

REQUEST FOR PROPOSALS FOR

Electronic Funds Transfer

ISSUING OFFICE

Pennsylvania Department of Corrections

RFP NUMBER

RFP #14 – IGWF - 93

DATE OF ISSUANCE

2-18-15

REQUEST FOR PROPOSALS FOR

RFP #14 – IGWF - 93

TABLE OF CONTENTS

CALENDAR OF EVENTS	iii
Part I—GENERAL INFORMATION	1-8
Part II—PROPOSAL REQUIREMENTS	9-14
Part III—CRITERIA FOR SELECTION	15-19
Part IV—WORK STATEMENT	20-35

APPENDIX A, IT CONTRACT TERMS AND CONDITIONS

APPENDIX B, DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

APPENDIX C, COST PROPOSAL SHEET

APPENDIX D, PROPOSAL COVER SHEET

APPENDIX E, SMALL DIVERSE BUSINESS LETTER OF INTENT

APPENDIX F, EFT TRANSACTION AND USE DATA PADO

**APPENDIX G, REQUIREMENTS FOR NON-COMMONWEALTH HOSTED
APPLICATIONS/SERIVES**

APPENDIX H, SERVICE LEVEL AGREEMENTS

APPENDIX I, PAYMENT CARD INDUSTRY (PCI) SECURITY STANDARDS

CALENDAR OF EVENTS

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

Activity	Responsibility	Date
Deadline to submit Questions via email to rilgenfrit@pa.gov	Potential Offerors	3-3-15 4:00 PM
Pre-proposal Conference—Location. Department of Corrections, 1920 Technology Parkway, Mechanicsburg, PA 17050	Issuing Office/Potential Offerors	3-11-15 9:30 AM
Answers to Potential Offeror questions posted to the DGS website http://www.dgsweb.state.pa.us/RTA/Search.aspx no later than this date.	Issuing Office	3-19-15
Please monitor website for all communications regarding the RFP.	Potential Offerors	
Sealed proposal must be received by the Issuing Office at Department of Corrections, Bureau of Administration, 1920 Technology Parkway, Mechanicsburg, PA 17050	Offerors	4-15-15 2:00 PM

PART I

GENERAL INFORMATION

I-1. Purpose. This request for proposals (RFP) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the **Department of Corrections’** consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for **Electronic Funds Transfer** for inmate accounts (“Project”).

I-2. Issuing Office. The **Department of Corrections, Bureau of Administration** (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be **Russ Ilgenfritz, 1920 Technology Parkway, Mechanicsburg, PA 17050, rilgenfrit@pa.gov**, the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer.

I-3. Scope. This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

I-4. Problem Statement. PADOc wishes to continue its involvement in Electronic Funds Transmittal to inmates with a proven vendor who can provide these established services and others related services under one umbrella. Other services to be included in this RFP include a money order lock box service to tie in with the electronic funds transmittal system and an inmate release card program to eliminate the practice of giving checks to inmates upon their release. Additional detail is provided in **Part IV** of this RFP.

I-5. Type of Contract. It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a **No-Fee Contract** containing the IT Contract Terms and Conditions as shown in **Appendix A**. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.

I-6. Rejection of Proposals. The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.

I-7. Incurring Costs. The Issuing Office is not liable for any costs an Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

I-8. Pre-proposal Conference. The Issuing Office will hold a Pre-proposal conference as specified in the Calendar of Events. The purpose of this conference is to provide opportunity for clarification of the RFP. Offerors should forward all questions to the Issuing Office in accordance with **Part I, Section I-9** to ensure adequate time for analysis before the Issuing Office provides an answer. Offerors may also ask questions at the conference. In view of the

limited facilities available for the conference, Offerors should limit their representation to **two (2)** individuals per Offeror. The Pre-proposal conference is for information only. Any answers furnished during the conference will not be official until they have been verified, in writing, by the Issuing Office. All questions and written answers will be posted on the Department of General Services' (DGS) website as an addendum to, and shall become part of, this RFP. **Attendance at the Pre-proposal Conference is optional.**

I-9. Questions & Answers. If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line "RFP #14 – IGWF - 93 Question"**) to the Issuing Officer named in **Part I, Section I-2** of the RFP. If an Offeror has questions, they must be submitted via email **no later than** the date indicated on the Calendar of Events. The Offeror shall not attempt to contact the Issuing Officer by any other means. The Issuing Officer shall post the answers to the questions on the DGS website by the date stated on the Calendar of Events. An Offeror who submits a question *after* the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its proposal will not be responsive or competitive because the Commonwealth is not able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a responsive or competitive proposal. When submitted after the deadline date for receipt of questions indicated on the Calendar of Events, the Issuing Officer *may* respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office decides to respond to a non-administrative question *after* the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided to all Offerors through an addendum.

All questions and responses as posted on the DGS website are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section I-10**. Each Offeror shall be responsible to monitor the DGS website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described on the DGS website

I-10. Addenda to the RFP. If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the DGS website at <http://www.dgsweb.state.pa.us/RTA/Search.aspx>. It is the Offeror's responsibility to periodically check the website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to the website as an addendum to the RFP.

I-11. Response Date. To be considered for selection, hard copies of proposals must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office will **not** accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next

Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. The Issuing Office will reject, unopened, any late proposals.

I-12. Proposals. To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in **Part II**, providing **seven (7) paper copies with one (1) marked original of the Technical Submittal and one (1) paper copy of the Cost Submittal and two (2) paper copies of the Small Diverse Business (SDB) participation submittal.** In addition to the paper copies of the proposal, Offerors shall submit two **complete and exact** copies of the entire proposal (Technical, Cost and SDB submittals, along with all requested documents) on CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. The electronic copy must be a mirror image of the paper copy and any spreadsheets must be in Microsoft Excel. The Offerors may not lock or protect any cells or tabs. Offerors should ensure that there is no costing information in the technical submittal. Offerors should not reiterate technical information in the cost submittal. The CD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD or Flash drive before it was submitted. The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the Proposal Cover Sheet (Appendix **D** to this RFP) and the Proposal Cover Sheet is attached to the Offeror's proposal, the requirement will be met. For this RFP, the proposal must remain valid for **120** days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

Also include seven (7) copies of your company's video demonstration (See Part II Section II-3) on a separate CD/DVD media along with your technical submittal. No flash drive will be accepted.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by written notice received at the Issuing Office's address for proposal delivery prior to the exact hour and date specified for proposal receipt. An Offeror or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements.

I-13. Small Diverse Business Information. The Issuing Office encourages participation by small diverse businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use small diverse businesses as subcontractors and suppliers.

A Small Diverse Business is a DGS-verified minority-owned business, woman-owned business, veteran-owned business or service-disabled veteran-owned business.

A small business is a business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$7 million in gross annual revenues for building design, \$20 million in gross annual revenues for sales and services and \$25 million in gross annual revenues for those businesses in the information technology sales or service business.

Questions regarding this Program can be directed to:

Department of General Services
Bureau of Small Business Opportunities
Room 611, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: gs-bsbo@pa.gov
Website: www.dgs.state.pa.us

The Department's directory of BSBO-verified minority, women, veteran and service disabled veteran-owned businesses can be accessed from: [Searching for Small Diverse Businesses](#).

I-14. Economy of Preparation. Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.

I-15. Alternate Proposals. The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. **The Issuing Office will not accept alternate proposals.**

I-16. Discussions for Clarification. Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

I-17. Prime Contractor Responsibilities. The contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. The Issuing Office will consider the selected Offeror to be the sole point of contact with regard to contractual matters.

I-18. Proposal Contents.

- A. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions

as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

- B. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. If financial capability information is submitted in response to Part II of this RFP such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-19. Best and Final Offers.

- A. While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining "best and final offers." To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:
 - 1. Schedule oral presentations;
 - 2. Request revised proposals;
 - 3. Conduct a reverse online auction; and
 - 4. Enter into pre-selection negotiations.
- B. The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:
 - 1. Those Offerors, which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.

2. Those Offerors, which the Issuing Office has determined in accordance with **Part III, Section III-5**, from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to assure good faith performance of the contract.
3. Those Offerors whose score for their technical submittal of the proposal is less than 70% of the total amount of technical points allotted to the technical criterion.

The issuing office may further limit participation in the best and final offers process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.

- C. The Evaluation Criteria found in **Part III, Section III-4**, shall also be used to evaluate the Best and Final offers.
- D. Price reductions offered through any reverse online auction shall have no effect upon the Offeror's Technical Submittal. Dollar commitments to Small Diverse Businesses can be reduced only in the same percentage as the percent reduction in the total price offered through any reverse online auction or negotiations.

I-20. News Releases. Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

I-21. Restriction of Contact. From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.

I-22. Issuing Office Participation. Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-22**.

I-23. Term of Contract. The term of the contract will commence on the Effective Date and will end **five (5) years from execution of contract with five (5) optional one year extensions**. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

I-24. Offeror's Representations and Authorizations. By submitting its proposal, each Offeror understands, represents, and acknowledges that:

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

- I. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

I-25. Notification of Selection.

- A. **Contract Negotiations.** The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.
- B. **Award.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

I-26. Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See Section I-27 of this RFP).

I-27. RFP Protest Procedure. The RFP Protest Procedure is on the DGS website at <http://www.dgsweb.state.pa.us/comod/ProtestProcedures.doc>. A protest by a party not submitting a proposal must be filed within **seven** days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

PART II

PROPOSAL REQUIREMENTS

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

- A. Technical Submittal, which shall be a response to RFP **Part II, Sections II-1 through II-8.**
- B. Small Diverse Business participation submittal, in response to RFP **Part II, Section II-9;** and
- C. Cost Submittal, in response to RFP **Part II, Section II-10.**

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

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

II-1. Statement of the Problem. State in succinct terms your understanding of the problem presented or the service required by this RFP.

II-2. Management Summary. Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided.

II-3. Work Plan. Describe in narrative form your technical plan for accomplishing the work. Use the task descriptions in **Part IV** of this RFP as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach. **Include a brief video demonstration/explanation of how your proposed system works, giving details of each step or steps involved. This is not to be a promotional video of your company. Instead, PA**

DOC wishes to see your company's system as used in a correctional setting as specified in this RFP. Video presentations should be brief, 10-15 minutes in length, no more. Please provide seven (7) copies of this video demonstration on CD/DVD media along with your proposal. This video should be on separate CD/DVD media from your technical proposal. No flash drives will be accepted.

II-4. Prior Experience. PADOc wishes to select a provider whose established service meets the unique requirements and needs of our inmates and State Correctional Institutions. Vendor shall have experience in the areas of Electronic Funds Transmittal, money order lock box, release card services and use of intelligence and data gathering tools that tie in with all services requested. Provider must also possess the technical knowledge to meet the requirements of PADOc. Prior experience should include a minimum of three (3) years of experience in the fields of Electronic Funds Transmittal, money order lock box service, release card services and intelligence/data gathering, with successful deployment of comparable size and scope as PADOc. PADOc requires examples of such experience and successful deployment (this proven experience will serve as a reference). Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted. Correctional experience is preferred.

II-5. Personnel. Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the Project. For key personnel - project manager, area account representative(s), IT personnel and technical advisor(s) - include the employee's name and, through a resume or similar document, the Project personnel's education and experience in areas of Corrections and the use and understanding of Electronic Funds Transmittal, money order lock box, release card services and intelligence/data gathering. Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Identify by name any subcontractors you intend to use and the services they will perform, include the company and employee(s) name and, through a resume or similar document, the Project personnel's education and experience related to the services contracted to perform.

II-6. Training. If appropriate, indicate recommended training of agency personnel. Include the agency personnel to be trained, the number to be trained, duration of the program, place of training, curricula, training materials to be used, number and frequency of sessions, and number and level of instructors.

II-7. Financial Capability. Describe your company's financial stability and economic capability to perform the contract requirements. Provide your company's financial statements (audited, if available) for the past three fiscal years. Financial statements must include the company's Balance Sheet and Income Statement or Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report, if available. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing

hardcopies. The Commonwealth reserves the right to request additional information it deems necessary to evaluate an Offeror's financial capability.

II-8. Objections and Additions to IT Contract Terms and Conditions. The Offeror will identify which, if any, of the terms and conditions (contained in **Appendix A**) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Appendix A**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in **Appendix A**. The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in **Appendix A or to other provisions of the RFP as specifically identified above.**

II-9. Small Diverse Business Participation Submittal.

- A. To receive credit for being a Small Diverse Business or for subcontracting with a Small Diverse Business (including purchasing supplies and/or services through a purchase agreement), an Offeror must include proof of Small Diverse Business qualification in the Small Diverse Business participation submittal of the proposal, as indicated below:

A Small Diverse Business verified by BSBO as a Small Diverse Business must provide a photocopy of their verification letter.

- B. In addition to the above verification letter, the Offeror must include in the Small Diverse Business participation submittal of the proposal the following information:
1. **All** Offerors must include a numerical percentage which represents the total percentage of the work (as a percentage of the total cost in the Cost Submittal) to be performed by the Offeror and not by subcontractors and suppliers.
 2. **All** Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Diverse Businesses (SDBs) as subcontractors. To support its total percentage SDB subcontractor commitment, Offeror must also include:

- a) The percentage and dollar amount of each subcontract commitment to a Small Diverse Business;
 - b) The name of each Small Diverse Business. The Offeror will not receive credit for stating that after the contract is awarded it will find a Small Diverse Business.
 - c) The services or supplies each Small Diverse Business will provide, including the timeframe for providing the services or supplies.
 - d) The location where each Small Diverse Business will perform services.
 - e) The timeframe for each Small Diverse Business to provide or deliver the goods or services.
 - f) A subcontract or letter of intent signed by the Offeror and the Small Diverse Business (SDB) for each SDB identified in the SDB Submittal. The subcontract or letter of intent must identify the specific work, goods or services the SDB will perform, how the work, goods or services relates to the project, and the specific timeframe during the term of the contract and any option/renewal periods when the work, goods or services will be performed or provided. In addition, the subcontract or letter of intent must identify the fixed percentage commitment and associated estimated dollar value that each SDB will receive based on the total value of the initial term of the contract as provided in the Offeror's Cost Submittal. Attached is a letter of intent template which may be used to satisfy these requirements.
 - g) The name, address and telephone number of the primary contact person for each Small Diverse Business.
- 3. The total percentages and each SDB subcontractor commitment will become contractual obligations once the contract is fully executed.
 - 4. The name and telephone number of the Offeror's project (contact) person for the Small Diverse Business information.
- C. The Offeror is required to submit **two** copies of its Small Diverse Business participation submittal. The submittal shall be clearly identified as Small Diverse Business information and sealed in its own envelope, separate from the remainder of the proposal.
 - D. A Small Diverse Business can be included as a subcontractor with as many prime contractors as it chooses in separate proposals.
 - E. An Offeror that qualifies as a Small Diverse Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

II-10. Cost Submittal. The information requested in this **Part II, Section II-10** shall constitute the Cost Submittal. The Cost Submittal shall be placed in a separate sealed envelope within the sealed proposal, separated from the technical submittal. The total proposed cost shall be broken down into the following components:

- Cost or fee for the senders of electronic funds based on a flat rate or ascending scale;
- Cost to process and transmit money orders received for PA DOC inmates;
- Commissions will be based on the total yearly amount for 5 years

PA DOC is not paying any cost or fees for the provided service(s). Offerors should **not** include any assumptions in their cost submittals. If the Offeror includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office pursuant to **Part I, Section I-9**, of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

A. **Direct Labor Costs.** Itemize to show the following for each category of personnel with a different hourly rate:

1. Category (e.g., partner, project manager, analyst, senior auditor, research associate).
2. Estimated hours.
3. Rate per hour.
4. Total cost for each category and for all direct labor costs.

B. **Labor Overhead.** Specify what is included and rate used.

C. **Travel and Subsistence.** Itemize transportation, lodging and meals per diem costs separately. Travel and subsistence costs must conform with the requirements of the most current version of Commonwealth Management Directive 230.10, *Travel and Subsistence Allowances*. The Issuing Office may accept higher rates normally paid by an Offeror, if those rates were approved by the Offeror's officials and published prior to submitting this proposal to the Issuing Office.

D. **Consultant Costs.** Itemize as in (a) above.

E. **Subcontract Costs.** Itemize as in (a) above.

F. **Cost of Supplies and Materials.** Itemize.

G. **Other Direct Costs.** Itemize.

H. **General Overhead Costs.** Overhead includes **two** major categories of cost, operations overhead and general and administrative overhead. Operations overhead includes costs that are not **100%** attributable to the service being completed, but are generally associated with the recurring management or support of the service. General and administrative overhead includes salaries, equipment and other costs related to

headquarters management external to the service, but in support of the activity being completed. Specify what specific items are included and the rates used.

