



FULLY EXECUTED - CHANGE 2
 Purchase Order No: 4300598559
 Original PO Effective Date: **09/05/2018**
 PO Change Date: 12/11/2018
 PO Issue Date: **10/26/2020**
 Valid From: 09/04/2018 To 09/03/2021

Your SAP Vendor #: 535753

Supplier Name/Address:
SMART COMMUNICATION HOLDING
 10491 72ND ST
 SEMINOLE FL 33777-1511 US

Supplier Phone Number: 941-799-1586

Purchasing Agent

Name: Russ Ilgenfritz
 Phone: 717-728-3919
 Fax: 717-728-4181

Please Deliver To:
DOC Secretary Complex
1920 Technology Parkway, 3rd Floor
Mechanicsburg PA 17050 US

Please Bill To:
 Save time, reduce cost, get paid faster:
 Email PDF invoice to 69180@pa.gov
<https://www.budget.pa.gov/Programs/Pages/e-Invoicing.aspx>

Or mail paper invoice to:
 Commonwealth of Pennsylvania
 PO Box 69180, Harrisburg, PA 17106

Purchase Order Description:
Mail Scanning Services

This Purchase Order is comprised of: The above-referenced Solicitation, the Suppliers Bid or Proposal, and any documents attached to this Purchase Order or incorporated by reference.

Suppliers must provide four mandatory elements on PO invoices: PO Number, Invoice Date, Invoice Number, and Invoice Gross Amount. Failure to comply will result in the return of the invoice. Additional optional information such as supplier name, address, remit to information and PO Line Item information will improve invoice processing.

Item	Material/Service Desc	Qty	UOM	Delivery Date	Net Price	Price Unit	Total
1	FY18 - Mail Scanning Services	3.000	Month	09/04/2018	376,000.00	1	1,128,000.00

2	FY18 - Mail Scanning Services	7.000	Month	12/01/2018	376,000.00	1	2,632,000.00

3	FY19 - Mail Scanning Services	12.000	Month	07/01/2019	376,000.00	1	4,512,000.00

Information:

Total Amount:
SEE LAST PAGE FOR TOTAL OF ALL ITEMS

Currency: USD

Supplier's Signature _____

Printed Name _____

Title _____

Date _____



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Supplier Name:
SMART COMMUNICATION HOLDING

Item	Material/Service Desc	Qty	UOM	Delivery Date	Net Price	Price Unit	Total
4	FY20 - Mail Scanning Services	12.000	Month	07/01/2020	376,000.00	1	4,512,000.00

5	FY21 - Mail Scanning Services	2.000	Month	07/01/2021	376,000.00	1	752,000.00

General Requirements for all Items:

Header Text

Vendor shall provide mail scanning services to the PA Department of Corrections per the following attachment.

This purchase order shall serve as your Notice to Proceed

Attachment 1 - Agreement

Attachment 2 - Exhibit A Statement of Work

Attachment 3 - Exhibit B Commonwealth Terms and Conditions

Attachment 4 - Appendix

Terms of Payment

The annual fee for the postal mail processing Services that are the subject of this Agreement shall be four million five hundred and twelve thousand dollars (\$4,512,00.00), to be billed monthly. The fee for the first three (3) months, or one million one hundred twenty-eight thousand dollars (\$1,128,000.00), will be invoiced on the Effective Date, and which shall be paid in accordance with Paragraph 6 of Exhibit B. Beginning on the first day of the fourth month of the Agreement, fees will be invoiced monthly on the first of each month.

The monthly fee amount is three hundred seventy-six thousand dollars (\$376,000.00). Payments may be made electronically either via wire transfer or ACH.

No further information for this PO.

Information:

Total Amount:

13,536,000.00

Currency: USD

Agreement for Processing Inmate Postal Mail

This Agreement for Processing Inmate Postal Mail (the or this "Contract" or "Agreement") is entered into by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Corrections ("Commonwealth" or "DOC"), and Smart Communications Holding, Inc. ("SmartCOM" or "Contractor") with principal offices located at 10491 72nd Street, Seminole, Florida 33777 (Commonwealth and Contractor being sometimes hereinafter each individually referred to as a "Party" and collectively as the "Parties"), and is effective as of the Effective Date.

This Agreement supersedes all other agreements made between the Parties, written, oral or otherwise.

Now therefore, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties, intending to be legally bound, agree as follows:

SmartCOM agrees to provide its Patent Pending MailGuard Postal Mail Elimination® Services to the DOC, for services and systems that allows the DOC to monitor and archive inmate postal mail electronically. SmartCOM makes no representation or warranty as to the legality of monitoring or archiving such communications and activities.

A. Postal Mail Processing Services

1. SmartCOM is the exclusive licensor of MailGuard®, the patent pending postal mail elimination system.
2. SmartCOM shall provide Services to the DOC as outlined in Exhibit A, Statement of Work, which is attached hereto and hereby incorporated in this Agreement.
3. MailGuard® converts regular incoming postal mail into an electronic document that will be delivered to the DOC in accordance with Exhibit A.

