can assist Contractors with posting positions and explain how to retrieve resumes or applications within the system.

7. Wage Rate Requirements. Section 1606 of ARRA requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

8. Whistleblower Provision.

(a) An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

(1) gross mismanagement of an agency contract or grant relating to covered funds;
(2) a gross waste of covered funds;
(3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
(4) an abuse of authority related to the implementation or use of covered funds; or
(5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate U.S. Office of the Inspector General.

(c) Any employer receiving covered funds under ARRA, shall post notice of the rights and remedies as required by Section 1553 of ARRA. See www.recovery.gov.

9. Duty to Report Fraud. Contractors and subcontractors shall promptly refer to the U.S. Office of Inspector General and Commonwealth Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person will or has: 1) submitted a false claim under the False Claims Act; 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, ethics or similar misconduct involving ARRA funds; or 3) engaged in misuse, gross waste, gross mismanagement or abuse of authority related to the use or award of ARRA funds.

10. Environmental and Preservation Requirements. The Contractor shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by the awarding Federal agency to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, the Clean Air Act, the Federal Water Pollution and Control Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Contractor to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. The Contractor shall not undertake any project having the potential to impact EHP resources without the prior approval of the awarding Federal agency, including but not limited to communication towers, physical security enhancements, new construction, and modification to buildings that are 50 years old or greater. The Contractor must comply with all conditions placed on the project as a result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Contractor must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Contractor will immediately cease construction in that area and notify the awarding Federal agency and the Pennsylvania Historical and Museum Commission. Any construction activities that have been initiated prior to the full environmental and historic preservation review will result in a non-compliance finding.

11. No Contracts with Debarred or Suspended Entities. The Contractor shall not enter into any contract or subcontract with any party that has been debarred or suspended from either:

(a) contracting with the Federal Government or the Commonwealth; or

(b) participating in any Federal or Commonwealth assistance programs.

12. Prohibition on Lobbying.

(a) The Contractor covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any Agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Agreement.

(b) Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) and any applicable regulations are incorporated by reference and the Contractor agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

13. Nondiscrimination Provisions. The Contractor covenants and agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this Agreement. Accordingly, and to the extent applicable, the Contractor covenants and agrees to comply with the following:

(a) On the basis of race, color or national origin, in Title V I of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by applicable regulations.

(b) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 (3 CFR, 1964-1965 Comp. pg. 339), as implemented by applicable regulations.

(c) On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by applicable regulations.

(d) On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by applicable regulations.

(e) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by applicable regulations.

14. DBE Provisions. The Contractor shall comply with all applicable federal Disadvantaged Business Enterprises (DBE) requirements related to DBE programs. In the event there are no federal DBE programs applicable to this agreement, the Contractor shall comply with the Pennsylvania Department of General Services (DGS) policy for contracting (http://www.portal.state.pa.us/portal/server.pt/community/bureau_of_minority_and_women_business_opportunities/1358). In the event this agreement is a grant agreement not covered by federal DBE requirements, the Contractor shall use reasonable and good faith efforts to solicit and utilize DGS-certified Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) for those contracting, subcontracting and purchase opportunities that exist and report utilization to DGS.

15. Access to Records. Contractor agrees that with respect to each agreement using, in whole or in part, ARRA funds, any representative of an appropriate U.S. Inspector General appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the U.S. Comptroller General is authorized:

(a) to examine any records of the Contractor, any of its subcontractors, or any state or local agency administering such contract that pertain to, and involve transactions relating to the contract; and

(b) to interview any officer or employee of the contractor, subcontractor or agency regarding such transactions.

16. Records Retention. The Contractor shall retain all such contract records intact in a form, if not original documents, as may be approved by the Federal Government, for at least three (3) years following termination of a project funded by ARRA or for such longer period of time as required by the Commonwealth.

17. Access to Information. This contract and any records or expenditures related thereto may be subject to disclosure under the Pennsylvania Right to Know Law 65 P.S. 67.101 *et seq.* and the Freedom of Information Act, 5 U.S.C. §552.