I. Total Cost.

II-11. Domestic Workforce Utilization Certification. Complete and sign the Domestic Workforce Utilization Certification contained in **Appendix B** of this RFP. Offerors who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Technical Submittal.

PART III

CRITERIA FOR SELECTION

III-1. Mandatory Responsiveness Requirements. To be eligible for selection, a proposal must be/have:

- A. Timely received from an Offeror;
- B. Properly signed by the Offeror.
- C. Current PA Money Transmitter License.

Technical Submittal **must** include a copy of your Pennsylvania Money Transmitter License as part of the response to this RFP (see **Part IV, section IV-3,B**). **Failure to provide a copy of this license shall disqualify an Offeror from consideration for the contract to be awarded from this RFP.**

III-2. Technical Nonconforming Proposals. The three (3) Mandatory Responsiveness Requirements set forth in **Section III-1** above (A, B, C) are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.

III-3. Evaluation. The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BSBO will evaluate the Small Diverse Business participation submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors.

III-4. Evaluation Criteria. The following criteria will be used in evaluating each proposal:

- A. **Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as **50%** of the total points. Evaluation will be based upon the following in order of importance: **(1) Soundness of Approach; (2) Offeror Qualifications; (3) Intelligence and Investigative Capabilities; (4) Personnel Qualifications.** The final Technical scores are determined by giving the maximum number of technical points available to the proposal with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage: http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_overview/20124.

- B. **Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **30%** of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth at the following webpage: http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_overview/20124

C. **Small Diverse Business Participation:**

BSBO has established the weight for the Small Diverse Business (SDB) participation criterion for this RFP as **20%** of the total points. Each SDB participation submittal will be rated for its approach to enhancing the utilization of SDBs in accordance with the below-listed priority ranking and subject to the following requirements:

1. A business submitting a proposal as a prime contractor must perform 60% of the total contract value to receive points for this criterion under any priority ranking.
2. To receive credit for an SDB subcontracting commitment, the SDB subcontractor must perform at least fifty percent (50%) of the work subcontracted to it.
3. A significant subcontracting commitment is a minimum of five percent (5%) of the total contract value.
4. A subcontracting commitment less than five percent (5%) of the total contract value is considered nominal and will receive reduced or no additional SDB points depending on the priority ranking.

Priority Rank 1: Proposals submitted by SDBs as prime offerors will receive 150 points. In addition, SDB prime offerors that have significant subcontracting commitments to additional SDBs may receive up to an additional 50 points (200 points total available).

Subcontracting commitments to additional SDBs are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

Priority Rank 2: Proposals submitted by SDBs as prime contractors, with no or nominal subcontracting commitments to additional SDBs, will receive 150 points.

Priority Rank 3: Proposals submitted by non-small diverse businesses as prime contractors, with significant subcontracting commitments to SDBs, will receive up to 100 points. Proposals submitted with nominal subcontracting commitments to SDBs will receive points equal to the percentage level of their total SDB subcontracting commitment.

SDB subcontracting commitments are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

Priority Rank 4: Proposals by non-small diverse businesses as prime contractors with no SDB subcontracting commitments shall receive no points under this criterion.

To the extent that there are multiple SDB Participation submittals in Priority Rank 1 and/or Priority Rank 3 that offer significant subcontracting commitments to SDBs, the proposal offering the highest total percentage SDB subcontracting commitment shall receive the highest score (or additional points) available in that Priority Rank category and the other proposal(s) in that category shall be scored in proportion to the highest total percentage SDB subcontracting commitment. Proportional scoring is determined by applying the following formula:

$$\frac{\text{SDB \% Being Scored}}{\text{Highest \% SDB Commitment}} \times \frac{\text{Points/Additional Points Available}^*}{\text{Points Available}^*} = \frac{\text{Awarded/Additional SDB Points}}{\text{SDB Points}}$$

Priority Rank 1 = 50 Additional Points Available

Priority Rank 3 = 100 Total Points Available

Please refer to the following webpage for an illustrative chart which shows SDB scoring based on a hypothetical situation in which the Commonwealth receives proposals for each Priority Rank:

http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_overview/20124

- D. **Domestic Workforce Utilization:** Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum amount of bonus points available for this criterion is 3% of the total points for this RFP.

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. See the following webpage for the Domestic Workforce Utilization Formula:

http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_overview/20124. Offerors who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Technical Submittal. The certification will be included as a contractual obligation when the contract is executed.

III-5. Offeror Responsibility. To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

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

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **70%** of the **available technical points**; and
- B. The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. The Issuing Office will review the Offeror's previous three financial statements, any additional information received from the Offeror, and any other publicly-available financial information concerning the Offeror, and assess each Offeror's financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.

An Offeror which fails to demonstrate sufficient financial capability to assure good faith performance of the contract as specified herein may be considered by the Issuing Office, in its sole discretion, for Best and Final Offers or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Issuing Office. Based on the financial condition of the Offeror, the Issuing Office may require a certified or bank (cashier's) check, letter of credit, or a performance bond conditioned upon the faithful performance of the contract by the Offeror. The required performance security must be issued or executed by a bank or surety company authorized to do business in the Commonwealth. The cost of the required performance security will be the sole responsibility of the Offeror and cannot increase the Offeror's cost proposal or the contract cost to the Commonwealth.

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

III-6. Final Ranking and Award.

- A. After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, BSBO's final small diverse business participation scores, the final cost scores, and (when applicable) the domestic workforce

utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.

- B. The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C. The Issuing Office must select for contract negotiations the offeror with the highest overall score; PROVIDED, HOWEVER, THAT AN AWARD WILL NOT BE MADE TO AN OFFEROR WHOSE PROPOSAL RECEIVED THE LOWEST TECHNICAL SCORE AND HAD THE LOWEST COST SCORE OF THE RESPONSIVE PROPOSALS RECEIVED FROM RESPONSIBLE OFFERORS. IN THE EVENT SUCH A PROPOSAL ACHIEVES THE HIGHEST OVERALL SCORE, IT SHALL BE ELIMINATED FROM CONSIDERATION AND AWARD SHALL BE MADE TO THE OFFEROR WITH THE NEXT HIGHEST OVERALL SCORE.
- D. The Issuing Office has the discretion to reject all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

PART IV

WORK STATEMENT

Electronic Funds Transmittal, Money Order Lockbox and Release Cards

IV-1. Objectives.

- A. General.** To allow any and all inmates housed at a PADOCC State Correctional Institution to receive incoming funds electronically from family and friends. The contractor shall provide multiple options for funding of inmate accounts, i.e., phone, internet, mobile, walk-in (cash), etc. No funds will be accepted in person at any of the DOC State Correctional Institutions.
- B. Specific.** The contractor shall provide a hosted solution to allow friends and family of PADOCC inmates to send money electronically to fund the inmates' accounts. The solution should be secure and capture ALL data regardless of the source of the funds. This is to include, but not limited to: sender name, address, telephone #, credit/debit card information, date of transaction, amount sent, method of payment used (credit/debit card, cash, money order, etc.), how the payment was made (telephone, internet, walk-in, mobile, etc.), transaction number(s), identifying document numbers, copies of deposit slips, money orders and mailing envelopes. All data captured from this Solution shall be kept secure and made available to the PADOCC upon request. An option to allow the senders to use cash that would be included in the electronic transmittal should be included as well. The Solution should also include a lockbox service that would allow for the sending of money orders to a specific location to be processed and sent electronically by the contractor. This lockbox service will speed up the posting of funds to the inmate's account. Inmate accounts are used by the inmate to purchase commissary items, pay their costs, fines and restitution and are maintained by the business office at each State Correctional Institution.

IV-2. Nature and Scope of the Project.

PADOCC is soliciting proposals to provide electronic funds transmittal to inmates housed at PADOCC institutions. PADOCC desires a vendor to provide a secure electronic funds transmittal system so that inmates may receive electronic funds sent by family, friends and relatives. This will include a lockbox service to allow for the processing of money orders by the contractor so that the funds can be sent electronically and be posted to the inmates' accounts in a much timelier manner. PADOCC wishes to engage a vendor with proven ability in the corrections sector, and with at least three (3) years of experience, to implement this type of service in all 26 (currently) of PADOCC's State Correctional Institutions located throughout the Commonwealth of Pennsylvania (see attached map of SCI locations). See section II-4 for prior experience qualifications.

This contract **does not** include EFT deposits accepted via lobby kiosks. This is part of another DOC awarded contract already in place. The selected Offeror, having the required Money Transmitter License, will be required to work with this established Provider to coordinate the receiving of funds for deposit into PA DOC IGWF bank accounts and the posting of accepted transactions to PA DOC inmate accounts along with EFT transactions accepted by the selected Offeror.

IV-3. Requirements.

A. System Requirements

Listed below are system requirements set forth by PADOCC for the contractor hosted system. This list is by no means all-encompassing and will be subject to change as needs arise. PADOCC reserves the right to request enhancements and changes to the selected system/interface in order to meet operational needs and requirements.

- a. **Electronic funds to Inmates** -- This would allow friends and family to have the ability to send funds electronically to inmates. The system must meet all requirements of PADOCC as prescribed in this RFP and give staff the ability to review all transactions as deemed appropriate by the PADOCC based on sender, inmate addressee and amount of the transaction. **SENDER WILL PAY ALL FEES ASSOCIATED WITH THE COLLECTION OF FUNDS TO BE TRANSMITTED.**
- b. **Money Order Lockbox – Contractor** will provide a lockbox service for money orders received by inmates housed at PADOCC institutions. This service should include the processing of daily money orders being sent and including these transactions along with the daily electronic funds file transmittal. PADOCC wishes to include money orders in the electronic transmittal process which will make the funds available to the inmate in a much timelier manner. A tracking system should be implemented by the contractor to allow PADOCC staff to access sender information of any and all money orders processed by the contractor. Electronic copies of all money orders and mailing envelopes should be kept by the contractor and made available to PADOCC upon request. **This service will be made available at no cost to PADOCC or the senders of said money orders.**
- c. **Release Card Program** – PADOCC wishes to implement the use of a Release Card system for the issuance of inmate funds upon release from any of the 26 (currently) State Correctional institutions. This would include an option for use at any of the 14 DOC owned and operated Community Corrections Centers (CCC's) across the Commonwealth. PADOCC also wishes to explore the option of using this system for inmates to send funds home to family members. This system should give the PADOCC the ability to issue a prepaid card versus a check to inmates being paroled or discharged. PADOCC will incur no cost for the necessary equipment, supplies or issuance of the release cards. The release cards must be a "branded" card, i.e., VISA, MasterCard, which are widely accepted at most any consumer retail locations.

- d. • **Daily Update File** – PADOc will provide the contractor with a daily update file of all PADOc inmates and their current information. This file will be a comma delimited text file named **padocmamYYMMDD** (current date inserted when sent) and will include the following information: Inmate #, last name, first name, permanent location (facility), building, section and cell. **CONTRACTOR MUST INCLUDE THIS INFORMATION ON ALL INCOMING TRANSACTIONS AS A HEADER FOR PRINTING OF RECEIPTS TO PROVIDE FOR ACCURATE DELIVERY** (see Part IV-4 for more detailed information).
- e. **Other Related Services** – PADOc reserves the right to request additional services from the contractor that would supplement or enhance existing services under this RFP due to changes in technology over the length of the contract, or to meet the needs of the inmate population and/or PADOc staff. PA DOC reserves the right to add additional services offered by the selected Offeror to the contract/RFP at any time during the contract period. Additional services will only be added if they are provided at no cost to PA DOC and the Commonwealth of Pennsylvania. Any additional services selected by PA DOC will require negotiation between the selected Offeror and PA DOC.
- f. **Detailed Requirements**
- PADOc requires that the selected system accommodate PADOc Inmate Population. Currently, the population is approximately 50,000 inmates.
 - All transactions, including money orders, must be made available in detail to PADOc for review and approval each day (via user interface produced to meet PADOc requirements).
 - The user interface must allow PADOc staff to view all daily transactions in detail (inmate name, ID #, amount of transaction, sender name, sender contact information, etc). This will include money order transactions included in the daily file.
 - PADOc must be able to retrieve ALL transactions for purposes of investigation and review. Contractor will store all transactions electronically and will allow PADOc access to all transaction information (to include all transaction logs, copies of money orders, deposit slips and envelopes) via user interface or archive retrieval method. Contractor will be primary owner of all transactions, with PA DOC acting as their client through the awarded contract.
 - PADOc requires that the user interface be able to show links between senders and inmates – how many inmates are receiving funds from a particular sender or how many inmates are receiving funds from multiple senders. This feature **must** include all transaction types/methods accepted by the Contractor.
 - PADOc requires that the user interface allow PADOc to block senders and/or inmates because of fraudulent or improper activity (i.e., an inmate receives funds from a former inmate). This feature must allow for the acceptance or rejection of individual transactions after review by PADOc staff.
 - User interface will list all transactions that have been received on a daily basis and each SCI will have access to only the transactions belonging to them

(separate passwords and login for each facility users (individual staff), to view only that specific institution's transactions). Authorized PADOCCentral Office staff will have access to ALL PADOCC facility transactions using individual logins and passwords. Data that is to be captured includes, but not limited to: sender name, address, telephone #, credit/debit card information, date of transaction, amount sent, method of payment used (credit/debit card, cash, money order, etc.), how the payment was made (telephone, internet, walk-in, mobile, etc.), transaction number(s), identifying document numbers, copies of deposit slips, money orders and mailing envelopes. All data captured from this Solution shall be kept secure and made available to the PADOCC upon request.

- System will be secure and data will be encrypted so no unauthorized users can access PADOCC transactions or data.
- Each SCI will have the ability to print receipts from the interface. Each receipt will include as a header the following information: inmate #, last name, first name, permanent location (facility), building, section and cell. This information **must** appear on each receipt to facilitate prompt delivery (within 24-48 business hours of receipt by PADOCC, excluding weekends and holidays). The receipt must also list the name of the sender and amount of the transaction along with the date the transaction was received by the contractor.
- Release card issuances and details of the issuance (balance on the card, date of issuance, etc.) must be available for viewing by PADOCC. This information should show alongside any other transactions grouped by inmate ID #.
- PADOCC reserves the right to require the Contractor to add other features to meet the needs of PADOCC during the life of the contract. These additional features, if feasible, will be provided at no cost to PADOCC.
- PADOCC requires the Contractor to have a well-defined Systems Development Life Cycle (SDLC) framework for system development. Contractor is to assure high quality systems are delivered, provide strong management controls over IT projects, and ensure that the system can, and will, work as required and is effectively maintained to support PADOCC. Contractor to describe its SDLC framework for system development.
- Contractor agrees to keep all information about inmates confidential and to make no disclosure to any third party, except as required by law. Contractor agrees to give PADOCC prompt notice of any such disclosure.
- Contractor agrees that PADOCC has the right of review and approval of any advertisement or promotional material referring to the Commonwealth or PADOCC and/or the operation or existence of the electronic funding system, money order lock box and release card service.

g. Hosting Requirements

See Appendix G, Requirements for non-Commonwealth Hosted Applications/Services for details and requirements for technology solutions procured by the Commonwealth that are not hosted within Commonwealth infrastructure.

B. Technical Support. Contractor must provide full technical support and contact information for normal working hours (Monday thru Friday, 0800-1700) and for in case of emergency problems. This would include both telephone and email contact.

C. Experience and Qualifications

Contractor should demonstrate experience within the corrections environment having at least three (3) years of hands on knowledge and experience with implementing and running electronic funds transmittal, money order lockbox and release card services for customers of comparable size and scope to PADOCC. For key personnel, which would be those individuals who are experienced in the areas of electronic funds transmittal and related services, include the employee's name and, through a resume or similar document, the Project personnel's education and experience in providing the services required by PADOCC. Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Contractor will be responsible for all parts of the project and for any subcontractor(s) intended to be used and the services they will perform.