B. Fee Structure for Postal Mail Processing

1. The annual fee for the postal mail processing Services that are the subject of this Agreement shall be four million five hundred and twelve thousand dollars (\$4,512,00.00), to be billed monthly. The fee for the first three (3) months, or one million one hundred twenty-eight thousand dollars (\$1,128,000.00), will be invoiced on the Effective Date, and which shall be paid in accordance with Paragraph 6 of Exhibit B. Beginning on the first day of the fourth month of the Agreement, fees will be invoiced monthly on the first of each month. The monthly fee amount is three hundred seventy-six thousand dollars (\$376,000.00). Payments may be made electronically either via wire transfer or ACH.

C. Contract Specifications

1. Exhibit A, Statement of Work, attached hereto, is hereby incorporated into this Agreement.
2. Exhibit B, Commonwealth Terms and Conditions, attached hereto, is hereby incorporated into this Agreement.
3. License Grant: SmartCOM grants the DOC a nonexclusive royalty free license to utilize MailGuard® and the accompanying web applications described in Exhibit A (collectively, the "Software") for the term of this Agreement. SmartCOM grants the DOC a nonexclusive royalty free license to utilize the Legal Mail Carts described in Exhibit A (the "Hardware") for the term of this Agreement.
4. License Restrictions: The Software is to be used solely by the DOC in connection with the Services described in this Agreement and its exhibits. Unless and only to the extent that this Agreement expressly permits, DOC must not:

- (i) Rent, lease, lend, assign, sublicense, encumber or otherwise transfer or attempt to transfer the Hardware or Software or any portion thereof;
 - (ii) alter, create derivatives of, or modify the Hardware or Software in any way, or allow a third party to do so;
 - (iii) connect the Software or Hardware to any third-party products or services that were not first approved of in writing by SmartCOM;
 - (iv) distribute or otherwise make the Hardware or Software or any password, key, or other access code for the Software available to any third party;
 - (v) reverse engineer, decompile, or disassemble the Hardware or Software, or allow a third party to do so;
 - (vi) defeat or work around any access restrictions or encryption in the Software, or allow a third party to do so;
 - (vii) remove, minimize, block, or modify any titles, logos, trademarks, copyright and patent notices, digital watermarks, disclaimers, or other legal notices that are included in the Software or Hardware, whether they are SmartCOM's or a third party's.
5. Title. SmartCOM shall have and retain all rights, title, and interest in the products and Services provided to DOC. The Hardware, Software, and systems, including all modifications and updates of Software, shall always remain the sole and exclusive property of SmartCOM. Any trade secrets, methodology and processes of SmartCOM's services and systems constitute proprietary information of SmartCOM, regardless of any part or portion thereof which is the subject of a valid copyright or patent. DOC retains ownership rights of all Data, as defined on Exhibit B, during the term of this Agreement and upon termination or expiration of the Agreement. When the Agreement expires or is terminated, and at any other time at the written request of the DOC, SmartCOM must promptly return to the Commonwealth or DOC all its data (and all copies of this information), in a format agreed to by the Commonwealth, that is in SmartCOM's possession or control.
6. Term. This Agreement shall commence on the Effective Date and shall continue for a period of three (3) years (the "Expiration Date").
7. Limitation of Liability. Each Party agrees that it shall be solely responsible for the negligent or wrongful acts of its own agents and employees. In the event of litigation because of this Agreement, each Party shall be responsible for their own legal fees.
8. Employees. SmartCOM represents that it has, or will secure at its own expense, all personnel required in performing its obligations under this Agreement. All the Services required hereunder will be performed by SmartCOM or under its supervision, and all personnel engaged in the work shall be fully qualified to perform such Services. SmartCOM and any subcontractors used in the performance of the responsibilities listed herein must maintain a drug-free workplace policy. DOC acknowledges that SmartCOM is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an agency relationship, any employer/employee relationship, a joint venture relationship, or any other relationship allowing DOC to exercise control or discretion over how SmartCOM performs hereunder. SmartCOM expressly agrees that it shall be solely responsible for supervising its employees that it shall comply with all rules, regulations, orders, standards and interpretations promulgated pursuant to the OSHA Act of 1970, including but not limited to training, recordkeeping, providing personal protective equipment, lock/tag out procedures, material safety data sheets and labeling. SmartCOM certifies that neither it nor any subcontractors used to accomplish its obligations hereunder, shall employ unauthorized aliens. SmartCOM certifies that in accordance with the provisions of Title VII of the 1968 Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972 and Executive Order 11914, that neither it nor any subcontractors used to accomplish its obligations

hereunder discriminate based on race, color, sex, religion, age, national origin or disability in their employment practices.