18. Compliance. The Contractor shall comply with all applicable laws, regulations and program guidance. A **non-exclusive** list of statutes, regulations and/or guidance commonly applicable to Federal funds follows:

General

- Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.; 32 CFR part 26, Subpart B
- Copeland "Anti-Kickback Act", 18 U.S.C. Section 874; 29 CFR Part 3
- Contract Work Hours and Safety Standards Act, 40 U.S.C. §§327-330; 29 CFR Part 5

- Americans with Disabilities Act of 1990, as amended; 42 U.S.C. Chapter 126; 28 C.F.R. §35.101 et seq.

Administrative Requirements

- OMB Circular A-102, State and Local Governments (10/07/94, amended 08/28/07) (44 CFR Part 13)
- OMB Circular A-110, Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (11/19/93, amended 09/30/99) (2 CFR Part 215)

Cost Principles

- OMB Circular A-87, State and Local Governments (05/10/04) (2 CFR Part 225)
- OMB Circular A-21, Educational Institutions (5/10/04) (2 CFR Part 220)
- OMB Circular A-122, Non-Profit Organizations (5/10/04) (2 CFR Part 230)

Audit Requirement

- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (6/24/97, includes revisions published in the Federal Register 6/27/03)

19. Buy American - Use of American Iron, Steel, and Manufactured Goods.

Please use subsections I and II in the alternative as detailed below:

I. The following shall apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work when:

- ***the estimated value of the project is less than $7,443,000; or***
- ***the procurement is being conducted by local governments and municipalities; or***
- ***the specific item being procured is not covered under the World Trade Organization Agreement on Government Procurement or other international procurement agreement. (e.g. mass transit or highway procurements, dredging service procurements, or national defense-related procurements).***

(a) *Requirement.* All iron, steel, and other manufactured goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United States and the Commonwealth of Pennsylvania.

(b) *Definitions.*

1. "Building or work" means construction, maintenance, alteration, or repair. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

2. "Construction material" means an article, material, or supply brought to the construction site by the recipient, subrecipient or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

3. "Domestic construction material" means:

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States.

4. "Foreign construction material" means a construction material other than a domestic construction material.

5. "Manufactured good or product" means a good or product used as construction material in a project that is the result of processing materials by way of machinery and/or labor that produce a substantially different article. Where the basic character, function, or kind of material processed remains the same, it is not manufactured.

6. "Manufactured construction material" means any construction material that is not unmanufactured construction material."

7. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which, as defined in this award term, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

8. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

9. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been:

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

10. "United States" means the 50 States, the District of Columbia, and outlying areas including:

(i) Commonwealths: (*a*) Puerto Rico; (*b*) The Northern Mariana Islands;

(ii) Territories: (*a*) American Samoa; (*b*) Guam; (*c*) U.S. Virgin Islands; and

(iii) Minor outlying islands: (*a*) Baker Island; (*b*) Howland Island; (*c*) Jarvis Island; (*d*) Johnston Atoll; (*e*) Kingman Reef; (*f*) Midway Islands; (*g*) Navassa Island; (*h*) Palmyra Atoll; (*i*) Wake Atoll.

(c) *Domestic preference.*

1. This award term and condition implements Section 1605 of ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States.

2. The recipient shall use only domestic construction material in performing this project, except as provided in paragraph (c)(3) and (c)(4) of this term and condition.

3. This requirement does not apply to the construction material or components listed by the Government as follows:

_____

[*Award official to list applicable excepted materials or indicate "none"*]

4. The award official may add other foreign construction material to the list in paragraph (c)(3) of this term and condition if the Federal government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of ARRA to a particular construction material would be inconsistent with the public interest.