- In accordance with PADOCC policy 1.1.4, section 4, all employees of the contractor and sub-contractor(s) will be **required** to pass background investigations performed by PADOCC before any work associated with this RFP can begin. PADOCC reserves the right to deny any employee of the contractor or sub-contractor(s) access to PADOCC facilities as the result of confidential information obtained during the course of the security clearance process or for violation of PADOCC policy.
- Contractor **MUST** be a licensed money transmitter as defined by the Commonwealth of Pennsylvania, Money Transmitter Act. No person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration without first having obtained a license from the Pennsylvania Department of Banking nor shall any person engage in such business as an agent except as an agent of a person licensed or exempted under the Money Transmitter Act. The act and related statutes can be found at the following links:

Money Transmitter Act (*copy & paste this link into your browser for the PDF file to open*):
http://www.portal.state.pa.us/portal/server.pt/document/657349/money_transmitter_act_pdf

Information & Related Statutes:
http://www.portal.state.pa.us/portal/server.pt/community/licensees/18274/money_trans_2_8/597113

Contractor **MUST** be a Commonwealth of Pennsylvania licensed money transmitter **at the time their response is submitted and MUST provide a copy of their Pennsylvania Money Transmitter License as part of their response to this RFP.** Failure to do so shall disqualify the contractor from consideration for the contract to be awarded from this RFP

D. System Security and Confidentiality

- Contractor must keep all information about inmates confidential and to make no disclosure thereof to any third party, except as may otherwise be required by law. Contractor agrees to give PADOCC prompt notice of any such disclosure.
- PADOCC reserves the right to review and inspect **ALL** incoming transactions and determine whether distribution is consistent with the good order, security and policies of the PADOCC and the correctional institution where the inmate is incarcerated. Where PADOCC determines that distribution is not consistent with the good order, security and/or policies of the Pennsylvania Department of Corrections and/or the correctional institution where the inmate is located, PADOCC may, in its sole discretion, chose not to distribute the funds to the inmate. If PADOCC chooses not to distribute the funds, it will notify the contractor who will be responsible in notifying the sender. This review and approval/rejection process should take place electronically within the site provided by the contractor to PADOCC for review of daily transactions.
- Contractor agrees that PADOCC has the right of review and approval of any advertisement or promotional material referring to PADOCC or the Commonwealth and/or the operation or existence of the electronic funds transmittal, money order lockbox and release card systems.
- PADOCC will require access for its security and investigations staff to any customer/client based forum or chat room operated by the contractor. This access must allow security or investigations staff to be “hidden” or operate as a monitor. Access to this type of forum or chat room will be limited to security and investigations staff only (this includes central office and each institution).
- **All employees of the contractor and sub-contractor(s) are subject to complete background investigations at the discretion of PADOCC. PADOCC reserves the right to deny any employee of the contractor or sub-contractor(s) access to its facilities, information or their clients as the result of confidential information obtained during the course of the security clearance process or for violation of PADOCC policy.**

E. PCI Data Security Standard (PCI DSS)

1. Contractors that process transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist PADOE or for other uses specifically authorized by law.

- a. Vendor must use "Tokenization", whereby credit card information is not stored at all. Instead, "tokens" must be used in place of credit card numbers to communicate to the vendor's back end card processor. With tokenization, individual accounts are each linked to a "token" that authorized personnel utilize to retrieve the associated information when needed. Because tokens, by themselves, contain no personally identifiable information, they have no value to hackers or other mischievous persons. This provides a highly secure system for securing cardholder data. Tokenization became industry standard after the Target breach in 2014. **(See Appendix I for more information on Tokenization)**

2. The Contractor must notify PADOE (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised, and must also disclose any past breaches to date. In the event of having been compromised, the Contractor must provide full cooperation to the Visa, MasterCard and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

- a. Vendor is required to disclose any and all credit card data breaches and any instances whereby customer data was compromised, that have happened at any time during the company's history

3. The Contractor must properly dispose of cardholder data when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

F. Emergency Preparedness.

To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

1. Describe how you anticipate such a crisis will impact your operations.
2. Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:
 - a) Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)
 - b) Identified essential business functions and key employees (within your organization) necessary to carry them out
 - c) Contingency plans for:
 - i.) How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
 - ii.) How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
 - d) How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
 - e) How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

IV-4. Detailed Information Technology Requirements – EFT File

A. Proper Use and Disclosure of Personally Identifiable Information (PII)

PII moved from one computer to another over an un-trusted network must be transferred using encryption controls to protect data integrity and confidentiality. Prior Agency legal review may be required, and is otherwise recommended, to ensure appropriate limits and processes are applied to any PII data transfer between Commonwealth Agencies, business partners, or external entities (*ITP-SEC025 - Proper Use and Disclosure of Personally Identifiable Information (PII) – Transferring PII*).

<http://www.portal.state.pa.us/portal/server.pt?open=514&objID=210791&mode=2>

B. Inmate Roster List – DOC-BIT provides an inmate roster list to the contractor. It is used to show the institution name where the inmate currently resides.

1. FTP is done every morning (Eastern time)
2. It is a comma delimited text file named in the format:
padocmamYYYYMMDD.

3. The list contains the following columns:

- Inmate_Number char(6)
 - last_name char(20)
 - first_name char(15)
- PermLoc_Cd char(3)
- facbed_building char(2)
- facbed_section char(2)
- LvlCellDorm char(4)

4. Example:

- AB1234 , PUBLIC , JOHN , CHS , D , B
 , 2034
- AB5678 , HARRY , THOMAS , CHS , D , A
 , 2051

C. Contractor FTP Site - In order for DOC-BIT to send the daily inmate roster to contractor, the contractor needs to provide DOC-BIT the following information:

- Name of the FTP site (IP address if FTP site is a URL)
- User id
- Password

IV-5. Tasks.

The contractor shall perform all tasks necessary to meet the requirements of this RFP and will be responsible for the performance of the following tasks

A. **Incoming Transition.** Selected Offeror shall work with current Provider to allow funding of inmate accounts to continue without delay and to avoid loss of information during conversion. The Offeror is responsible for the generation and creation of the new system and database(s) to provide a fully operational inmate account funding system.

1. During the transition period, the selected Offeror shall operate its system in parallel with the existing system which the current Provider will not have yet removed in total. There will no doubt be old information and forms that family and friends will still be using to place funds on inmates accounts. The objective of the “parallel operation” is to avoid unnecessary delay and allow inmate accounts to receive the funds no matter the vendor used until such time as PADOCC can remove all forms and promotional material from each SCI and housing units during the transition period. The selected Offeror shall be required to work closely with the PADOCC to ensure the transfer of responsibility for funding of inmate accounts at each institution is carried out as smoothly as possible. In addition, the PADOCC will work cooperatively with the selected Offeror to create and maintain an information flow in accordance with other provisions of the awarded Contract and the parties shall utilize best efforts to resolve all issues that may or could occur from such parallel operation, including, but not limited to, data sharing and an agreement on a conversion schedule.

B. **Electronic Funds Transmittal, Money Order Lockbox and Release Cards services.**

The selected Offeror shall provide electronic funds to inmates, money order lockbox, release card program, daily update files, and other related services as described in section IV-3.

1. Contractor shall receive the funds from the senders in accordance with their collection methods (this would include phone, internet, walk-in and money orders). All funds collected will be guaranteed by the contractor. For the avoidance of doubt, the PADOCC will not be held liable for any fraudulent transactions related to the collection of said funds. This service will be provided at no cost to PADOCC or its inmate population.
2. Contractor will send to the PADOCC a daily file of the previous day’s or days’ activity as specified by PADOCC Bureau of Information Technology Services. This file will contain the inmate name, ID #, location (as provided by PADOCC), sender name and amount of deposit. These transactions will be reviewed by PADOCC staff and security at the appropriate State Correctional Institution. PADOCC reserves the right to accept or reject any transactions that do not conform to PADOCC requirements and/or policy. Transactions must be in the file format specified and supplied by the PADOCC and MUST include the sender’s name (**no exceptions**). PADOCC will in turn provide the contractor with an inmate locator file each day so that the contractor can make sure the funds are going to the proper Institution and inmate. Transactions will

be transmitted to PADOCC on a daily basis (once per day) and these transactions must occur between the hours of 1700 and 0500. Once PADOCC receives the daily file, funds will be posted to the inmates' accounts within 24 business hours. For specific details on the file format required by the PADOCC, see section IV-6 below.

3. Deposit of all collected funds (including money order and walk-in transactions) will be made via Automated Clearing House (ACH) by the contractor for each SCI on a DAILY basis for previous day(s) transactions. This is necessary for accounting staff at each SCI to balance daily batches and to ensure that funds are posted properly. Deposits will be made to each SCI's individual bank account. **All deposits will be in accordance with Pennsylvania money transmitter laws**
4. Contractor shall store all transaction information in a secure database and the electronic information relating to each transaction shall be made available to PADOCC and the Commonwealth via a secure online interface provided by the contractor. This interface will allow PADOCC to lookup transactions, print receipts for delivery to the inmate(s), add and delete users through centralized administrative access and provide an intelligence feature that allows PADOCC to track all incoming transactions and to see who is sending money to whom. This intelligence feature should also capture each and every money order sent and copies kept (including the mailing envelope and/or deposit slip), made available to PADOCC upon request. ALL transactions shall remain available to PADOCC for review, whether via the online interface or archive retrieval process. PADOCC requires at minimum one (1) years' worth of data be provided via the online interface, with a requirement for archived or older data to be made available upon request.
5. Contractor will provide prompt notice (within 1-2 business days) if any changes to the system are to be made and will obtain PADOCC approval before doing so (not to include basic appearance changes or "visual" enhancements). This system and/or interface will conform to the needs of PADOCC security and accounting staff.
6. Contractor shall be responsible for responding to and resolving any inquiries and complaints from senders arising as a result of Contractor's failure to timely transmit any transactions to PADOCC.
7. Contractor will provide all hosting, necessary hardware, software, equipment and web interface needed to process incoming transactions received by all State Correctional Institutions (unless any necessary hardware or equipment provided by the Commonwealth is already available for use). This would include, but is not limited to, PC's, monitors, printers, cables, keyboards, mice, etc. Necessary equipment needs will be left up to each individual institution to determine and will be communicated to the contractor by the institution business manager or by the contract administrator at PADOCC Central Office.
8. Any consumables - paper, ink, etc. - used for the sole purpose of this project will be provided by the contractor (consumables will still be provided by the contractor even if needed hardware and equipment is provided by PADOCC and the Commonwealth).

C. **Outgoing Transition.** The contractor shall work with PADOCC to retain ALL transactions and information processed during the term of this contract so as to be retained by PADOCC (see below). Contractor agrees to work with PADOCC and any incoming provider so that funding of inmate accounts can continue without delay.

- 1) Upon completion, termination or cancellation of this contract, the contractor shall work with PADOCC to allow funding of inmate accounts to continue without delay and to avoid loss of information during any future conversion or transition. The contractor is responsible to provide PADOCC with a way to retrieve ALL transactions processed during the term of the contract for purposes of investigation and review. Contractor will store all transactions electronically and will allow PADOCC access to all transaction information (to include all transaction logs, copies of money orders, deposit slips and envelopes) via a contractor provided user interface or archive retrieval method. If archival retrieval method, it must be in a searchable, readable format. Microsoft Excel is preferred. PADOCC will retain ownership of all transactions provided by the contractor at the end of the outgoing transition period. Contractor agrees to continue to keep all information that may be retained in their system about PADOCC inmates confidential and to make no disclosure to any third party, except as required by law. Contractor further agrees to give PADOCC immediate notice of any such required disclosure.

IV-6. Reports and Project Control.

The selected Offeror shall provide project management services throughout the life of the project. Offeror shall submit its project management methodology and/or draft plans which it proposes to use for this project. The Offeror's project management methodology shall include, but not be limited to methods for project planning, requirements management, risk management, change control, communications and escalation, quality assurance, and time/task management. The selected Offeror must submit final plan(s) within **30 days** of receiving the notice to proceed. All plans are subject to Commonwealth approval.

The selected Offeror shall create, maintain and execute all project management plans, reports, and supporting documentation in a format agreed to by the Commonwealth.

At a minimum, Offeror shall provide the following plans and reports as part of its project management services. In addition, Offeror shall provide all plans and reports as proposed as part of its project management methodology as described above.

- A. **Project Plan.** The project plan must describe the scope of work for the project and how the scope shall be managed. The project plan shall act as a confirmation of project scope, phasing, implementation objectives, and be detailed enough to ensure the product is delivered on time, within projected estimates, and meets all requirements as specified in the RFP.

- B. Task Plan.** A work plan for each task that identifies the work elements of each task, the resources assigned to the task, and the time allotted to each element and the deliverable items to be produced. Where appropriate, a PERT or GANTT chart display should be used to show project, task, and time relationship.
- C. Status Report.** Various daily and monthly reports that will include, but are not limited to, number of transactions per day by location (SCI), monthly report totals showing the activity of the previous month (listing all PADOc locations and # and amount of funds received), and daily recap reports for tracking by Central Office. These reports should be keyed to the work plan the Offeror developed in its proposal, as amended or approved by the Issuing Office.
- D. Problem Identification Report.** An “as required” report, identifying problem areas will be provided to the PADOc on an as needed basis. This report should describe any problem encountered by the contractor, its impact on the overall project and its potential impact on each affected task. The report should list possible corrective courses of action with the advantages and disadvantages of each course of action, and include Offeror recommendations with supporting rationale.
- E. Final Report.** If required, PADOc will notify contractor, in advance, of any need for final reports of summary of data.

IV-7. Demonstration

- a) Qualified Offeror’s, whose proposals are determined by the PADOc, in its sole discretion, to be reasonably susceptible of being selected for award, will be required to demonstrate the functional capabilities of the proposed solution prior to final award. The proposed equipment and software must be in production, installed and in use by one (1) or more customers of the Offeror, in accordance with the prior experience provisions set forth in section **II-4, Prior Experience**. The PADOc will not be responsible for any cost incurred by an Offeror for such a demonstration.
- b) The demonstration of the proposed solution as proposed in the RFP shall be conducted at a PADOc location to be determined by the PADOc.
- c) The date and times of the demonstration will be determined by the PADOc and coordinated with the Offeror(s).
- d) The solution to be demonstrated must be operational, in production, and in operation by one (1) or more customers of the Offeror who are the same size and scope as the PADOc.

IV-8. Commissions

- a) Offeror's commission to PADOc shall remain fixed during the contract term, unless PADOc and the Offeror mutually agree to modify the commission rate at any time during the contract term.
- b) Offeror's commission to be paid to PADOc shall be computed as a percentage of the total gross revenue generated by the application of the approved transactions for every completed money transfer. The Offeror's proposed commission percentage shall be presented **Appendix C, Cost Proposal**.
- c) Offeror shall provide a commission check to the PADOc to be paid monthly by the last calendar day of the following month to the PADOc. Such payments shall be accompanied by the management report, in paper format, that, as a minimum, includes, Total Commission, Total Revenue, Total Transactions, and Total Dollars Transferred. Offeror shall also forward, in electronic format (Microsoft Excel), via email a monthly usage report containing, at a minimum, the same information as noted above to the PADOc Contract Administrator (Michael Knaub). After the award, the selected Offeror will be provided with the name and address of the payee location.
- d) Offeror must maintain complete and accurate accounting records for the life of the contract and shall be available for audit at the request of the PADOc or designee.

All information shall be retrievable in a print format and electronic media. These records shall be transferred to the PADOc at the termination of the contract. The electronic media required to read the data may not be proprietary.

IV-9. Contract Requirements—Small Diverse Business Participation.

All contracts containing Small Diverse Business participation must also include a provision requiring the selected contractor to meet and maintain those commitments made to Small Diverse Businesses at the time of proposal submittal or contract negotiation, unless a change in the commitment is approved by the BSBO. All contracts containing Small Diverse Business participation must include a provision requiring Small Diverse Business subcontractors to perform at least **50%** of the subcontracted work.

The selected contractor's commitments to Small Diverse Businesses made at the time of proposal submittal or contract negotiation shall, to the extent so provided in the commitment, be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to BSBO, which will make a recommendation to the Contracting Officer regarding a course of action.

If a contract is assigned to another contractor, the new contractor must maintain the Small Diverse Business participation of the original contract.

The selected contractor shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to the Contracting Officer of the Issuing Office and BSBO within **10** workdays at the end of each quarter the contract is in

force. This information will be used to determine the actual dollar amount paid to Small Diverse Business subcontractors and suppliers. Also, this information will serve as a record of fulfillment of the commitment the selected contractor made and for which it received Small Diverse Business participation points. If there was no activity during the quarter then the form must be completed by stating “No activity in this quarter.”