9. Warranty Against Contingent Fees. SmartCOM warrants that no person or selling agency has been employed or retained to solicit this Agreement upon an agreement of understanding for commission, percentage, brokerage or contingency, except bona fide employees or selling agents maintained by SmartCOM for securing business.
10. Subcontracts. SmartCOM shall be allowed to use subcontractors for performing its Services under this Agreement in accordance with Paragraph 19 of Exhibit B.
11. SmartCOM Cooperation. SmartCOM shall always observe and comply with all Federal, State, and local municipal laws, ordinances, rules and regulations in any way affecting the Agreement. SmartCOM shall maintain regular communications with the DOC Director, or their designees, and shall actively cooperate in all matters pertaining to this Agreement.
12. Public Information. Unless otherwise required by law, neither SmartCOM nor the DOC shall publish any findings based on data obtained from the operation of this Agreement without the prior written consent of the other party, whose written consent shall not be unreasonably withheld.
13. Access to Management Information. DOC shall have the complete and unlimited right to access all Data maintained by SmartCOM. SmartCOM shall make available all records or Data requested.
14. Permits and Licenses. All permits and licenses required by Federal, State, local laws, rules, and regulations necessary for the implementation of the work undertaken by SmartCOM pursuant to the Agreement shall be served and paid for by SmartCOM. It is the responsibility of SmartCOM to have and maintain the appropriate certificate(s) valid for work to be performed and valid for the jurisdiction in which the work is to be performed for all persons working on the job for whom a certificate is required.
15. Third-party Rights. The rights, obligations and duties contained in this Agreement shall exist exclusively between the Parties. The Parties expressly agree and intend that they alone shall have the exclusive rights to seek legal or equitable enforcement, remedy, injunctive relief or to bring a breach of Agreement action. The Parties do not intend to create, nor shall this Agreement be construed to create in any other individual or entity the status of a third-party beneficiary.
16. Public Entity Crime. SmartCOM confirms its understanding that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any state or of the United States and involving antitrust, fraud, bribery, collusion, racketeering, conspiracy, or material misrepresentation. SmartCOM hereby certifies that neither its officers, directors, executives, partners, employees, members, nor agents who are active in the management of SmartCOM have been charged with and convicted of a public entity crime after July 1, 1989.
17. Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.
18. Compliance with Laws. SmartCOM shall comply with all Federal, State and local laws, rules, and regulations applicable to the Services or payments for Services under this Agreement.
19. Governing Law. The parties mutually agree that any litigation arising hereunder shall be brought and completed in the Commonwealth of Pennsylvania.
20. Attorney Fees. In the event of litigation concerning this Agreement, the Parties shall each be responsible for

their own attorney's fees and costs.

21. Completeness of Agreement. This Agreement, together with any additional or supplementary Schedules, Exhibits or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the Parties hereto, and no other agreements including click-through, shrink-wrap licenses and software terms of use, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the Parties hereto. This Agreement may be amended or revised only in writing and signed by both Parties.
22. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement which shall remain in full force and effect and enforceable in accordance with its terms.
23. Matters to be Disregarded. The titles of the several sections, subsections and paragraphs set for in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.
24. Notices. Any notices, demands, payments or reports required by this Agreement shall be in writing and sufficient if sent by the Parties hereto via registered or certified United States mail, postage prepaid, to the notice addresses noted below the Parties' signatures on the signature page.
25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any telecopy or other electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other electronic transmission of a signature shall be deemed an original and shall bind the party who made such signature.
26. Order of Precedence. In the event there is a conflict among the documents comprising the Agreement, the parties agree on the following order of precedence: the Commonwealth Terms and Conditions; the Statement of Work, and then the Agreement.
27. The DOC reserves the right to add services and amend this Agreement as needed in accordance with Paragraph 21 above. The DOC acknowledges that additional services may require payment of an additional fee.

THIS PORTION INTENTIONALLY LEFT BLANK .

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the duly authorized Officers and Agents and have set their hands and seals hereto as of the day and year written below.

Pennsylvania Department of Corrections:
Pennsylvania Department of Corrections

By: 

Name: John E. Ward

Title: Secretary

Date: 9/4/18

Notice Address:
1920 Technology Parkway
Mechanicsburg, PA 17050

Smart Communications Holding:
Smart Communications Holding, Inc.

By: 

Name: Jon Logan

Title: CEO

Date: 9-4-18

Notice Address:
10491 72nd Street
Seminole, Florida 33777

EXHIBIT A

I. STATEMENT OF WORK:

The Commonwealth of Pennsylvania, Department of Corrections, requires an offsite solution for the receipt and processing of inmate postal mail. SmartCOM in providing the solution shall meet the following requirements:

1. SmartCOM shall provide all the equipment and support services to operate the MailGuard® system and transmit incoming routine postal mail into an electronic document to be made available electronically, in a manner agreed to by the Parties, to the DOC.
2. “Routine Mail” means all regular incoming correspondence between inmates, family and friends. “Non-Routine Mail” means all mail that does not qualify as Routine Mail, including, but not limited to, all legal mail, packages, books, magazines and periodicals. All Non-Routine Mail will still be sent directly to the DOC for handling. Documents received by SmartCOM such as social security cards, driver licenses and other items as agreed upon between the parties, shall be sent to the DOC prior to scanning.
3. Operational processing of Routine Mail will mirror the United States Postal Service operation schedule.
4. SmartCOM shall be solely responsible for the cost of maintaining a mailbox in the State of Florida, which DOC will instruct and advertise all Routine Mail to be addressed and subsequently sent to.
5. SmartCOM shall retrieve and process incoming Routine Mail and process said mail as outlined herein within twenty-four (24) hours upon receipt, with the exception that for the first sixty (60) days of the Agreement mail processing shall be accomplished within five (5) days of receipt.
6. DOC will provide inmate housing information to SmartCOM,
 - a. Initially, information will be provided through comma-separated values (csv) file through a Secure FTP. The inmate information provided through the csv file will include the following information: Inmate Number, Control Number, Last name, First name, Middle, Suffix, Location, Building (Housing Unit), Section (Section in the housing unit), and Dorm (Bed number).
 - b. The csv file will be provided through DOC Secure FTP server. The DOC will provide the file once each day at approximately 6:00 am EST. The parties may mutually agree to provide the file at a different time based upon operational needs. DOC will provide information for the secure FTP location, including the host name, port, username and password.

EXHIBIT A

- c. After initial release, SmartCOM will work with DOC to convert the inmate data exchange to a web services format.
7. SmartCOM will scan each piece of Routine Mail and create a single pdf file for each piece of Routine Mail.
 - a. Page-1 of each pdf file will include an image of the envelope.
 - b. The following pages of the pdf will include images of the contents of the envelope.
 - c. All images will be scanned at 300dpi and will include color.
 - d. SmartCOM will associate each pdf file with an inmate number and the inmate's corresponding Location, Building, Section, and Dorm.
 - e. Routine Mail for which a corresponding inmate number cannot be located in the DOC information file will be returned to sender.
8. SmartCOM will retain original Routine Mail for forty-five (45) days unless otherwise instructed by DOC. At the expiration of forty-five (45) days (or longer if instructed by DOC) SmartCOM will securely destroy processed Routine Mail in a manner agreed upon by the parties. SmartCOM will maintain electronic records of Routine Mail for a period of seven (7) years from the date of the inmate's release. Retention periods may be altered upon mutual agreement of the parties.
9. SmartCOM will use the DOC-provided inmate information file to generate aggregate pdf files that include all the individual piece-mail pdfs for inmates housed in a given Location, Building, and Section.
 - a. The aggregate files will only include Routine Mail that has been tagged as "approved" via the review/approval web application (i.e. Routine Mail that has not been reviewed and/or placed on hold will not be included in the aggregate file).
 - b. The aggregate file will be sorted by Dorm.
 - c. The beginning of each aggregate pdf file will include an index listing all the piece-mail contents of the aggregate file.
 - d. Two aggregate files (not to exceed 5,000 pages per PDF) will be created for each Location, Building and Section.
 - i. One file will include Routine Mail containing photos.
 - ii. The other file will contain Routine Mail that does not contain photos.
 - iii. If the PDF exceeds 5,000 pages, all pages in excess must be created in a new PDF file.
10. SmartCOM will host a web application with the following capabilities:

EXHIBIT A

- a. DOC staff will be able to login to SmartCOM's web application using individual user IDs and passwords assigned to individual DOC staff.
 - b. The Web Application must be secure with HTTPS.
 - c. DOC staff will be able to administer user accounts, such as creating new user accounts, setting user permissions, resetting user passwords, etc.
 - d. DOC staff will be able to preview and tag mail as approved for distribution. The process for reviewing mail will allow the end user to query/sort mail by Building and Section.
 - e. Routine Mail containing photos shall be tagged with an identifier indicating that the mail contains photos.
 - f. The system shall provide a way to review Routine Mail containing photos separately.
 - g. The system shall provide the ability to tag a piece of Routine Mail to place it on hold pending further review.
 - h. The system shall provide the ability for an end user to preview and download an aggregate pdf file for a specific Location, Building, and Section.
 - i. The system will provide the ability to retrieve archived Routine Mail for a specific inmate using the inmate's number.
 - j. Due to the DOC process of assigning a different inmate number based on sentence, the inmate number for an individual could change while actively serving at the DOC. The system shall match an inactive inmate number with an active inmate number based on inmate's control number. Any Routine Mail sent to an inactive inmate number for an active inmate serving another sentence with another inmate number, should be automatically set to be available for the active inmate under the active number.
 - k. The system will provide the ability to print an individual piece-mail pdf.
 - l. Access to the DOC's information within the web application shall be limited to traffic originating from the DOC as defined by the source IP of the DOC traffic. DOC is responsible for providing the list of approved source IP networks to SmartCOM. DOC information will be available to SmartCOM staff accounts outside of their authorized IP range(s) as needed for normal business operation.
11. Legal Mail Carts. SmartCOM will provide twenty-five (25) MailGuard® Legal Carts ("Legal Mail Carts") to DOC within ninety (90) days of the Effective Date of the

EXHIBIT A

Agreement. Legal Mail Carts shall be delivered to facilities as designated by DOC. SmartCOM shall provide Legal Mail Carts in accordance with the following:

- a. SmartCOM will provide a Legal Mail Cart for video recording, file scanning and printing of inmate's legal mail.
- b. DOC will provide a wired or other network connection for the Legal Mail Cart. DOC will provide a network connection that will allow the Legal Mail Cart to communicate with SmartCOM servers.
- c. SmartCOM will store the video recordings from the Legal Mail Cart for forty-five (45) days, unless otherwise requested by DOC.
- d. The Legal Mail Cart shall be configured with options to enable or disable the storage of the legal mail scanned.
- e. The Legal Mail Cart shall have the capability to store information locally on the cart in the case where a network connection is not available or in use. The digital information, such as videos and scanned mail, will be transferred, at the DOC's discretion, to the SmartCOM server when the network becomes available.
- f. SmartCOM will provide web applications for DOC authorized users to:
 - View the video recordings from the Legal Mail Cart.
 - Download the video recording from the Legal Mail Cart.
 - Retrieve audit information on list of users that have viewed information related to legal mail.
- g. SmartCOM shall have a defensible solution that guarantees, in the event scanned legal mail is stored on a Legal Mail Cart by SmartCOM, that the digital copy of the legal mail has only been viewed by the inmate. The audit tracking of all activities related to access, transfer and deletion of scanned legal mail must be stored for a period of seven (7) years, unless otherwise requested by DOC.
- h. SmartCOM shall provide routine maintenance on the Legal Mail Carts to keep them in good working order and in a manner to ensure functionality as needed to perform the services outlined in this Agreement. In the event of an equipment breakdown or malfunction, service shall be provided by SmartCOM within twenty-four (24) hours of notification by DOC. Legal Mail Cart maintenance and service shall be provided at no additional cost to DOC.

12. SmartCOM will provide end user training on use of the web application to include:

- a. An instructor-led webinar and end user manual. SmartCOM shall provide instructor-led webinars upon DOC's request.

EXHIBIT A

- b. Instructions on all web application functionality.
- c. Training must be provided to the end users at all DOC locations.

13. Security Requirements.

- a. SmartCOM 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 six months.
- b. SmartCOM shall comply with Commonwealth directions/resolutions to remediate the results of the security/vulnerability assessment to align with the standards of the Commonwealth.
- c. SmartCOM 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.
- d. SmartCOM shall use industry best practices to provide system intrusion detection and prevention in order to detect intrusions in a timely manner.
- e. SmartCOM shall use industry best practices to provide virus protection on all servers and network components.
- f. SmartCOM shall limit access to the system and servers and provide access only to those staff that must have access to provide services proposed.
- g. SmartCOM 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.
- h. In addition to these requirements, SmartCOM shall comply with **Appendix 1**, Requirements for non-Commonwealth Hosted Applications/Services, attached hereto and incorporated herein by reference.

14. Upon termination or completion of the Agreement, SmartCOM shall:

- a. Promptly provide all Data to DOC through a mutually agreed upon secured method, such as FIPS 140-2 compliant external hard drives or secured FTP.
- b. Smart Communications will destroy or delete all DOC Data after written confirmation that DOC has received all Data.

EXHIBIT B
COMMONWEALTH TERMS AND CONDITIONS

Any reference in these terms and conditions to “Contractor” shall apply in the same manner to SmartCOM.

1. **DEFINITIONS.** The terms and definitions included herein shall apply to this entire Agreement including any and all Exhibits or Appendices.
 - a. Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency.
 - b. Commonwealth: The Commonwealth of Pennsylvania and the DOC.
 - c. Contract: The documents made and entered into between the Commonwealth, acting through the Pennsylvania Department of Corrections, and Contractor, pursuant to which these Contract Terms and Conditions are incorporated into and governed by.
 - d. Data. Any recorded information, regardless of the form, the media on which it is recorded or the method of recording.
 - e. Days. Calendar days, unless specifically indicated otherwise.
 - f. Developed Works. All of the fully or partially complete property, whether tangible or intangible prepared by the Contractor for use or ownership by the Commonwealth in fulfillment of the requirements of this Contract, including but not limited to: documents; sketches; drawings; designs; works; papers; files; reports; computer programs; documentation; data; records; software; samples; literary works and other works of authorship. Developed Works include all material necessary to exercise all attributes of ownership or of the license granted pursuant to the Contract.
 - g. Documentation. All materials required to support and convey information about the Services or Supplies required by this Contract, including, but not limited to: written reports and analyses; diagrams maps, logical and physical designs; system designs; computer programs; flow charts; and disks and/or other machine-readable storage media.
 - h. Effective Date. 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.
 - i. Expiration Date: The last valid date of the Contract, as indicated in the Contract documents to which these Contract Terms and Conditions are attached.
 - j. Proposal. Contractor’s response to a Solicitation issued by the Issuing Agency, as accepted by the Commonwealth.
 - k. Services. All Contractor activity necessary to satisfy the Contract, including the services outlined in Exhibit B to the Contract.
 - l. Software. MailGuard® and the accompanying web applications described in Exhibit A of the Contract to which the Commonwealth shall have secure access to review and engage in the Services which are the subject of the Contract, and includes, the operating system and software embedded within the Legal Mail Cart, which provides a user interface and allows the Commonwealth to engage the functions of the Legal Mail Cart.
 - m. Solicitation. A document issued by the Commonwealth to procure Services or Supplies, e.g., Request for Proposal; Request for Quotation; Supplier Pricing Request; or Invitation for Bid, including all attachments and addenda thereto.