(d) *Request for determination of inapplicability of Section 1605 of ARRA.*

1. (i) Any request to use foreign construction material in accordance with paragraph (c)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(*a*) A description of the foreign and domestic construction materials;
(*b*) Unit of measure;
(*c*) Quantity;
(*d*) Price;
(*e*) Time of delivery or availability;
(*f*) Location of the construction project;
(*g*) Name and address of the proposed supplier; and
(*h*) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (e) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after award shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

2. If the Federal government determines after award that an exception to section 1605 of ARRA applies, the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

3. Unless the Federal government determines that an exception to section 1605 of ARRA applies, use of foreign construction material is noncompliant with section 1605 of ARRA.

(e) *Data.* To permit evaluation of requests under paragraph (d) of this clause based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

1. [*List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*]
2. [*Include other applicable supporting information.*]
3. [* *Include all delivery costs to the construction site.*]

II. ***The following shall, in addition to the Pennsylvania Steel Products Procurement Act, 73 P.S. Sections 1881-1887, apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work with an estimated value of $7,443,000 or more:***

(a) *Requirement.* All iron and steel used in the construction, reconstruction, alteration or repair of a public building or public work must be manufactured in the United States. All other manufactured goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States or a designated country. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United States and the Commonwealth of Pennsylvania.

(b) *Definitions.* As used in this award term and condition:

1. "Building or work" includes, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

2. "Construction material" means iron, steel, and other manufactured goods used as construction material brought to the construction site by the recipient, subrecipient, or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

3. "Designated country" means: Aruba, Australia, Austria, Belgium, Bulgaria, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

4. "Designated country construction material" means a construction material that

(i) Is wholly the growth, product, or manufacture of a designated country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

5. "Domestic construction material" means:

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States.

6. "Foreign construction material" means a construction material other than a domestic construction material.

7. "Manufactured construction material" means any construction material that is not unmanufactured construction material."

8. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which, as defined in this Subpart, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

9. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

10. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

11. "United States" means the 50 States, the District of Columbia, and outlying areas.

(c) *Construction materials.*

1. This award term and condition implements

(i) Section 1605(a) of the American ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of ARRA do not apply to designated country construction materials. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used as construction material in the project are

from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services, or where the iron, steel or manufactured goods used as construction material in the project are from a least developed country. This obligation shall only apply to projects with an estimated value of $7,443,000 or more.

2. The recipient shall use only domestic or designated country construction material in performing the work funded in whole or part with this award, except as provided in paragraphs (c)(3) and (c)(4) of this term and condition.

3. The requirement in paragraph (c)(2) of this term and condition does not apply to the construction materials or components listed by the Government as follows:

_____

[*Award official to list applicable excepted materials or indicate "none"*]

4. The award official may add other construction material to the list in paragraph (c)(3) of this award term and condition if the Federal government determines that:

(i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of ARRA to a particular construction material would be inconsistent with the public interest.

(d) *Request for determination of inapplicability of section 1605 of ARRA or the Buy American Act.*

1. (i) Any recipient request to use foreign construction material in accordance with paragraph(c)(4) of this term and condition shall include adequate information for Government evaluation of the request, including—

(*a*) A description of the foreign and domestic construction materials;
(*b*) Unit of measure;
(*c*) Quantity;
(*d*) Price;
(*e*) Time of delivery or availability;
(*f*) Location of the construction project;
(*g*) Name and address of the proposed supplier; and
(*h*) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph(c)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (e) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after award shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

2. If the Federal government determines after award that an exception to section 1605 of ARRA applies and the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in paragraph (c)(4)(i) of this term and condition.

3. Unless the Federal government determines that an exception to the section 1605 of ARRA applies, use of foreign construction material other than designated country construction material is noncompliant with the applicable Act.