NOTE: EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE STATEMENTS REFERRING TO COMPANY EQUAL EMPLOYMENT OPPORTUNITY POLICIES OR PAST CONTRACT COMPLIANCE PRACTICES DO NOT CONSTITUTE PROOF OF SMALL DIVERSE BUSINESS STATUS OR ENTITLE AN OFFEROR TO RECEIVE CREDIT FOR SMALL DIVERSE BUSINESS UTILIZATI

Appendix A
IT CONTRACT
TERMS AND CONDITIONS

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

1. TERM AND SCOPE OF CONTRACT

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

2. PURCHASE ORDERS

- (a) The Commonwealth may issue Purchase Orders against the Contract. These orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Contractors are not permitted to accept Purchase Orders which require performance in excess of those performance time periods specified in the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.

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

placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. The Contractor agrees to accept payment through the use of a Commonwealth Procurement card.

3. DEFINITIONS

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

4. CONTRACT SCOPE

- (a) If the Contractor must perform work at a Commonwealth facility outside of the daily operational hours set forth by the Commonwealth, it must make arrangements with the Commonwealth to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access, unless the Commonwealth fails to provide access as set out in the RFP.
- (b) Except as set out in this Contract, 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.). Contractor may recommend the use of tools such as hardware and software, without requiring agencies to purchase those tools. Software tools that are NOT on statewide contract will be acquired through separately procured purchase agreements, and the Contractor shall not be considered for award of such agreements if it has recommended their use.
- (c) Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (OA/OIT) (located at: <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=416&PageID=210791&mode=2>), including the accessibility standards set out in IT Bulletin ACC001, IT Accessibility Policy. The Contractor shall ensure that Services procured under this

Contract comply with the applicable standards. In the event such standards change during Contractor's performance, and the Commonwealth requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

5. IDENTIFICATION NUMBER

The Contractor must have a SAP vendor number.

6. ORDER OF PRECEDENCE

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

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

7. CONTRACT INTEGRATION

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

8. PERIOD OF PERFORMANCE

The Contractor, for the life of this Contract, shall complete all Services as specified under the terms of this Contract. In no event shall 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.

9. OPTION TO EXTEND

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

10. 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.

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

12. OTHER CONTRACTORS

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

13. PRIME CONTRACTOR RESPONSIBILITIES

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

14. COMPENSATION

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

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

15. PAYMENT

- (a) The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
 - (1) the date on which payment is due under the terms of the Contract; or
 - (2) forty-five (45) calendar days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed).

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

- (b) Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications.
- (c) Electronic Payments
 - (1) The Commonwealth will make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the Contract, 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.

16. ASSIGNABILITY

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

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

17. INSPECTION AND ACCEPTANCE

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

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

18. DEFAULT

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

and terminate (as provided in Section 22 (TERMINATION) the whole or any part of this Contract for any of the following reasons:

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

19. NOTICE OF DELAYS

Whenever the Contractor encounters any difficulty that delays or threatens to delay the timely performance of this Contract (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to the Commonwealth 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 of any rights or remedies to

which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with Section 21 (CHANGES).

20. CONDUCT OF SERVICES

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

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

21. CHANGES

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

22. TERMINATION

- (a) For Convenience
 - (1) The Commonwealth may terminate this Contract without cause by giving Contractor thirty (30) calendar days prior written notice (Notice of Termination)

whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective.

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

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

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

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

- (2) The Contractor shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such services performed during the thirty (30) calendar day notice period, if such services are requested by the Commonwealth, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under this Contract.
- (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 law.

(b) Non-Appropriation

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

(c) Default

The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within 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 . The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

- (1) Subject to Section 30 (LIMITATION OF LIABILITY) of this Contract, in the event the Commonwealth terminates this Contract in whole or in part as provided in this Subsection 22(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 promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.
 - (3) Nothing in this Subsection 22 (c) shall abridge 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 the Contract shall be deemed to have been terminated for convenience under Subsection (a).
 - (5) If this Contract is terminated as provided by this Subsection 22(c), the Commonwealth may, in addition to any other rights provided in this Subsection, and subject to Section 36 (OWNERSHIP RIGHTS) of this Contract, require the Contractor to deliver to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such reports and other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Payment for such reports and documentation will be made consistent with the Contract.
- (d) The rights and remedies of the Commonwealth provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

- (e) The Commonwealth's failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- (f) Following exhaustion of the Contractor's administrative remedies as set forth in Section 24 (CONTRACT CONTROVERSIES), the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

23. BACKGROUND CHECKS

- (a) The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth IT facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access and on an annual basis thereafter.
- (b) Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that an employee of the Contractor or an employee of a subcontractor of the Contractor has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to cure any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.
- (c) The Commonwealth specifically reserves the right of the Commonwealth to conduct or require background checks over and above that described herein.

24. CONTRACT CONTROVERSIES

- (a) In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- (b) The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120

days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

- (c) Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

25. CONFIDENTIALITY

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

- (4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- (5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

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.

- (c) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
 - (1) Prepare an un-redacted version of the appropriate document, and
 - (2) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
 - (3) Prepare a signed written statement that states:
 - (i) the attached document contains confidential or proprietary information or trade secrets;
 - (ii) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
 - (iii) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
 - (4) Submit the two documents along with the signed written statement to the Commonwealth.

26. INSURANCE

- (a) The Contractor shall procure and maintain at its expense and require its subcontractors to procure and maintain, as appropriate, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:
 - (1) Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act* (77 P.S. § 101, *et seq.*).
 - (2) Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all Subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death, and damage to property, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any Subcontractor, or by anyone directly or indirectly

employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth as an additional insured against the insurance coverages in regard to the Services performed for the Commonwealth.

- (b) Prior to commencing Services under the Contract, the Contractor shall provide the Commonwealth 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 in such a way to cause the coverage to fail to comply with the requirements of this Paragraph until at least thirty (30) days prior written notice has been given to the Commonwealth.
- (c) The Contractor agrees to maintain such insurance for the life of the Contract.
- (d) Upon request to and approval by the Commonwealth, contractor's self-insurance of the types and amounts of insurance set for above shall satisfy the requirements of this Section 26 (INSURANCE), provided the Commonwealth may request from Contractor evidence each year during the term of the contract that Contractor has sufficient assets to cover such losses.

27. CONTRACTOR RESPONSIBILITY PROGRAM

- (a) The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.
- (b) The Contractor must also certify, in writing, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.
- (c) The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform 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

28. 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.

29. TAXES-FEDERAL, STATE, AND LOCAL

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-23740001-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.

30. LIMITATION OF LIABILITY

- (a) The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of \$250,000 or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this Section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to damages for:
- (1) bodily injury;
 - (2) death;
 - (3) intentional injury;

- (4) damage to real property or tangible personal property for which the Contractor is legally liable; or
 - (5) the Contractor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection.
- (b) In no event will the Contractor be liable for consequential or incidental damages unless otherwise specified in the RFP. Except as set out in Section 32 (VIRUS; MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING), the Contractor will not be liable for damages due to lost records or data, unless otherwise specified in the RFP. Notwithstanding the foregoing, the Contractor shall provide reasonable assistance to the Commonwealth in restoring such lost records or data to their most recent backup copy.

31. COMMONWEALTH HELD HARMLESS

- (a) The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives 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.
- (b) Notwithstanding the above, neither party shall enter into any settlement without the other party'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.

32. 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 the Contract 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 Contractor shall perform a security scan on any software or computer program developed by the Contractor or its subcontractors in a country other than the United States of America that may come in contact with the Commonwealth's software or computer networks. Contractor shall perform such security scan prior to introducing any such software or computer program into a Commonwealth development environment, test environment or production environment. The results of these security scans will be provided to the Commonwealth prior to installing into any Commonwealth development environment, test environment or production environment. The Commonwealth may perform, at its discretion, additional security scans on any software or computer program prior to installing in a Commonwealth environment as listed above.
- (c) 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.
- (d) The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing services to the Commonwealth. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contract.
- (e) 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.

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

- (a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, 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. 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 to provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor will, at its expense, provide whatever cooperation OAG requests in the defense of the suit.

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

- (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.
- (g) The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.
- (h) Notwithstanding the above, the Contractor shall have no obligation for:
- (1) modification of any 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 Contract; or
 - (7) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.
- (i) 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.

34. SENSITIVE INFORMATION

- (a) The Contractor shall not publish or otherwise disclose, except to the Commonwealth or the Contractor's subcontractors and except matters of public record (which is to be determined entirely in the discretion of the Commonwealth), any information or data obtained hereunder from private individuals, organizations, or public agencies.
- (b) The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Contract for any purpose not connected with the parties' Contract responsibilities except with consent pursuant to applicable state and federal law and

regulations. All documents associated with direct disclosures of this kind must be announced to and open for inspection by the Commonwealth.

- (c) Contractor will comply with all federal or state laws related to the use and disclosure of information, including information that constitutes Protected Health Information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA). Further, by signing this Contract, the Contractor agrees to the terms of the Business Associate Agreement, which is incorporated into this Contract as Exhibit A. It is understood that Exhibit A is only applicable if indicated in the procurement documents.
- (d) Rights and obligations of the parties under this Section 34 survive the termination of this Contract

35. CONTRACT CONSTRUCTION

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

36. OWNERSHIP RIGHTS

- (a) Ownership of Properties
 - (1) All “Developed Works” shall be owned according to the provisions set forth in this Section 36.
 - (2) All software owned by the Commonwealth or its licensors (“Commonwealth Software”) as of the Effective Date, 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 except as described in this Section or in another provision set forth in this Contract. The Contractor shall not use any Commonwealth Software, Commonwealth Tools or software or tools of its licensors for any purpose other than for completion of work to be performed under this Contract. In the use of 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 the 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 the purposes of this Contract, the term “data” means any recorded information, regardless of form, the media on which it may be recorded, or the method of recording.

- (3) Technical Data—For purposes of this Contract, the term “technical data” means any specific information necessary for the development, production or use of the 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 Effective Date of this Contract and, (ii) Contractor, as part of the Services to be rendered under this Contract, shall compile and, as changes are made, update a list of all of the Commonwealth Software then in use by Contractor or any of its subcontractors in connection with Contractor’s performance of the Services required by this Contract.

(e) Reservation of Rights

All rights, not expressly granted here to Contractor on a nonexclusive basis, including the right to grant non-exclusive licenses and other rights are reserved by 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, all rights granted to Contractor in this Section 36 (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 36 (OWNERSHIP RIGHTS) shall survive any termination of this Contract.

(h) Use of Contractor-Owned Software

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

(i) Definition of Contractor Tools

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

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

(1) Contractor must provide a list of all Contractor Tools and Contractor Software to be delivered in connection with the deliverables or Developed Materials prior to commencing any work under the Contract. Contractor must also provide a list of all other Contractor Tools and Contractor Software intended to be used by

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

- (2) As part of its response to a RFP, the Contractor will provide a list of all software and tools that are commercially available and which are required to support the deliverables or Developed Materials.
 - (3) During the term of this Contract, Contractor shall maintain at its principal office books of account and records showing its actions under this Contract. Upon reasonable notice by 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 shall (i) grant 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) 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 36 (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.

(1) 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, but which was not developed specifically for the

Commonwealth under this Contract, the ownership of the Developed Work will remain with the Contractor, provided, however, that the Commonwealth has the right to copy and distribute the Developed Work within the Commonwealth.

- (m) Copyright Ownership—Developed Works Developed as Part of the Scope of Work for the Project, including Developed Works developed by Subcontractors, are the sole and exclusive property of 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 Developed Works and the right to display the Developed Works. The Contractor further agrees that it will include this requirement in any subcontractor or other agreement with third parties who in any way participate in the creation or development of Developed Works. Upon completion or termination of this Contract, Developed Works shall immediately be delivered by Contractor to 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. Section 401, and other applicable statutes.

(p) Usage Rights for Know-How and Technical Information

Either Party, in the ordinary course of conducting business, may use any ideas, concepts, know-how, methodologies, processes, components, technologies, algorithms, designs, modules or techniques not otherwise covered by this Section relating to the Services which Contractor or 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, 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 and all Developed Works delivered hereunder so that it appears at the beginning of all visual displays of such Developed Works.

(u) Commercial Software

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

37. PUBLICATION RIGHTS AND/OR COPYRIGHTS

- (a) Except as otherwise provided in Section 36 (OWNERSHIP RIGHTS), the Contractor shall not publish any of the results of the work without the written permission of the Commonwealth. The publication shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the Commonwealth of Pennsylvania." The Contractor shall not include in the documentation any copyrighted matter, unless the Contractor provides the Commonwealth with written permission of the copyright owner.
- (b) Except as otherwise provided in Section 36 (OWNERSHIP RIGHTS) and the confidentiality provisions of Section 25 (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 the Contract.
- (c) Rights and obligations of the parties under this Section 37 survive the termination of this Contract.

38. CHANGE OF OWNERSHIP OR INSOLVENCY

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. Nothing in this section limits the Commonwealth's exercise of any rights that the Commonwealth may have under Section 22 (TERMINATION).

39. 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.

40. 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.

41. COMPLIANCE WITH LAWS

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

42. 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.

43. EXAMINATION OF RECORDS

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

44. 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*.

45. 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.

46. NONDISCRIMINATION CLAUSE/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

- (a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- (b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
- (c) The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- (d) The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
- (e) The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction

Contractors”, each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.

- (f) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- (g) 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.

47. CONTRACTOR INTEGRITY PROVISIONS

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

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

- (a) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
- (b) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
- (c) Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
- (d) Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
- (e) Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.

- (f) Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
- (g) Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
- (h) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- (i) Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
 - (1) Approved in writing by the Commonwealth prior to its disclosure; or
 - (2) Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
 - (3) Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
 - (4) Necessary for purposes of Contractor's internal assessment and review; or
 - (5) Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
 - (6) Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
 - (7) Otherwise required by law.
- (j) Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with,

convicted of, or officially notified of a governmental determination of any of the following:

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

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

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

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

- (k) If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- (1) Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- (2) Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

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

- (l) Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
- (m) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
- (n) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.
- (o) Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.
- (p) For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

- (q) For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph (q).
- (1) “Confidential information” means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of 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 pre-qualification, 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 those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
 - (4) “Financial interest” means:
 - i. Ownership of more than a five percent interest in any business; or
 - ii. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - (5) “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b)*, shall apply.
 - (6) “Immediate family” means a spouse and any unemancipated child.
 - (7) “Non-bid basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
 - (8) “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

48. 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.

49. WARRANTIES

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

- (a) The Contractor hereby represents and warrants to the Commonwealth that the Contractor will 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, the Commonwealth will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the Commonwealth, shall within ten (10) days notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the Commonwealth, until such time as the deliverable conforms, in all material respects, to the functional specifications of the Developed Works set forth in this Contract. The Contractor shall have no obligation with respect to nonconformities arising out of: (a) modifications to Developed Materials made by the Commonwealth, (b) use of the Developed Materials not in accordance with the documentation or specifications applicable thereto, (c) failure by the Commonwealth 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.

50. LIQUIDATED DAMAGES

- (a) By accepting this Contract, the Contractor agrees to the delivery and acceptance requirements of this Contract. If a Contract schedule is not met, the delay will interfere with the Commonwealth's program. In the event of any such delay, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. The Commonwealth and the Contractor therefore agree that, in the event of any such delay the amount of damage shall be the amount set forth in this Section 50 and agree that the Contractor shall pay such amount as liquidated damages, not as a penalty. Such liquidated damages are in lieu of all other damages arising from such delay.
- (b) The Commonwealth and Contractor agree that the Deliverables identified in the Payment Schedule set forth in this Contract as "Major Deliverables" (the "Major Deliverables") shall be those for which liquidated damages shall be applicable in the event of delay of their completion beyond the delivery date specified in the Contract. If Major Deliverables are not identified in the Contract, liquidated damages shall apply to the total value of the Contract.
- (c) The amount of liquidated damages for any such Major Deliverable not completed by the deliverable schedule set out in the Contract shall be three-tenths of a percent (.3%) of the price of the specifically identified Major Deliverable for each calendar day following the scheduled completion date of such Major Deliverable. Liquidated damages shall be assessed each calendar day until the date on which the Contractor completes such Major Deliverable, up to a maximum of thirty (30) calendar days. Contractor may recoup the total amount of liquidated damages assessed against previous Major Deliverables if the Contractor accelerates progress towards future Major Deliverables and meets the final project completion date set out in the Contract.
- (d) If, at the end of the thirty (30) day period specified in Section 50(c) above, the Contractor has not met the schedule for completion of the Major Deliverable, then the Commonwealth, at no additional expense and at its option, may either:
 - (1) immediately terminate the Contract and all software, documentation, reports, Developed Materials and any other materials provided for or created for the Commonwealth as a result of this Contract shall be given to the Commonwealth, and the Commonwealth shall be entitled to its remedies under Section 22(c); or
 - (2) order the Contractor to continue with no decrease in effort until the work is completed in accordance with the Contract and accepted by the Commonwealth or until the Commonwealth terminates the Contract. If the Contract is continued, any liquidated damages will also continue until the work is completed.
- (e) At the end of the Contract term, or at such other time(s) as identified in the Contract, liquidated damages shall be paid by the Contractor and collected by the Commonwealth by deducting them from the invoices submitted under this Contract or any other contract Contractor has with the Commonwealth, by collecting them through the performance security, if any, or by billing the Contractor as a separate item.
- (f) To the extent that the delay is caused by 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.