- n. Supplies. All tangible and intangible property including, but not limited to, materials and equipment provided by the Contractor to satisfy the Contract.

2. **TERM OF CONTRACT**

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 fixed by the Contracting Officer after the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the Effective Date is affixed and the fully-executed Contract has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Commonwealth shall not be liable to pay the Contractor for any Services performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract.

3. **EXTENSION OF CONTRACT TERM**

The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions.

- a. The Commonwealth and the Contractor specifically agree as follows:
 - i. Written signature not required. Except as set forth in Paragraph C(21) of the Contract, Completeness of Agreement, no handwritten signature shall be required in order for the Contract or any Purchase Order to be legally enforceable.
 - ii. Validity; admissibility. Except as set forth in Paragraph C(21) of the Contract, Completeness of Agreement, the Parties agree that no writing shall be required in order to make the Contract or any Purchase Order legally binding, notwithstanding contrary requirements in any law or regulation. The Parties hereby agree not to contest the validity or enforceability of the Contract executed electronically, or acknowledgement issued electronically, under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the Party bound thereby. Any genuine Contract or acknowledgement executed or issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the Parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
 - iii. Verification. 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.

4. PURCHASE ORDERS.

- a. Purchase Orders. The Commonwealth may issue Purchase Orders against the Contract or issue a Purchase Order as the Contract. These Purchase Orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to, and including, the Expiration Date of the Contract are acceptable and must be performed in accordance with the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.
- b. Electronic transmission. Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor.
- c. Receipt. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of a Purchase Order.
- d. Received next business day. Purchase Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.
- e. Commonwealth Purchasing Card. Purchase Orders under \$10,000 in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number and expiration date of the card. The Contractor agrees to accept payment through the use of a Commonwealth Purchasing card.

5. WARRANTY

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

6. PAYMENT

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required

to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

- c. The Commonwealth will make Contract payments through Automated Clearing House (ACH).
 - i. Within 10 days of award of the Contract or Purchase Order, the Contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth's procurement system (SRM).
 - ii. 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.
 - iii. 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.
7. **TAXES.** The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.
8. **INFORMATION TECHNOLOGY POLICIES.**
- a. General. The Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (located at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Policy ACC001, Accessibility Policy. The Contractor shall ensure that Services and Supplies procured under the Contract comply with the applicable standards. In the event such standards change during the Contractor's performance, and the Commonwealth requests that the Contractor comply with the changed standard, then any incremental costs incurred by the Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.
 - b. Waiver. The Contractor may request a waiver from an ITP by providing detailed written justification as to why the ITP cannot be met. The Commonwealth may waive the ITP in whole, in part or conditionally, or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.

9. **CONFIDENTIALITY, PRIVACY AND COMPLIANCE.**

- a. General. 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. Unless the context otherwise clearly indicates the need for confidentiality, information is deemed confidential only when the party claiming confidentiality designates the information as "confidential" in such a way as to give notice to the other Party (for example, notice may be communicated by describing the information, and the specifications around its use or disclosure, in

the Solicitation or in the Proposal). Neither Party may assert that information owned by the other Party is such Party's confidential information. Notwithstanding the foregoing, all Data (including mail), provided by, or collected, processed, or created on behalf of the Commonwealth is Confidential Information unless otherwise indicated in writing.

- b. Copying; Disclosure; Termination. The Parties agree that 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 confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon expiration or termination of this Contract or any license granted hereunder, the receiving Party will return to the disclosing Party, or certify as to the destruction of, all confidential information in the receiving Party's possession, other than one copy (where permitted by law or regulation), which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions. A material breach of these requirements may result in termination for default, in addition to other remedies available to the non-breaching Party.
- c. Insofar as information is not otherwise protected by law or regulation, the obligations stated in this section do not apply to information:
 - i. already known to the recipient at the time of disclosure other than through the contractual relationship;
 - ii. independently generated by the recipient and not derived from the information supplied by the disclosing Party;
 - iii. known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - iv. disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - v. required to be disclosed by the recipient by law, regulation, court order, or other legal process.

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.

- d. The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
 - i. Prepare and submit an un-redacted version of the appropriate document;
 - ii. Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret. The Contractor shall use a redaction program that ensures the information is permanently and irreversibly redacted; and
 - iii. Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:
 - 1. the attached material contains confidential or proprietary information or trade secrets;

2. the Contractor is submitting the material in both redacted and un-redacted format, if possible, in accordance with 65 P.S. § 67.707(b); and

3. the Contractor is requesting that the material be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

- e. Disclosure of Recipient or Beneficiary Information Prohibited. The Contractor 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 the Services provided by Contractor under the Contract for any purpose not connected with the Contractor's responsibilities, except with consent pursuant to applicable law or regulations. All material associated with direct disclosures of this kind (including the disclosed information) shall be provided to the Commonwealth prior to the direct disclosure.
- f. Compliance with Laws. Contractor will comply with all applicable laws or regulations 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).
- g. Additional Provisions. Additional privacy and confidentiality requirements may be specified in the Contract.
- h. Restrictions on Use. All Data and all intellectual property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract shall be used only for the work of this Contract. No Data, intellectual property, Documentation or Developed Works may be used, disclosed, or otherwise opened for access by or to the Contractor or any third party unless directly related to and necessary under the Contract.