(e) *Data.* To permit evaluation of requests under paragraph (d) of this clause based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[*List name, address, telephone number ,email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*]
[*Include other applicable supporting information.*]
[* *Include all delivery costs to the construction site).*]

Master Information Technology (IT) Services Invitation to Qualify (ITQ)
Amendment #2 to Contract Terms and Conditions

The Master IT Services ITQ Contract, 4400004480, has been amended to include terms and conditions related to cooperative purchasing. No action is required to indicate acceptance of the contract amendment. If you do not want to be bound by the amendment, please notify DGS of your objection in writing by contacting the ITQ Program Office no later than October 8, 2010. By refusing to accept the amendment, your company will be removed from the list of qualified ITQ Contractors and will no longer be qualified to participate in this Contract.

The following Section #58 has been added to the Master IT Services ITQ Contract Terms and Conditions on September 24, 2010:

58. COOPERATIVE PURCHASING.

This Contract allows other states or similar external procurement activities ("cooperative purchasers") to participate in the Contract through a cooperative purchase in accordance with the provisions and definitions set forth in Chapter 19 of the *Commonwealth Procurement Code,* 62 Pa.C.S. § 1901, et seq.

a. **General.** A participating addendum shall be required for each cooperative purchase arrangement and shall incorporate the terms and conditions of this Contract. A Contractor shall not be required to enter into any participating addendum.

b. **Additional Terms.**

1) A participating addendum may include new or additional terms that are required by law or mutually agreed upon that clarify ordering procedures specific to a cooperative purchase arrangement.

2) The construction and effect of any participating addendum shall be governed by and construed in accordance with the laws governing the cooperative purchaser.

3) If an additional term in a cooperative purchase arrangement that is requested by the cooperative purchaser will result in an increased cost to the Contractor, the Contractor may adjust its pricing up or down accordingly.

c. **Price Adjustment.**

1) For any costs affecting the percent markup that the Contractor will or will not incur or that differ from costs incurred or not incurred in the fulfillment of this Contract, the Contractor shall adjust its pricing up or down accordingly. These costs may include, but not be limited to:

- ☐ State and local taxes;
- ☐ Unemployment and workers compensation fees;
- ☐ E-commerce transaction fees; and
- ☐ Costs associated with additional terms, established pursuant to this section.

2) The Contractor's pricing for each cooperative purchase arrangement shall be firm and fixed for the duration of the initial term of the Contract. After the initial term of the Contract, if the Contract is renewed, the Contractor's pricing may be adjusted up or down based on market conditions only with the mutual agreement of both the Contractor and the cooperative purchaser.

d. **Usage Reports on Cooperative Purchasing.** The Contractor shall furnish to the Contracting Officer an electronic quarterly usage report, preferably in spreadsheet format no later than the fifteenth calendar day of the succeeding calendar quarter. Reports shall be e-mailed to the Contracting Officer for the Contract. Each report shall indicate the name and address of the Contractor, contract number, period covered by the report, the name of the cooperative purchaser that has used the Contract and the total volume of sales attributable to that purchase for the reporting period.

Electronic Copy of Participating Addendum. The Contractor, upon request of the Contracting Officer, shall submit one (1) electronic copy of the participating addendum to the Contracting Officer within ten (10) days after request.

Master Information Technology (IT) Services Invitation to Qualify (ITQ)
Amendment #3 to Contract Terms and Conditions

The Master IT Services ITQ Contract, 4400004480, has been amended to include terms and conditions for an option to extend the term of the contract. No action is required to indicate acceptance of the contract amendment. If you do not want to be bound by the amendment, please notify the Office of Administration, Bureau of IT Procurement of your objection in writing by contacting the ITQ Administrator no later than July 1, 2012. By refusing to accept the amendment, your organization will be removed from the list of qualified ITQ contractors and will no longer be qualified to participate in this contract.

The following changes have been made to the Master IT Services ITQ Contract Terms and Conditions on February 1, 2012:

Paragraph 10 of the Contract is hereby amended to read as follows:

10. TERM OF CONTRACT
The term of the Contract shall commence on the Effective Date and shall end when terminated by the Commonwealth pursuant to Paragraph 23. Termination.

Paragraph 11 of the Contract is hereby amended to read as follows:

11. OPTION TO EXTEND
Intentionally left blank.