51. 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 Contractor 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.

52. NOTICE

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

53. RIGHT-TO-KNOW LAW

- (a) The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of this provision #53, the term "the Commonwealth" shall refer to the contracting Commonwealth organization.
- (b) If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

- (c) Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
- (1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - (2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- (d) If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- (e) The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- (f) If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- (g) The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- (h) The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

- (i) The Contractor’s duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

54. GOVERNING LAW

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

55. ARRA ADDENDUM

Contractor agrees that in consideration of receipt of Federal American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) Funds, it shall comply with all of the terms, conditions, requirements and limitations set forth in Exhibit B (ARRA Addendum), which is incorporated herein as a material part of the Contract; provided, however, the requirements of Exhibit B shall only apply to those products and/or services purchased in whole or in part with ARRA funds.

56. RECYCLED MATERIALS

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

**PAPER PRODUCTS
RECYCLED CONTENT**

(A) REQUIREMENT

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

Item	Notes	Post-Consumer Content (%)
Printing and Writing Papers		
Reprographic	Business papers such as bond, electrostatic, copy, mimeo, duplicator and reproduction	30
Offset	Used for book publishing, commercial printing, direct mail, technical documents, and manuals	30
Tablet	Office paper such as note pads and	30

	notebooks	
Forms bond	Bond type papers used for business forms such as continuous, cash register, sales book, unit sets, and computer printout, excluding carbonless	30
Envelope	Wove	30
	Kraft, white and colored (including manila)	10
	Kraft, unbleached	10
	Excludes custom envelopes	
Cotton fiber	High-quality papers used for stationery, invitations, currency, ledgers, maps, and other specialty items	30
Text and cover	Premium papers used for cover stock, books, and stationery and matching envelopes	30
Supercalendered	Groundwood paper used for advertising and mail order inserts, catalogs, and some magazines	10
Machine finished groundwood	Groundwood paper used in magazines and catalogs	10
Papeteries	Used for invitations and greeting cards	30
Check safety	Used in the manufacture of commercial and government checks	10
Coated	Used for annual reports, posters, brochures, and magazines. Have gloss, dull, or matte finishes	10
Carbonless	Used for multiple-impact copy forms	30
File folders	Manila or colored	30
Dyed filing products	Used for multicolored hanging folders and wallet files	20
Index and card stock	Used for index cards and postcards	20
Pressboard	High-strength paperboard used in binders and report covers	20
Tags and tickets	Used for toll and lottery tickets, licenses, and identification and tabulating cards	20
Newsprint		
Newsprint	Groundwood paper used in newspapers	20
Commercial Sanitary Tissue Products		
Bathroom tissue	Used in rolls or sheets	20
Paper towels	Used in rolls or sheets	40
Paper napkins	Used in food service applications	30
Facial tissue	Used for personal care	10
General-purpose	Used in cleaning and wiping applications	40
Industrial wipers		

Paperboard and Packaging Products

Corrugated containers	Used for packaging and shipping a variety Of goods (<300 psi)	25
	(300 psi)	25
Solid fiber boxes	Used for specialized packaging needs such as dynamite packaging and army ration boxes	40
Folding cartons	Used to package a wide variety of foods, household products, cosmetics, pharmaceuticals, detergent, and hardware	40
Industrial paperboard	Used to create tubes, cores, cans and drums	45
Miscellaneous	Includes “chipboard” pad backings, book covers, covered binders, mailing tubes, game boards, and puzzles	75
Padded mailers	Made from kraft paper that is usually brown but can be bleached white	5
Carrierboard	A type of folding carton designed for multipack beverage cartons	10
Brown papers	Used for bags and wrapping paper	5

Miscellaneous Paper Products

Tray liners	Used to line food service trays. Often contain printed information.	50
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“Post-consumer” content is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer content is part of the broader category of recovered material.”

The Commonwealth of Pennsylvania recognizes that paper products are universally made with scrap material recovered from the manufacturing process; use of such materials is a standard practice, both efficient and economical for the paper maker; therefore, bidders of paper products need not certify that their products are made with “pre-consumer,” “recovered,” or “secondary” paper fiber.

(B) BIDDER’S CERTIFICATION

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

(C) MANUFACTURER/MILL CERTIFICATION

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

(D) ENFORCEMENT

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

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA BUSINESS ASSOCIATE AGREEMENT

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

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

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

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

1. Definitions.

- a. "Breach" shall have the meaning assigned to such term at 42 USCS § 17921 and HIPAA regulations at 45 C.F.R. § 164.402.
- b. "Business Associate" shall have the meaning given to such term under the Privacy and Security Rules, including but not limited to, 45 C.F.R. §160.103.
- c. "Covered Entity" shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 C.F.R. §160.103.
- d. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- e. "Privacy Rule" shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164.
- f. "Protected Health Information" or "PHI" shall have the meaning given to such term under HIPAA and the HIPAA Regulations in 45 C.F.R. Parts 160, 162 and 164, including, but not limited to 45 C.F.R. §160.103.
- g. "Security Rule" shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164.
- h. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17,

2009), the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, and the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164.

2. **Stated Purposes For Which Business Associate May Use Or Disclose PHI.** The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided by or obtained on behalf of Covered Entity for purposes state in Appendix A, except as otherwise stated in this Agreement.

NO OTHER USES OR DISCLOSURES OF PHI ARE PERMITTED.

3. **BUSINESS ASSOCIATE OBLIGATIONS:**

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

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

- d) **Reports Of Security Incidents.** In addition to following the Breach notification requirements in section 13402 of the HITECH Act and related regulations and guidance, Business Associate shall report to Covered Entity's Privacy Officer, or his designee, within two (2) days of discovery any Security Incident of which it becomes aware.

- e) **Subcontractors And Agents.** Business Associate hereby agrees that any time PHI is provided or made available to any subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and shall first enter into a subcontract or contract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Agreement.
- f) **Right Of Access To PHI.** Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within five (5) business days of receiving a written request from the Covered Entity or individual. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity of same within two (2) business days. Business associate shall further conform with and meet all of the requirements of 45 C.F.R. §164.524, 42 USCS § 17936(e), and other applicable laws.
- g) **Amendment And Incorporation Of Amendments.** Within five (5) business days of receiving a request from Covered Entity for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available and incorporate the amendment to enable Covered Entity to comply with 45 C.F.R. §164.526 and other applicable laws. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity within five (5) business days.
- h) **Provide Accounting Of Disclosures.** Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 C.F.R. §164.528, 42 USCS § 17935(c), and other applicable laws. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, the purpose of the disclosure, and shall include disclosures made on or after the date that is six (6) years prior to the request or April 14, 2003, whichever is later. Business Associate shall make such record available to the individual or the Covered Entity within five (5) business days of a request for an accounting of disclosures, or within such other time as may be dictated by applicable law.
- i) **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.
- j) **Return Or Destruction Of PHI.** At termination of this Agreement, Business Associate hereby agrees to return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Agreement. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Agreement to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.

- k) **Maintenance of PHI.** Notwithstanding Section 5(j) of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under §5(h) of this Agreement for a period of six (6) years after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise.
- l) **Mitigation Procedures.** Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Agreement or the Privacy Rule. Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement or the Privacy Rule.
- m) **Training.** Business Associate will train all members of its workforce on its policies and procedures with respect to PHI as necessary and appropriate for the workforce members to carry out the functions required by this contract.
- n) **Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement or other applicable laws.
- o) **Grounds For Breach by Covered Entity.** Upon Business Associate's knowledge of a material breach by Commonwealth of this Business Associate Agreement, Business Associate shall notify Commonwealth of such breach and Commonwealth shall have at least thirty (30) days to cure such breach. In the event Commonwealth does not cure the breach, Business Associate shall have the right to report the violation to the Secretary. Notwithstanding any other language in this Agreement, the parties agree that termination by the Business Associate is infeasible.
- p) **Grounds For Breach.** Any non-compliance by Business Associate with this Agreement or the Privacy or Security Rules will automatically be considered to be a breach of the Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance. Business Associate shall have thirty (30) days to cure such breach from the date of notice to cure by the Commonwealth. In the event Business Associate does not cure the breach, the Commonwealth shall have the right to immediately terminate this Agreement and the underlying agreement. If termination is infeasible, the Commonwealth shall report the violation to the Secretary.
- q) **Termination by Commonwealth.** Business Associate authorizes termination of this Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion, that the Business Associate has violated a material term of this Agreement.
- r) **Failure to Perform Obligations.** In the event Business Associate fails to perform its obligations under this Agreement, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Agreement and applicable law.

- s) **Privacy Practices.** The Department will provide and Business Associate shall immediately begin using any applicable form, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date designated by the Program or Department. The Department retains the right to change the applicable privacy practices, documents and forms. The Business Associate shall implement changes as soon as practicable, but not later than 45 days from the date of notice of the change.

4. OBLIGATIONS OF COVERED ENTITY:

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

5. MISCELLANEOUS:

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

Appendix A to Commonwealth of Pennsylvania Business Associate Agreement

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

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

EXHIBIT B

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)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
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 Measure	of Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
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].

EXHIBIT C

SOFTWARE LICENSE REQUIREMENTS

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

- 1. Enterprise Language:** The parties agree that more than one agency of the Commonwealth may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "Commonwealth Agency" as defined by the Commonwealth Procurement Code, 62 Pa.C.S. § 103, the terms and conditions of this Agreement apply to any purchase of products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software.
- 2. Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to principles of conflict of laws.
- 3. Indemnification:** The Commonwealth does not have the authority to and shall not indemnify any entity. The Commonwealth agrees to pay for any loss, liability or expense, which arises out of or relates to the Commonwealth's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Commonwealth is established by a court of law or where settlement has been agreed to by the Commonwealth. This provision shall not be construed to limit the Commonwealth's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the Commonwealth.
- 4. Patent, Copyright, Trademark, and Trade Secret Protection:**
 - a) The Licensor shall, at its expense, defend, indemnify and hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the Commonwealth for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The Commonwealth agrees to give Licensor prompt notice of any such claim of which it learns. 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, delegate to Licensor its right of defense of a Claim and the authority to control any potential settlements thereof. Licensor shall not without the Commonwealth's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the Commonwealth has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the Commonwealth to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the Commonwealth to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the Commonwealth. If OAG delegates such rights to the Licensor, the Commonwealth will cooperate with all reasonable requests of Licensor made in the defense and or settlement of a Claim. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at its own expense and without derogation of Licensor's authority to control the defense and settlement of a Claim. It is expressly agreed by the Licensor that, in the event it requests that the Commonwealth to provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the Commonwealth for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the Commonwealth for such support. If OAG does not delegate to Licensor the authority to control the defense and settlement of a Claim, the Licensor's obligation under this section ceases. If OAG does not delegate the right of defense to Licensor, upon written request from the OAG, the Licensor will, in its sole reasonable discretion, cooperate with OAG in its defense of the suit.

- b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties.
- c) If the right of defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensor, the Licensor shall pay all damages and costs finally awarded therein against the Commonwealth or agreed to by Licensor in any settlement. If information and assistance are furnished by the Commonwealth at the Licensor's written request, it shall be at the Licensor's expense, but the responsibility for such expense shall be only that within the Licensor's written authorization.
- d) If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the Commonwealth to continue the use of such licensed products.
- e) If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either procure the right to continue use of such infringing

products, replace them with non-infringing items, or modify them so that they are no longer infringing.

- f) If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the Commonwealth the license fee paid for the infringing licensed products, pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.
- g) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.
- h) Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:
 - (1) modification of any licensed products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;
 - (2) any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare the product;
 - (3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;
 - (4) use of the licensed products in other than its specified operating environment;
 - (5) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (6) infringement of a non-Licensor product alone;
 - (7) the Commonwealth's use of the licensed product beyond the scope contemplated by the Agreement; or
 - (8) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Licensor at no charge.
- i) The obligation to indemnify the Commonwealth, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

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

The Commonwealth's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the licensed products with a copy that does not contain Virus, and (b) if the Commonwealth, has suffered an interruption in the availability of

its computer system caused by Virus contained in the licensed product, reimburse the Commonwealth for the actual reasonable cost to remove the Virus and restore the Commonwealth's most recent back up copy of data provided that:

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

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

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

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

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

7. Termination:

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

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

Before the Commonwealth will permit an employee access to the Commonwealth's facilities, Licensor must provide written confirmation to the office designated by the agency that the

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

- 9. Confidentiality:** Each party shall treat the other party’s confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.
- 10. Publicity/Advertisement:** The Licensor must obtain Commonwealth approval prior to mentioning the Commonwealth or a Commonwealth agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
- 11. Signatures:** The fully executed Agreement shall not contain ink signatures by the Commonwealth. The Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent on the Agreement represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.

Software Publisher acknowledges and agrees the terms and conditions of this Exhibit shall supplement, and to the extent a conflict exists, shall supersede and take precedence over the terms and conditions of Software Publisher’s Software License Agreement.

IN WITNESS WHEREOF, Software Publisher has executed this Exhibit to Software Publisher’s Software License Agreement on the date indicated below.

Witness:	Software Publisher
_____ Signature	_____ Signature
_____ Date	_____ Date
_____ Printed Name	_____ Printed Name
_____ Title	_____ Title

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

By: _____ [Signature Affixed Electronically]
Deputy Secretary Date

APPROVED:

[Signature Affixed Electronically]
Comptroller Date

APPROVED AS TO FORM AND LEGALITY:

[Signature Affixed Electronically]
Office of Chief Counsel Date

[Signature Affixed Electronically]
Office of General Counsel Date

[Signature Affixed Electronically]
Office of Attorney General Date

APPENDIX B
DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. In order to be eligible for any consideration for this criterion, offerors must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, _____ [title] of _____ [name of Contractor] a _____ [place of incorporation] corporation or other legal entity, ("Contractor") located at _____ [address], having a Social Security or Federal Identification Number of _____, do hereby certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

_____ percent (____ %) [Contractor must specify the percentage] of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed:

[Use additional sheets if necessary]

The Department of General Services [or other purchasing agency] shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

Corporate or Legal Entity's Name

Signature/Date

Signature/Date

Printed Name/Title

Printed Name/Title

**APPENDIX C
COST PROPOSAL SHEET**

See Attached Spreadsheet

**APPENDIX D - PROPOSAL COVER SHEET
COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
RFP#14-IGWF-93**

Enclosed in three separately sealed submittals is the proposal of the Offeror identified below for the above-referenced RFP:

Offeror Information:	
Offeror Name	
Offeror Mailing Address	
Offeror Website	
Offeror Contact Person	
Contact Person's Phone Number	
Contact Person's Facsimile Number	
Contact Person's E-Mail Address	
Offeror Federal ID Number	
Offeror SAP/SRM Vendor Number	

Submittals Enclosed and Separately Sealed:	
<input type="checkbox"/>	Technical Submittal
<input type="checkbox"/>	Small Diverse Business Participation Submittal
<input type="checkbox"/>	Cost Submittal

<i>Signature</i>	
Signature of an official authorized to bind the Offeror to the provisions contained in the Offeror's proposal:	
Printed Name	
Title	

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

**APPENDIX E
SMALL DIVERSE BUSINESS
LETTER OF INTENT**

[DATE]

**[SDB Contact Name
Title
SDB Company Name
Address
City, State, Zip]**

Dear **[SDB Contact Name]**:

This letter serves as confirmation of the intent of **[Offeror]** to utilize **[Small Diverse Business (SDB)]** on RFP **[RFP number and Title]** issued by the **[Commonwealth agency name]**.

If **[Offeror]** is the successful vendor, **[SDB]** shall provide **[identify the specific work, goods or services the SDB will perform, and the specific timeframe during the term of the contract and any option/renewal periods when the work, goods or services will be performed or provided]**.