10. DATA BREACH OR LOSS.

- a. Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329.
- b. For Data and Confidential Information in the possession, custody, and control of the Contractor or its employees, agents, and/or subcontractors:
 - i. The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information ("Incident") to the Commonwealth within **two (2) hours** of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such Data or Confidential Information.
 - ii. Contractor shall provide timely notice to all individuals that may require notice under any applicable law or regulation as a result of an Incident. The notice must be pre-approved by the Commonwealth. At the Commonwealth's request, Contractor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.
 - iii. Contractor shall be solely responsible for any costs, losses, fines, or actual damages incurred by the Commonwealth due to Incidents.
- c. As to Data and Confidential Information fully or partially in the possession, custody, or control of the Contractor and the Commonwealth, the Contractor shall diligently perform all of the duties required in this section in cooperation with the Commonwealth, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

11. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING.

- a. The Contractor shall be liable for any damages incurred by the Commonwealth 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. The Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.
- b. 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 results from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).
- c. 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.
- d. The Contractor shall be responsible for reviewing Commonwealth software security standards and complying with those standards.
- e. 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 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.
- f. 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.
- g. The Commonwealth will not 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.

12. INDEMNIFICATION

- a. The Contractor shall indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of the negligence of the Contractor, its employees or agents in performing Contractor's Services 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. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under 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. Such indemnification shall not extend to claims brought by inmates or other third-parties challenging the DOC's policies or decisions regarding the processing and delivery of inmate mail.

- 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.

13. LOCATION, STATUS AND DISPOSITION OF DATA.

Unless the Contract specifies otherwise:

- a. All Data must be stored within the United States.
- b. The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor's or its subcontractors' possession.
- c. All Data shall be provided to the Commonwealth upon request, in a form acceptable to the Commonwealth and at no cost.
- d. Any Data shall be destroyed by the Contractor at the Commonwealth's request.
- e. Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy and accessibility requirements of this Contract.

14. INSURANCE.

- a. General. Unless otherwise indicated, the Contractor shall maintain at its expense and require its agents, contractors and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth:
 - i. Workers' Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the *Worker's Compensation Act*, Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.
 - ii. Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others, including loss of use resulting from any property damage which may arise from its operations under this Contract, whether such operation be by the Contractor, by any agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 per person and \$2,000,000 per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name the Commonwealth 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 or Supplies provided to the Commonwealth.
 - iii. Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of \$2,000,000, per accident/occurrence/annual aggregate.
 - iv. Professional Liability/Errors and Omissions Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
 - v. Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under Company's Professional Liability/Errors and

Omissions Insurance referenced above) in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.

- vi. Completed Operations Insurance in the amount of \$2,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
 - vii. Comprehensive crime insurance in an amount of not less than \$5,000,000 per claim.
- b. Certificate of Insurance. Prior to commencing Services under the Contract, and annually thereafter, the Contractor shall provide the Commonwealth with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been given to the Commonwealth. Such cancellation or change shall not relieve the Contractor of its continuing obligation to maintain insurance coverage in accordance with this section.
- c. Insurance coverage length. The Contractor agrees to maintain such insurance for the latter of the life of the Contract, or the life of any purchase orders issued under the Contract.

15. **DEFAULT**

- a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
 - i. Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - ii. Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - iii. Unsatisfactory performance of the work;
 - iv. Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - v. Improper delivery;
 - vi. Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - vii. Delivery of a defective item;
 - viii. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - ix. Discontinuance of work without approval;
 - x. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - xi. Insolvency or bankruptcy;

- xii. Assignment made for the benefit of creditors;
 - xiii. Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - xiv. Failure to protect, to repair, or to make good any damage or injury to property;
 - xv. Breach of any provision of the Contract;
 - xvi. Failure to comply with representations made in the Contractor's bid/proposal; or
 - xvii. Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.
- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

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

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

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

17. **TERMINATION PROVISIONS**

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

- a. **Termination for Convenience:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Commonwealth agrees that in the event this Contract is terminated for convenience, Contractor's damages cannot be ascertained with any reasonable degree of certainty. Accordingly, the Commonwealth shall pay liquidated damages, unless otherwise agreed by the Parties, not as a penalty of any kind, but as additional compensation to Contractor,.. The amount of liquidated damages shall be equal to the monthly fee set forth in the Contract multiplied by the number of months remaining in the Contract term as of the date of termination.
- b. **Non-Appropriation:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose
- c. **Termination for Cause:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under Subparagraph a.

18. **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.