These services represent **[identify fixed numerical percentage commitment]** of the total cost in the **[Offeror's]** cost submittal for the initial term of the contract. Dependent on final negotiated contract pricing and actual contract usage or volume, it is expected that **[SDB]** will receive an estimated **[identify associated estimated dollar value that the fixed percentage commitment represents]** during the initial contract term.

[SDB] represents that it meets the small diverse business requirements set forth in the RFP and all required documentation has been provided to **[Offeror]** for its SDB submission.

We look forward to the opportunity to serve the **[Commonwealth agency name]** on this project. If you have any questions concerning our small diverse business commitment, please feel free to contact me at the number below.

Sincerely,

Acknowledged,

**Offeror Name
Title
Company
Phone number**

**SDB Name
Title
Company
Phone number**

**APPENDIX F
EFT TRANSACTION AND USE DATA
PADOC**

EFT Transactions & Dollar Amounts				
Pennsylvania Dept of Corrections				
7/1/13 thru 6/30/14				
TRANSACTIONS				
Month	Credit Card	Walk-In	Money Orders	TOTAL
Jul-13	34,522	7,260	5,568	47,350
Aug-13	37,451	7,928	5,381	50,760
Sep-13	34,993	7,055	5,152	47,200
Oct-13	37,484	7,754	5,200	50,438
Nov-13	37,960	7,834	4,660	50,454
Dec-13	42,317	7,987	5,350	55,654
Jan-14	39,311	7,222	6,206	52,739
Feb-14	43,667	7,801	3,566	55,034
Mar-14	43,952	7,662	5,243	56,857
Apr-14	40,636	7,546	4,238	52,420
May-14	41,207	7,607	4,099	52,913
Jun-14	39,104	6,878	4,532	50,514
Totals	472,604	90,534	59,195	622,333
DOLLAR VALUE				
Month	Credit Card	Walk-In	Money Orders	TOTAL
Jul-13	\$2,513,012.68	\$619,617.87	\$421,924.64	\$3,554,555.19
Aug-13	\$2,693,606.39	\$659,656.66	\$421,471.78	\$3,774,734.83
Sep-13	\$2,522,196.80	\$595,417.21	\$407,061.54	\$3,524,675.55
Oct-13	\$2,706,353.09	\$657,949.11	\$400,887.16	\$3,765,189.36
Nov-13	\$2,734,917.96	\$655,804.55	\$364,324.01	\$3,755,046.52
Dec-13	\$3,081,351.77	\$681,871.94	\$397,635.71	\$4,160,859.42
Jan-14	\$2,742,103.99	\$592,716.89	\$460,271.41	\$3,795,092.29
Feb-14	\$3,457,915.53	\$793,108.30	\$294,510.51	\$4,545,534.34
Mar-14	\$3,334,706.36	\$720,495.53	\$425,212.29	\$4,480,414.18
Apr-14	\$2,952,221.97	\$668,419.16	\$320,846.75	\$3,941,487.88
May-14	\$2,966,248.01	\$659,660.16	\$346,430.33	\$3,972,338.50
Jun-14	\$2,770,571.07	\$584,295.83	\$356,664.22	\$3,711,531.12
Totals	\$34,475,205.62	\$7,889,013.21	\$4,617,240.35	\$46,981,459.18

Appendix G

Non Commonwealth Hosted Application Service

Requirements for non-Commonwealth Hosted Applications/Services

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Appendix G

Requirements for non-Commonwealth Hosted Applications/Services

The purpose of this appendix is to define requirements for technology solutions procured by the Commonwealth that are not hosted within Commonwealth infrastructure.

A. Hosting Requirements

1. The selected Offeror shall supply all hosting equipment (hardware and software) required for performance of the Contract.
2. The selected Offeror shall provide secure access to all levels of users via the internet.
3. The selected Offeror shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth and server capacity.
4. The selected Offeror shall maintain all hosting equipment (hardware and software) and replace as necessary to maintain compliance with the Service Level Agreements as described in **Appendix H**.
5. The selected Offeror shall monitor, prevent and deter unauthorized system access. Any and all known attempts must be reported to the Commonwealth within the timeframe set out by the RFP. In the event of any impermissible disclosure, loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the selected Offeror shall comply with state and federal data breach notifications regulations and is to report security incidents to the Commonwealth within one (1) hour of when the selected Offeror knew of such unauthorized access, use, release, or disclosure of data.
6. The selected Offeror shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, to review the hosted system's location and security architecture.
7. The selected Offeror staff, directly responsible for day-to-day monitoring and maintenance, shall have industry standard certifications applicable to the environment and system architecture used.
8. The selected Offeror shall locate servers in a climate-controlled environment. Offeror shall house all servers and equipment in an operational environment that meets industry standards including climate control, fire and security hazard detection, electrical needs, and physical security.
9. The selected Offeror shall examine system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. The selected Offeror shall completely test and apply patches for all third-party software products before release.

11. Offerors shall provide a successfully passed SSAE- 16 SOC2 audit report, conducted by an independent certified public accounting firm, subject to the approval of the Department, as part of its proposal, and the selected Offeror shall provide a SSAE-16 audit reports annually.

B. System Availability

1. The selected Offeror shall make available the system and any custom software on a **24 x 7** basis as established by the **RFP**.
2. The selected Offeror shall perform routine maintenance during the planned weekly maintenance period of **Daily from Midnight to 6am Eastern time**. Routine maintenance shall include, but is not limited to, server upgrades/patching, software upgrades/patching and hardware maintenance.
3. The selected Offeror shall perform non-routine maintenance at a mutually agreeable time with **at least two (2) weeks** advance notice to the Commonwealth.
4. From time to time, emergency maintenance may be required to bring down the system. In such situations, if possible, the selected Offeror shall give advance notice, before the system goes down for maintenance, to the Commonwealth. The selected Offeror will limit the emergency maintenance to those situations which require immediate action of bringing down the system that cannot wait for the next scheduled maintenance period.

C. Security Requirements

1. The selected Offeror shall conduct a third party independent security/vulnerability assessment at its own expense on an annual basis and submit the results of such assessment to the Commonwealth within **three (3) business days after the conclusion of the assessment**.
2. The selected Offeror shall comply with Commonwealth directions/resolutions to remediate the results of the security/vulnerability assessment to align with the standards of the Commonwealth.
3. The selected Offeror shall use industry best practices to protect access to the system with a firewall and firewall rules to prevent access by non-authorized users and block all improper and unauthorized access attempts.
4. The selected Offeror shall use industry best practices to provide system intrusion detection and prevention in order to detect intrusions in a timely manner.
5. The selected Offeror shall use industry best practices to provide virus protection on all servers and network components.
6. The selected Offeror shall limit access to the system and servers and provide access only to those staff that must have access to provide services proposed.
7. The Selected Offeror will provide all Services, using security technologies and techniques in accordance with industry best practices and the Commonwealth's security policies, procedures, and

requirements, including those relating to the prevention and detection of fraud and any other inappropriate use or access of systems and networks.

D. Data Storage

1. The selected Offeror shall use industry best practices to update all systems and third party software security patches to reduce security risk. The Selected Offeror shall protect their systems with anti-virus, host intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.
2. The selected Offeror shall be solely responsible for all data storage required.
3. The selected Offeror shall take all necessary measures to protect the data including, but not limited to, the backup of the servers on a daily basis in accordance with industry best practices and encryption techniques.
4. The Selected Offeror agrees to have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, and best practices to protect that data particularly in instances where sensitive data may be stored on a Selected Offeror controlled or owned electronic device.
5. The selected Offeror shall utilize a secured backup solution to prevent loss of data, back up all data every day and store backup media. Storage of backup media offsite is required. **The data retention period for data storage will be til the end of the contract in which time all data will become the property of the PA Department of Corrections, with a agreed upon method on how to view (Microsoft Excel preferred) the data.** Stored media must be kept in an all-hazards protective storage safe at the worksite and when taken offsite. All back up data and media shall be encrypted.

E. Disaster Recovery

1. The selected Offeror shall employ reasonable disaster recovery procedures to assist in preventing interruption in the use of the system.

F. Data Exchange/Interface Requirements

1. PCI Compliance

The Selected Offeror is obliged to adhere to the Payment Card Industry Data Security Standard (PCI DSS) if it processes payment card data. Moreover, The Selected Offeror certifies that their Information Technology practices conform to and meet current PCI DSS standards as defined by The PCI Security Standards Council at https://www.pcisecuritystandards.org/security_standards/index.php.

The Selected Offeror will monitor these PCI DSS standards and its Information Technology practices and the Selected Offeror will notify the Commonwealth within one (1) week, if its practices should not conform to such standards. The SELECTED OFFEROR will provide a letter of

certification to attest to meeting this requirement and agrees to the Commonwealth's right-to-audit either by Commonwealth or external 3rd party auditors.

Selected Offeror agrees that it may (1) create, (2) receive from or on behalf of Commonwealth, or (3) have access to, payment card records or record systems containing cardholder data including credit card numbers (collectively, the "Cardholder Data"). Selected Offeror shall comply with the Payment Card Industry Data Security Standard ("PCI-DSS") requirements for Cardholder Data that are prescribed by the payment brands (as appropriate including Visa, MasterCard, American Express, Discover), as they may be amended from time to time (collectively, the "PCIDSS Requirements"). Selected Offeror acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment brands, for purposes of this Agreement or as required by applicable law.

G. Adherence to Policy

1. The selected Offeror support and problem resolution solution shall provide a means to classify problems as to criticality and impact and with appropriate resolution procedures and escalation process for each classification of problem.
2. The selected Offeror shall abide by all the Commonwealth's policies (Information Technology Bulletins (ITBs)).
3. The Selected Offeror shall comply with all pertinent federal and state privacy regulations.

H. Closeout

1. When the contract term expires or terminates, and at any other time at the written request of the Commonwealth; the selected Offeror must promptly return to the Commonwealth all its data (and all copies of this information), in a format agreed to by the Commonwealth, that is in the selected Offeror's possession or control.

Appendix H - SLA document

Performance Metric	Performance Target	Definition	Calculation	Frequency of Review	Service Credit
Availability	99.9%	This Service Level measures the percentage of time the application is available during the applicable Measurement Window. This measurement is by application, not by server instance. Availability is defined by whether the application residing on any of the associated server instances is available to users.	$A = (T - M - D) / (T - M) \times 100\%$ <p>A = Availability T = Total Monthly Minutes M = Approved Maintenance Time D = Downtime</p>	Monthly	5% of dollar's transferred
Non-Degradation of Service Availability	98%	This Service Level measures the percentage of time the application is non-degraded during the applicable Measurement Window. This measurement is by application, not by server instance. Degradation shall mean a Service that tests as fully operational but is degraded below the baselines established during acceptance testing. This includes, but is not limited to slow performance and/or intermittent system errors.	$N = (T - M - D) / (T - M) \times 100\%$ <p>N = Non-Degradation T = Total Monthly Minutes M = Approved Maintenance Time D = Time Service is Degraded.</p>	Monthly	2.5% of dollar's transferred
System unavailability Notification	100% of notifications within two (2) hours	The selected Offeror must notify the Commonwealth of any system unavailability within two (2) hours of discovering or receiving notice of system unavailability.	Time from discovering or receiving notice of system unavailability until notification is sent to the Commonwealth.	Continual	.5% of dollar's transferred
Problem Circumvention or Resolution Time	1-Urgent Priority within 2 hours 2-High Priority within 1 calendar day 3-Standard Priority within 1 week 4-Low Priority within 1 month	The time required for circumvention or solution after reporting a problem.	Time from problem/incident is reported until the problem is resolved or circumvented	Continual	5% of dollar's transferred

[{Sample Help Desk SLAs can be found in the} Master IT Services ITQ – Help Desk & LAN Support Performance Indicators Document](#)

Definitions: [{items for consideration when developing SLA's}](#)

Service Level Credit: credit available to the Commonwealth should the service provider fail to meet minimum service levels.

Maximum at Risk Amount: a defined percentage of monthly service fees or a total dollar value which is not exceeded when assessing service credits (this limits risk to provider. Example: Maximum at risk amount is 20% of monthly service fees)

Increased Impact Service Level Default: where the provider fails to achieve the service level multiple times during a specified time period, it may be liable to increased credits (e.g., failures in two consecutive months, or failures in any four months during a twelve-month period will double the severity weight used in calculating credits owing to the Commonwealth).

{If Priorities are used then they must be defined, examples included below}

- 1-Urgent Priority – Hosted system or major functionality of system is not available or operational for all users
- 2-High Priority - Hosted system or major functionality of system is not available or operational for multiple users
- 3-Standard Priority – Minor function of hosted system is not operational for multiple users, but all other functionality is available and operational for users
- 4-Low Priority - Minor function of hosted system is not operational for single user, but all other functionality is available and operational for users



Security TM
Standards Council

Standard: PCI Data Security Standard (PCI DSS)
Version: 2.0
Date: August 2011
Author: Scoping SIG, Tokenization Taskforce
PCI Security Standards Council

Information Supplement: PCI DSS Tokenization Guidelines

Table of Contents

1	Executive Summary	3
1.1	Objective.....	3
1.2	Intended Audience.....	3
1.3	Introduction to Tokenization	3
2	Tokenization Overview	5
2.1	Tokenization System Common Components.....	6
2.1.1	<i>Token Generation</i>	6
2.1.2	<i>Token Mapping</i>	7
2.1.3	<i>Card Data Vault</i>	7
2.1.4	<i>Cryptographic Key Management</i>	7
2.2	Tokenization Operations	8
2.3	Tokenization Security Considerations	10
2.3.1	<i>Network Segmentation</i>	10
2.3.2	<i>Authentication</i>	10
2.3.3	<i>Monitoring</i>	11
2.3.4	<i>Token Distinguishability</i>	11
2.3.5	<i>PCI DSS Requirements</i>	12
2.4	Tokenization Roles and Responsibilities.....	12
2.4.1	<i>Tokenization Deployment Models</i>	12
2.4.2	<i>Merchant Responsibilities</i>	14
2.4.3	<i>TSP Responsibilities</i>	15
3	PCI DSS Scoping Considerations	17
3.1	PCI DSS Scope for Tokenization	17
3.1.1	<i>Scoping Principles</i>	17
3.1.2	<i>Out-of-Scope Considerations</i>	18
3.2	Maximizing PCI DSS Scope Reduction.....	18
4	Additional Considerations	20
4.1	Tokens as Payment Instruments.....	20
4.2	Understanding the Risks	20
5	Conclusion	21
6	Acknowledgments	22
7	About the PCI Security Standards Council	23

1 Executive Summary

1.1 Objective

The purpose of this Information Supplement is to provide guidance for payment industry stakeholders when developing, evaluating, or implementing a tokenization solution, including how tokenization may impact Payment Card Industry Data Security Standard (PCI DSS) scope. This document provides supplemental guidance on the use of tokenization and does not replace or supersede PCI DSS requirements.

This document does not define the technical specifications or steps required to implement a tokenization solution, nor does it describe how to validate PCI DSS compliance for environments using tokenization. This document is not an endorsement for any specific technologies, products or services.

1.2 Intended Audience

This Information Supplement is intended for merchants that store, process, or transmit cardholder data and are seeking guidance on how implementing a tokenization solution may impact the scope of their compliance efforts with the (PCI DSS). Other payment industry stakeholders including payment processors, acquirers, service providers, assessors, and solution vendors may also find the information in this document useful.

1.3 Introduction to Tokenization

Tokenization is a process by which the primary account number (PAN) is replaced with a surrogate value called a “token.” De-tokenization is the reverse process of redeeming a token for its associated PAN value. The security of an individual token relies predominantly on the infeasibility of determining the original PAN knowing only the surrogate value.

Depending on the particular implementation of a tokenization solution, tokens used within merchant systems and applications may not need the same level of security protection associated with the use of PAN. Storing tokens instead of PANs is one alternative that can help to reduce the amount of cardholder data in the environment, potentially reducing the merchant’s effort to implement PCI DSS requirements.

The following key principles relate to the use of tokenization and its relationship to PCI DSS:

- Tokenization solutions do not eliminate the need to maintain and validate PCI DSS compliance, but they may simplify a merchant’s validation efforts by reducing the number of system components for which PCI DSS requirements apply.
- Verifying the effectiveness of a tokenization implementation is necessary and includes confirming that PAN is not retrievable from any system component removed from the scope of PCI DSS.

- Tokenization systems and processes must be protected with strong security controls and monitoring to ensure the continued effectiveness of those controls.
- Tokenization solutions can vary greatly across different implementations, including differences in deployment models, tokenization and de-tokenization methods, technologies, and processes. Merchants considering the use of tokenization should perform a thorough evaluation and risk analysis to identify and document the unique characteristics of their particular implementation, including all interactions with payment card data and the particular tokenization systems and processes.

2 Tokenization Overview

One of the primary goals of a tokenization solution should be to replace sensitive PAN values with non-sensitive token values. For a token to be considered non-sensitive, and thus not require any security or protection, the token must have no value to an attacker.

Tokens come in many sizes and formats. Examples of some common token formats are included in the following table.

Table 1: Selected Examples of Token Formats*

PAN	Token	Comment
3124 005917 23387	7aF1Zx118523mw4cwl5x2	Token consists of alphabetic and numeric characters
4959 0059 0172 3389	729129118523184663129	Token consists of numeric characters only
5994 0059 0172 3383	599400x18523mw4cw3383	Token consists of truncated PAN (first 6, last 4 of PAN are retained) with alphabetic and numeric characters replacing middle digits.

** **Note:** This table provides a selection of examples only, and does not include all possible token formats.*

Tokens can be generally identified as either single-use or multi-use. A single-use token is typically used to represent a specific, single transaction. A multi-use token represents a specific PAN, and may be used to track an individual PAN across multiple transactions. A multi-use token always maps a particular PAN value to the same token value within the tokenization system. Determining whether single-use or multi-use tokens, or a combination of both, are appropriate for a particular merchant environment will depend on the merchant's specific business need for retaining tokens.

When evaluating a tokenization system, it is important to consider all elements of the overall tokenization solution. These include the technologies and mechanisms used to capture cardholder data and how a transaction progresses through the merchant environment, including transmission to the processor/acquirer. The tokenization solution should also address potential attack vectors against each component and provide the ability to confirm with confidence that associated risks are addressed.

The security and robustness of a particular tokenization system is reliant on many factors, including the configuration of the different components, the overall implementation, and the availability and functionality of security features for each solution.

2.1 Tokenization System Common Components

2.1.1 Token Generation

Token generation describes the process or method of creating a token. Common forms of token generation include but are not limited to:

- A mathematically reversible cryptographic function, based on a known strong cryptographic algorithm and strong cryptographic key (with a secure mode of operation and padding mechanism)
- A one-way non-reversible cryptographic function (e.g., a hash function with strong, secret salt)
- Assignment through an index function, sequence number or a randomly generated number (not mathematically derived from the PAN)

Note: *If a token is generated as a result of using a hash function, then it is relatively trivial effort for a malicious individual to reconstruct original PAN data if they have access to both the truncated and hashed version of the PAN. Where hashed and truncated versions of the same PAN are present in the environment, additional controls should be in place to ensure that the hashed and truncated versions cannot be correlated to reconstruct the original PAN.*

Whichever generation method is used, the recovery of the original PAN must not be computationally feasible knowing only the token or a number of tokens. This is true for both single-use and multi-use tokens. Additionally, access to multiple token-to-PAN pairs should not allow the ability to predict or determine other PAN values from knowledge of only tokens. Tokens should have no value if compromised or stolen, and should be unusable to an attacker if a system storing only tokens is compromised.

Note that where token generation is based on a reversible encryption method (where the token is mathematically derived from the original PAN through the use of an encryption algorithm and cryptographic key), the resultant token is an encrypted PAN, and may be subject to PCI DSS considerations in addition to those included in this document. The PCI SSC is further evaluating how these considerations may impact PCI DSS scope for reversible, encryption-based tokens.

Tokenization of sensitive authentication data (including magnetic stripe data or equivalent on a chip, CAV2 / CVC2 / CVV2 / CID data, and PINs/PIN blocks) is not permitted per PCI DSS Requirement 3.2.

2.1.2 Token Mapping

Token mapping is the process of assigning a token to the original PAN value. When a PAN is submitted for tokenization, the generated token and the original PAN are typically stored in the card-data vault. Token mapping provides the ability to retrieve either a particular PAN or a particular token, depending on how the solution is implemented and the type of request.

The ability to retrieve a PAN in exchange for its associated token should be restricted to specifically authorized individuals, applications, and/or systems. Any system component that can be used to retrieve PAN data would need to be protected according to PCI DSS.

2.1.3 Card Data Vault

In a tokenization system, the card data vault (or “data vault”) is the central repository for PANs and tokens and is used by the token-mapping process. Wherever PAN data exists, it must be managed and protected in accordance with PCI DSS requirements.

Because it contains PANs as well as tokens, the data vault often presents the most attractive target for attackers. Compromise of the data vault could potentially result in the compromise of the entire tokenization system, and additional security controls above and beyond those required in PCI DSS may be warranted.

2.1.4 Cryptographic Key Management

Cryptographic key management defines the processes for creating, using, managing, and protecting cryptographic keys used for the protection of PAN data. Cryptographic keys must be managed and protected in accordance with PCI DSS requirements. In a tokenization solution, cryptographic key management applies to keys used for encrypting PAN in the card data vault, as well as any keys used in the generation of the tokens themselves.

Where token generation is based on the use of cryptographic keys, compromise of the keys could result in the compromise of all current and future tokens generated with those keys.

Cryptographic keys used for token generation and de-tokenization should therefore not be available to any application, system, user, or process outside of the secure tokenization system.

2.2 Tokenization Operations

There are numerous ways to implement a tokenization solution. As a general principle, tokenization and de-tokenization operations should occur only within a clearly defined tokenization system that includes a process for approved applications to submit tokenization and de-tokenization requests. Figure 1 below shows an example of a tokenization process.

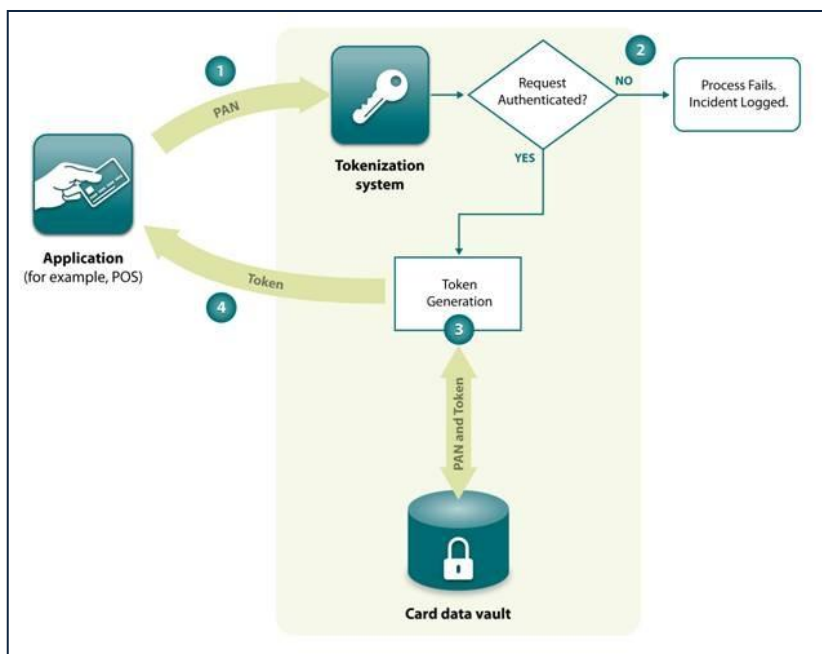


Figure 1: High-level example of a tokenization process

Note: This is an example only that illustrates one possible tokenization process. Each solution should be individually evaluated to understand its particular processes and data flows.

The steps illustrated in this example include:

1. A requesting application passes a PAN, along with necessary authentication information, to a tokenization system.
2. The tokenization system verifies the authentication information presented by the requesting application. If this check fails, the tokenization process fails, and information is logged for monitoring. Otherwise, the process continues to Step 3.
3. The tokenization system generates—or retrieves if already exists—a token associated to the PAN and records both to the card data vault, following PCI DSS requirements for PAN storage.
4. The tokenization system returns the token generated or retrieved in Step 3 to the requesting application.

De-tokenization typically reverses the steps from the tokenization process. An example of a de-tokenization process is shown in Figure 2 below.

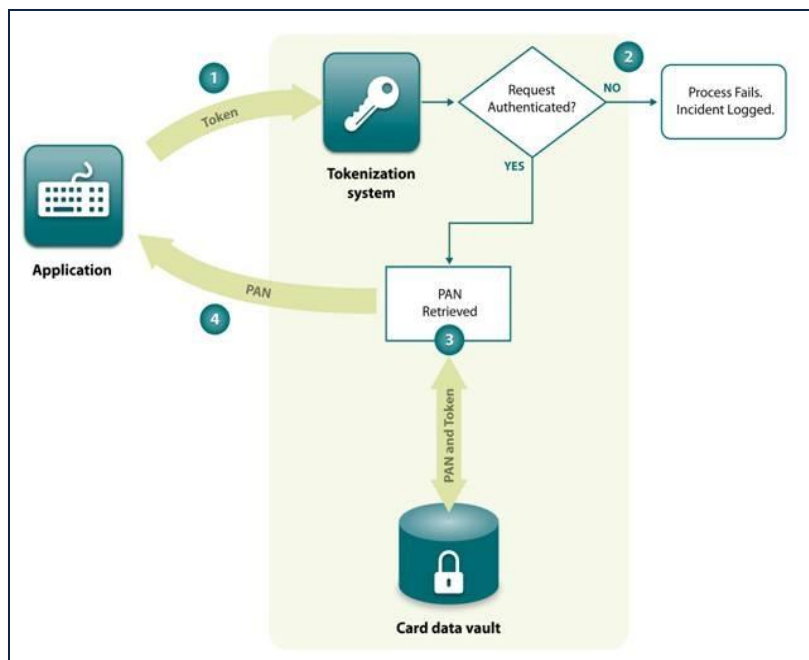


Figure 2: High-level example of a de-tokenization process

Note: This is an example that illustrates only one possible de-tokenization process. Each solution should be individually evaluated to understand its particular processes and data flows.

The steps illustrated in this example include:

1. The requesting application passes a token, along with necessary authentication information, to a tokenization system.
2. The tokenization system verifies the authentication information presented by the requesting application. If this check fails, the de-tokenization process fails, and information is logged for monitoring. Otherwise, the process continues to Step 3.
3. The tokenization system queries the card data vault for a record associated with the token, retrieves the PAN if found, and proceeds to Step 4. If no such token exists, the de-tokenization operation fails, and information is logged for monitoring.
4. The tokenization system returns the PAN value retrieved from the card data vault, if found, to the requesting application. If the PAN is not found, then an error message is returned.

Note: If PAN is retrievable by the merchant, the merchant's environment will be in scope for PCI DSS. In order to minimize the presence of cardholder data in a particular merchant environment or network segment, the merchant would not need or have the ability to retrieve the PAN once the token has been generated.

Some key considerations highlighted by these examples include:

1. Communications between the requesting application and the tokenization system must be secured to prevent interception or capture of cardholder data or token-to-PAN mapping information.
2. Strong authentication and access controls must exist for all access to the tokenization system, whether for tokenizing or de-tokenizing data, and authentication credentials must be secured from unauthorized access or use.
3. Security of the card data vault is critical for the security of the tokenization system as a whole, and must be secured at a minimum according to PCI DSS requirements to protect cardholder data.
4. All components within the tokenization system (for example, the token generation and mapping process, data vault, and cryptographic key management) must be located in a PCI DSS compliant environment.
5. Any system component with access to PAN data, or that has the ability to retrieve a PAN in exchange for a token, must be located in a PCI DSS compliant environment.

2.3 Tokenization Security Considerations

2.3.1 Network Segmentation

The tokenization system is considered part of an entity's cardholder data environment (CDE), and must be adequately segmented (isolated) from all networks not in scope for PCI DSS. Out-of-scope networks, applications, users, processes, and system components must not have access to authentication credentials that can be used to authenticate to the tokenization system or any part of the CDE.

2.3.2 Authentication

Only authenticated users and system components should be allowed access to the tokenization system and tokenization/de-tokenization processes. The authentication method should categorize all endpoints, including but not limited to applications, people, processes, and systems, to ensure the appropriate level of access is granted. In addition, consideration should be given to the following authentication items when evaluating a tokenization solution:

- **Identification** – Provides the required level of trust and assurance that the application, user, process, or system requesting access is uniquely identified.
- **Enrollment** – Establishes and ensures the uniqueness of identity during account provisioning.
- **Authentication** – Validates the identity of the application, user, process, or system at the time of a request.

- **Authorization** – Verifies the authenticated application, user, process, or system is permitted to submit a request, access a particular resource (such as data), or perform a particular activity.
- **Termination** – Removes or revokes the ability of an application, user, process, or system to successfully authenticate.
- **Maintenance** – Allows for ongoing management of accounts including but not limited to modification and termination.

2.3.3 Monitoring

The tokenization system should provide comprehensive and robust monitoring. All access to and actions within the tokenization system will need to be tracked, monitored, and logged in accordance with PCI DSS requirements. In addition, monitoring of the tokenization system should be sufficient to detect and alert personnel to any malfunctions, anomalies, and suspicious behavior that may indicate irregular token-to-PAN or PAN-to-token mapping requests or the presence of unauthorized activity within the tokenization process. Some tokenization systems can be configured to throttle or reject abnormal requests, reducing the potential exposure of unauthorized activity.

2.3.4 Token Distinguishability

The tokenization solution should include a mechanism for distinguishing between tokens and actual PANs. Distinguishability supports a merchant's ability to identify their sensitive data assets (in this case, PANs) so that appropriate security protections can be applied and verified. This also facilitates merchant and assessor efforts to validate the scope of the CDE as part of their annual PCI DSS review.

Without the ability to distinguish between a PAN and a token, the merchant or service provider may not realize that the tokenization system isn't functioning as intended. Additionally, PANs could be mistakenly identified as tokens, which can lead to mis-scoping of the CDE and the possibility that PANs are left unprotected and open to compromise.

Note that some tokens are designed to mimic the type and format of the original PANs, and it may not be possible for a human reviewer to distinguish between the two types of data. In this instance, a specific tool may need to be utilized or function performed to verify that an alleged token is actually a token and not a PAN.

The mechanism or method for distinguishing between tokens and PANs for a particular tokenization solution should be shared with the merchants using that solution, to allow merchants the ability to verify that their CDE has been accurately defined and scoped.

2.3.5 PCI DSS Requirements

Because the tokenization system stores, processes and/or transmits cardholder data, it must be installed, configured, and maintained in a PCI DSS compliant manner. Characteristics of a tokenization system that meets PCI DSS requirements include but are not limited to the following:

1. The tokenization system does not provide PAN in any response to any application, system, network, or user outside of the merchant's defined CDE.
2. All tokenization components are located on secure internal networks that are isolated from any untrusted and out-of-scope networks.
3. Only trusted communications are permitted in and out of the tokenization system environment.
4. The tokenization solution enforces strong cryptography and security protocols to safeguard cardholder data when stored and during transmission over open, public networks.
5. The tokenization solution implements strong access controls and authentication measures in accordance with PCI DSS Requirements 7 and 8.
6. The tokenization system components are designed to strict configuration standards and are protected from vulnerabilities.
7. The tokenization solution supports a mechanism for secure deletion of cardholder data as required by a data-retention policy.
8. The tokenization solution implements logging, monitoring, and alerting as appropriate to identify any suspicious activity and initiate response procedures.

2.4 Tokenization Roles and Responsibilities

The security considerations discussed in the previous section apply to the tokenization solution as a whole. Roles and responsibilities for a tokenization solution may be distributed between the various stakeholders—typically the merchant and tokenization service provider (TSP)—depending on its particular implementation or deployment model.

2.4.1 Tokenization Deployment Models

Examples of common deployments of a tokenization solution include the following:

- An on-premise or in-house solution that a merchant manages within its IT infrastructure
- An outsourced solution for which a merchant delegates management to a tokenization service provider outside of the merchant's infrastructure and control
- A hybrid solution that combines some on-premise components with some outsourced components

For an outsourced or hybrid tokenization solution, responsibility for ensuring that some system components comply with PCI DSS may be partially transferred from a merchant to a tokenization

service provider (TSP). Specifically, this would include components of the tokenization system that are managed by the service provider and are outside the control of the merchant.