19. SUBCONTRACTS. The Contractor may subcontract any portion of the Services or Supplies described in this Contract to third parties selected by Contractor and approved in writing by the Commonwealth, whose approval shall not be unreasonably withheld. Notwithstanding the above, if Contractor has disclosed the identity of subcontractor(s) 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 an un-redacted 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.

20. NONDISCRIMINATION/SEXUAL HARASSMENT

The Contractor agrees:

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

- d. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- e. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- f. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- g. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- h. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- i. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- j. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

21. CONTRACTOR INTEGRITY PROVISIONS

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

- a. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms

shall have the meanings found in this Section:

- i. **“Affiliate”** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - ii. **“Consent”** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this Contract.
 - iii. **“Contractor”** means the individual or entity that has entered into this contract with the Commonwealth, and **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5% or more interest in the Contractor.
 - iv. **“Financial Interest”** means either:
 1. Ownership of more than a five percent interest in any business; or
 2. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - v. **“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.
 - vi. **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- b. In furtherance of this policy, Contractor agrees to the following:
- i. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
 - ii. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
 - iii. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

- iv. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- v. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Entities have not:
 - 1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - 2. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - 3. had any business license or professional license suspended or revoked;
 - 4. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - 5. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

- vi. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- vii. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- viii. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity

Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- ix. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- x. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

22. CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or 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.

- a. The Contractor must certify, in writing, for itself and all its subcontractors, as of the date of its execution of any Commonwealth 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 the bid/proposal, 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 any Commonwealth 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 contracting agency 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 contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default by the contract with the Commonwealth.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but 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 which do not result in the Contractor's suspension or debarment.
- f. The Contractor may obtain the 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 Number: (717) 783-6472
FAX Number: (717) 878-9138

23. AMERICANS WITH DISABILITIES ACT

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that 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 all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph a above.

24. APPLICABLE LAW

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

25. 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 these provisions, the term "Commonwealth" shall refer to the contracting Commonwealth agency.

- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information") the Contractor shall:
 - i. Provide the Commonwealth, within 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
 - ii. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth 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 the 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.

26. ENHANCED MINIMUM WAGE

- a. **Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - i. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - ii. covered by a collective bargaining agreement;
 - iii. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - iv. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- e. **Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- g. **Subcontractors.** Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

27. SOVEREIGN IMMUNITY.

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

Appendix 1
Requirements for non-Commonwealth Hosted Applications/Services

All references to the Commonwealth in this Appendix shall apply in the same manner to the DOC.

This appendix defines requirements for technology solutions procured by the Commonwealth that are not hosted within Commonwealth infrastructure.

A. Hosting Requirements

1. SmartCOM shall supply all hosting equipment (hardware and software) required for performance of the Contract.
2. SmartCOM shall provide secure access to all levels of users via the internet.
3. SmartCOM shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth and server capacity.
4. SmartCOM shall maintain all hosting equipment (hardware and software) and replace as necessary to ensure delivery of services as required under this Agreement.
5. SmartCOM 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 Agreement. 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, SmartCOM 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 SmartCOM knew of such unauthorized access, use, release, or disclosure of data.
6. SmartCOM shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, to review the hosted system's location and security architecture.
7. SmartCOM staff, directly responsible for day-to-day monitoring and maintenance, shall have or obtain industry standard certifications applicable to the environment and system architecture used. Commonwealth shall inform SmartCOM of any specific certifications requested.
8. SmartCOM 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. SmartCOM shall examine system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. SmartCOM shall completely test and apply patches for all third-party software products before release.

11. SmartCOM shall provide a successfully passed SSAE-18 SOC2 audit report, conducted by an independent certified public accounting firm, subject to the approval of the DOC and SmartCOM shall provide a SSAE-18 audit reports annually.

B. System Availability

1. SmartCOM shall make available the system and any custom software on a 24 hour a day, seven days a week basis.
2. SmartCOM shall perform routine maintenance during the planned weekly maintenance period of 10:00 pm, Friday to 6:00 am Saturday and 10:00 pm Saturday to 6:00 am Sunday, Eastern time. Routine maintenance shall include, but is not limited to, server upgrades/patching, software upgrades/patching and hardware maintenance.
3. SmartCOM shall perform non-routine maintenance at a mutually agreeable time with 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, SmartCOM shall give advance notice, before the system goes down for maintenance, to the Commonwealth. SmartCOM 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. Data Storage

1. SmartCOM shall use industry best practices to update all systems and third party software security patches to reduce security risk. SmartCOM 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. SmartCOM shall be solely responsible for all data storage required.
3. SmartCOM 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. SmartCOM 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 SmartCOM controlled or owned electronic device.
5. SmartCOM 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. 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.

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E. Disaster Recovery

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

F. Adherence to Policy

1. SmartCOM 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. SmartCOM shall abide by all the Commonwealth's policies (Information Technology Policies (ITPs)).
3. SmartCOM shall comply with all pertinent federal and state privacy regulations.

G. Closeout

1. When the contract term expires or terminates, and at any other time at the written request of the Commonwealth; SmartCOM 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 SmartCOM's possession or control.