As an example, if a merchant outsources their card data vault containing encrypted PANs to a TSP, the TSP would be responsible for ensuring that PCI DSS controls are applied and maintained in the environment where the vault is located. Merchants planning to use an outsourced or hybrid tokenization solution for their CDE should ensure that they thoroughly understand the details of the solution being offered. This should include performing a detailed assessment of the potential risks associated with using the solution. Additionally, it is crucial that both parties understand which controls and requirements are their responsibility, and which are the responsibility of the other party. Responsibilities for maintaining PCI DSS requirements, and any other controls that could impact the security of cardholder data, should be clearly defined between the two parties and documented in a formal agreement.

In an on-premise tokenization solution, the merchant maintains control over all components of the tokenization system. In this scenario, the merchant is fully responsible for complying with all applicable PCI DSS requirements. Merchants with on-premise solutions will also need to verify any segmentation controls that are implemented between their tokenization solution and any out-of-scope networks or systems. Before a system or network can be deemed out of scope for PCI DSS, it must first be verified that the system/network is not connected to the CDE and that it cannot retrieve or access PAN or other account data.

Figure 3 illustrates an example of how responsibilities may differ between merchant and TSP, depending on how the solution is deployed.

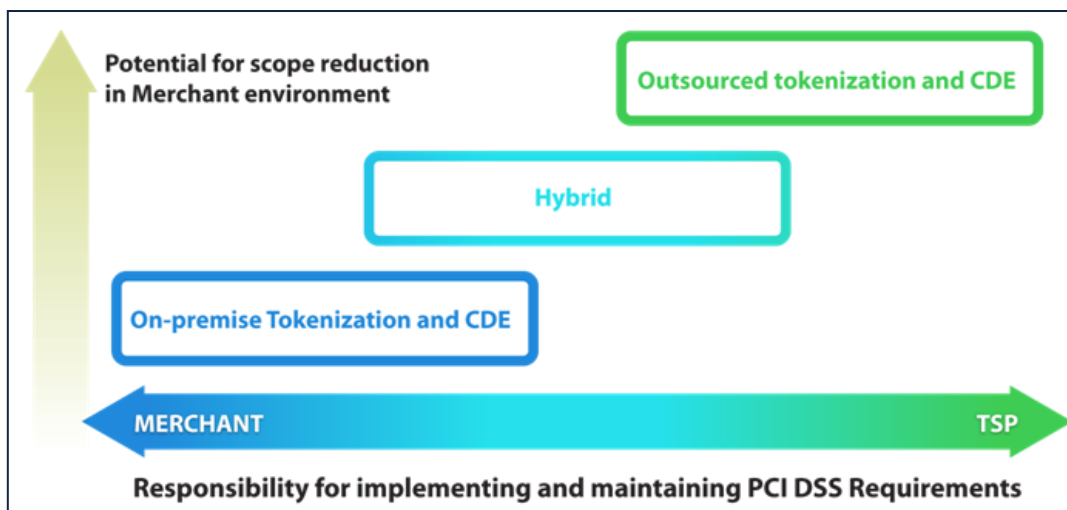


Figure 3: Example of how merchant and TSP responsibilities may be assigned for on-premise, hybrid, and outsourced solutions

Note: Some PCI DSS requirements will apply to the merchant even when a tokenization solution is outsourced or hybrid. For example, PCI DSS controls apply wherever PAN is processed, stored, or transmitted—such as at the point of capture—as well as at any de-tokenization points. Additionally, the merchant is required to implement and maintain policies and procedures to manage service providers whenever cardholder data is shared.

2.4.2 Merchant Responsibilities

The merchant has ultimate responsibility for the proper implementation of any tokenization solution they use, including its deployment and operation. Furthermore, the merchant is responsible for validation of its tokenization environment as part of their annual PCI DSS compliance assessment.

The merchant's level of responsibility for the tokenization solution can vary based on the extent to which the merchant manages it themselves or has outsourced some or all of the tokenization solution components. Depending on the tokenization solution implementation, the merchant's responsibilities may include but are not limited to some or all of the following:

- Ensure that the division of responsibility for protection of cardholder data is properly scoped and enforced.
- Verify the adequacy of any segmentation controls if these controls are not part of the supplied solution.
- Perform a risk assessment as part of their due diligence when selecting a tokenization service provider. Merchants should look for a provider with mature security processes that is capable of providing the required level of security as well as providing verification that the defined security controls are operational and effective.
- Ensure that proper contractual agreements are in place, with the tokenization service provider acknowledging that the service provider is responsible for the security of cardholder data processed, stored, and/or transmitted by the service provider.
- Maintain and implement policies and procedures to manage the tokenization service provider, including monitoring their PCI DSS compliance status at least annually.
- Verify that the solution supports and enforces the merchant's PCI DSS and security policy requirements, including but not limited to:
 - Data retention and disposal
 - Access control and authentication
 - Usage policies
 - Vulnerability management
 - Logging, monitoring and alerting

- Review logs of the merchant's interaction with the tokenization systems and processes on a regular basis to ensure that only users and system components authorized by the merchant have access to the tokenization/de-tokenization processes.
- Ensure that adequate incident response and disaster recovery plans are in place for the possibility of loss or compromise of the tokenization system. The following elements should be considered as part of these plans:
 - A risk analysis of all in-scope system components to determine the impact of a compromise.
 - A risk analysis for all out-of-scope system components that process, store, or transmit tokens to verify that they do not have access to the tokenization system or to PAN data, and to evaluate the impact of a compromise of tokenized data from those systems.
 - Strategies for remediation in the event of an incident or compromise. Examples may include but are not limited to rejecting de-tokenization requests from potentially compromised systems, reissuing tokens, and re-encrypting PANs in the data vault with new cryptographic keys.

Merchants using a hybrid or on-premise tokenization solution may be assuming the role of a TSP within their own organization, resulting in some or all of the TSP responsibilities (described below) also being applicable to the merchant.

2.4.3 TSP Responsibilities

The TSP has the overall responsibility for the design of an effective tokenization solution. Where a TSP manages one or more components of a tokenization solution on behalf of other merchants, additional responsibilities may include but are not limited to some or all of the following:

- Verify the security of all tokenization components under its control in accordance with PCI DSS requirements.
- Ensure that the tokenization solution supports the PCI DSS compliance of the TSP's customers. For example, the solution should provide secure transmission of cardholder data between the customer and the TSP, enforce secure authentication mechanisms for customer requests, implement customer access control policies, etc.
- Ensure that the tokenization solution supports the assignment of PCI DSS responsibilities between the TSP and their customers. For example, the solution should not return PANs to a customer without the customer's express permission and acknowledgement of how this action might affect the customer's responsibility for securing cardholder data and for validating PCI DSS controls.
- Ensure that responsibilities for maintaining and verifying PCI DSS controls are clearly defined between the customer and the TSP, and these responsibilities are documented in a tokenization service agreement.
- Develop and provide documentation to customer to assist in the proper deployment, implementation and use of the tokenization solution.

The TSP should clearly identify which PCI DSS requirements, system components, and services are covered by the TSP's PCI DSS compliance program. Any aspects of the solution not covered by the TSP are the responsibility of the merchant to manage and assess. The TSP should provide sufficient evidence and assurance that all processes and components under their control are PCI DSS compliant.

In summary, a TSP should ensure its tokenization solution meets all applicable PCI DSS requirements, supports their customers' PCI DSS compliance efforts, and helps to minimize their customers' need to store or access cardholder data.

3 PCI DSS Scoping Considerations

PCI DSS requirements apply to all system components within or connected to the CDE. The CDE is comprised of people, processes and technology that process, store, or transmit cardholder data or sensitive authentication data. To reduce the scope of a PCI DSS assessment, many organizations seek to minimize the number of system components that are included in or connected to the CDE. For example, network segmentation, which isolates systems that store, process or transmit cardholder data from those that do not, may reduce the scope of the CDE, and thus the scope of a PCI DSS assessment.

In general, tokenization can provide a model to centralize cardholder data storage and minimize the number of cardholder data occurrences in an environment. A properly implemented tokenization solution can reduce or remove the need for a merchant to retain PAN in their environment once the initial transaction has been processed. With adequate segmentation and process controls, a tokenization solution could help minimize the number of merchant system components that need to be protected according to PCI DSS.

3.1 PCI DSS Scope for Tokenization

All elements of the tokenization system and process, including de-tokenization and PAN storage, are considered part of the cardholder data environment (CDE) and are therefore in scope for PCI DSS. In addition, any system component or process with access to the tokenization system or the tokenization/de-tokenization process is considered in scope. System components that are adequately segmented (isolated) from the tokenization system and the CDE; and that store, process or transmit only tokens; and that do not store, process, or transmit any cardholder data or sensitive authentication data, may be considered outside of the CDE and possibly out of scope for PCI DSS. This section provides some high-level guidelines for scoping a tokenization solution for PCI DSS.

3.1.1 Scoping Principles

When scoping a tokenization environment for PCI DSS, the following general principles apply:

- All components of a tokenization system are considered part of the CDE and are always in scope since they store, process, and/or transmit cardholder data.
- System components that provide the ability to perform either of the following functions are in scope:
 - Generate a token in exchange for a PAN
 - Redeem a PAN in exchange for a token
- Any system component or process with access to the tokenization system or tokenization/de-tokenization processes is considered in scope as it is connected to the CDE.
- Any other system component located within or connected to the CDE, even if it does not perform tokenization or de-tokenization operations, is in scope.

3.1.2 Out-of-Scope Considerations

To be considered out of scope for PCI DSS, tokens, and the system components that store, process, and/or transmit only tokens would also need to meet following objectives:

- Recovery of the PAN value associated with a token must not be computationally feasible through knowledge of only the token, multiple tokens, or other token-to-PAN combinations.
- PAN cannot be retrieved even if the token and the systems it resides on are compromised.
- System components are segmented (isolated) from any application, system, process, or user with:
 - The ability to submit a de-tokenization request for that token and retrieve the PAN;
 - Access to the tokenization system, data vault, or cryptographic keys for that token;
 - Access to token input data or other information that can be used to de-tokenize or derive the PAN value from the token.
- System components are not connected to the tokenization system or processes, including the data vault, or cryptographic key storage.
- System components are not located within or connected to the CDE, nor do they have access to any authentication credentials that can be used to authenticate to any part of the CDE.
- System components do not store, process, or transmit cardholder data or sensitive authentication data through any other channel.
- System components that previously stored, processed, or transmitted cardholder data prior to implementation of the tokenization solution have been examined to ensure that all traces of cardholder data have been securely deleted.

3.2 Maximizing PCI DSS Scope Reduction

The key for merchants wishing to reduce their PCI DSS scope is to not store, process, or transmit cardholder data. Where there is a need to store cardholder data, retention should be limited to that which is required for business, legal, and/or regulatory purposes. If you don't need it, don't store it!

If tokens are used to replace PAN in the merchant environment, both the tokens and the systems they reside on will need to be evaluated to determine whether they require protection and should be in scope for PCI DSS. As described above, system components handling tokens that can be exchanged for a PAN or that can be de-tokenized to produce the PAN would be in scope. Any systems connected to the tokenization system or the CDE would also be in scope. To be considered out of scope for PCI DSS, both the tokens and the systems they reside on would need to have no value to an attacker attempting to retrieve PAN, nor should they in any way be able to influence the security of cardholder data or the CDE.

As part of their annual PCI DSS scope validation, merchants should review their use of tokens to ensure that cardholder data is not retrievable outside of the defined CDE. It should also be verified that tokens are being used as intended, and that any systems considered out of scope are adequately segmented from the CDE.

Additional recommendations for maximizing scope reduction for a merchant environment include the following:

- Replace PAN storage with tokens wherever possible;
- Limit existence of PAN to the point of capture and the card data vault;
- Minimize the number of system components that store, process, or transmit PAN prior to the PAN being tokenized;
- Ensure that PAN is not present in same environment as the tokens, outside of the card data vault;
- Ensure all PAN and other cardholder data is removed from source systems once it has been tokenized;
- Choose a solution that ensures PAN is not retrievable once a token has been issued; for example:
 - The tokenization solution does not permit a token to be exchanged for a PAN value.
 - The tokenization system does not provide PAN to the merchant in any response.
 - Once a token has been issued, all further transactions or processing (for example, refunds, chargeback, loyalty tracking, etc.) can be performed without the need for the merchant to retrieve or access the PAN.
- Enforce separation of duties such that token users and administrators do not have access to PAN at the point of capture or elsewhere;
- Combine an effective, secure tokenization solution with point-to-point encryption (P2PE), such that the only PANs in the environment are contained within a secure, PTS-approved point-of-interaction (POI) device.

Note: *If a token can be used to generate a transaction, additional security measures may be needed to protect against fraudulent use of the token. See “Tokens as Payment Instruments” in Section 4 for more information.*

4 Additional Considerations

4.1 Tokens as Payment Instruments

An important consideration when evaluating a tokenization solution is whether the token itself can be used in lieu of cardholder data to perform a transaction. Tokens that can be used as payment instruments (sometimes called “high-value tokens”) could potentially be “monetized” or used to generate fraudulent transactions, and may therefore have the same value to an attacker as the data they are intended to replace. Tokenization solutions which support these types of tokens should have additional controls in place to detect and prevent attempted fraudulent activities. Additionally, tokens that can be used to initiate a transaction might be in scope for PCI DSS, even if they cannot directly be used to retrieve PAN or other cardholder data; merchants should therefore consult with their acquirer and/or the Payment Brands directly to determine specific requirements for tokens that can be used as payment instruments.

4.2 Understanding the Risks

Tokenization is an evolving technology, and as with many evolving technologies, there is currently a lack of industry standards for implementing secure tokenization solutions. Organizations should carefully evaluate any solution before implementation to fully understand the potential impact to their CDE.

The architecture, implementation, and deployment of tokenization solutions can vary considerably, and the risks either created or mitigated by these systems are equally varied. Also, the advent of new attack vectors is likely to increase threats to tokenization systems. These factors mean that while a tokenization system may be secure against the best known attacks today, it may become vulnerable to attacks created in the future. Merchants and service providers should continue to monitor for new threats and potential risks to their existing use of tokenization.

When evaluating a tokenization solution, keep in mind that these solutions may introduce their own specific threats and security concerns. As with any evolving technology, care must be taken to understand the associated risks and avoid scenarios that may lead to cardholder data compromise.

5 Conclusion

Tokens and tokenization solutions can be implemented in numerous ways, and the security or process controls provided by one solution may not be suitable or applicable to another. Additionally, the assignment of roles and responsibilities may vary according to the particular solution or deployment method, and all entities involved should be aware of their obligations for maintaining security controls and protecting cardholder data.

The level of PCI DSS scope reduction offered by a tokenization solution will also need to be carefully evaluated for each implementation. For example, locations and flows of cardholder data, adequacy of segmentation, and controls around de-tokenization and mapping processes should be reviewed and verified to ensure proper scoping of the CDE and appropriate application of PCI DSS security requirements.

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3DSI	Nubridges
Appsec	Patrick Townsend Security Solutions
Barnes & Noble College Booksellers, LLC	Paymetric Inc
BT Counterpane	PayPal
Canadian Tire Corporation Limited	PCI SSC
Canadian Tire Financial Services	Privity
Capita Group Plc	Propay
CipherOptics	Protegrity
Coalfire Systems	PWC
Cybersource	Rogers Communications
DSW Inc.	RSA
Elavon	S1 Corporation
FIS Global	Security Metrics
Fishnet Security	Semtek
Hallmark	Shift 4
HSBC	Swedbank Card Services AB
IBM	Tesco
Illumis	The Buckle Inc.
Information Risk Management Plc	The College Board
Ingenico	T-Mobile
Intel	True Digital Security
International Forecourt Standards Forum	Trustwave
John Lewis Plc	US Bank
Key Innovations	Verifone
Marks and Spencer	Verizon
Merchant Link	Verizon Business
MTXEPS Inc	VFC
Nelnet Business Solutions (formerly InfiNet)	Voltage
Nettitude	Witham Labs
Nike	WNCO

7 About the PCI Security Standards Council

The mission of the PCI Security Standards Council is to enhance payment account security by driving education and awareness of the PCI Data Security Standard and other standards that increase payment data security.

The PCI Security Standards Council was formed by the major payment card brands American Express, Discover Financial Services, JCB International, MasterCard Worldwide, and Visa Inc. to provide a transparent forum in which all stakeholders can provide input into the ongoing development, enhancement, and dissemination of the PCI Data Security Standard (DSS), PIN Transaction Security (PTS) Requirements, and the Payment Application Data Security Standard (PA-DSS). Merchants, banks, processors, and point-of-sale vendors are encouraged to join as Participating Organizations.