FULLY EXECUTED
Contract Number: 4400033775
Original Contract Effective Date: 03/30/2026
Valid From: 05/01/2026 To: 09/01/2026

All using Agencies of the Commonwealth, Participating Political Subdivision, Authorities, Private Colleges and Universities

Your SAP Vendor Number with us: 546200

Supplier Name/Address:
LIQUIDITY SERVICES OPERATIONS LLC
DBA GOVDEALS
100 CAPITOL COMMERCE BLVD
MONTGOMERY AL 36117-4260 US

Supplier Phone Number: 800-613-0156

Purchasing Agent
Name: Amy Layman
Phone: 717-346-3826
Fax: 717-783-6241

Please Deliver To:

To be determined at
the time of the Purchase Order
unless specified below.

Contract Name:
Online Auction Services-TSA property

Payment Terms
NET 30

Solicitation No.: Issuance Date:

Supplier Bid or Proposal No. (if applicable): Solicitation Submission Date:

This contract is comprised of: The above referenced Solicitation, the Supplier's Bid or Proposal, and any documents attached to this Contract or incorporated by reference.

Item	Material/Service Desc	Qty	UOM	Price	Per Unit	Total
1	Auction Services with Related Solutions	0.000		0.00	1	0.00

General Requirements for all Items:

Information:

Supplier's Signature _____ Title _____

Printed Name _____ Date _____

FULLY EXECUTED

Contract Number: 4400033775

Original Contract Effective Date: 03/30/2026

Valid From: 05/01/2026 To: 09/01/2026

Supplier Name:

LIQUIDITY SERVICES OPERATIONS LLC

DBA GOVDEALS

Header Text

PARTICIPATING ADDENDUM TO THE NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION
ONLINE AUCTION SERVICES CONTRACT NO. 20-00000-22-000051AB

This revenue generating contract is for Auction Services to include: The sale of surplus tangible personal property from the Contractor under the Master Agreement, including assets confiscated from travelers by the Transportation Safety Administration (TSA) and forwarded to DGS for sale or disposal.
This contract is restricted for use by the Department of General Services, Bureau of Supplies and Surplus Operations, Federal Surplus Program for the Services of Auction Services with Related Solutions.

Agency Contact:
Department of General Services
Bureau of Supplies and Surplus Operations
Mike Starr, Chief
RM G-49
2221 Forster Street
Harrisburg, PA 17125
717-787-9724
mstarr@pa.gov

GovDeals Contact:
Mimi Limmeroth
Phone:301-635-9448
Email: vendor@govdeals.com
Email: mlimmeroth@govdeals.com

Contract Administrator:
Amy Layman
1800 Herr Street, Harrisburg, PA 17103
Phone: 717-346-3826
Email: alayman@pa.gov

No further information for this Contract

Information:

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State of New Mexico
General Services Department
State Purchasing Division

Agreement Cover Page

Awarded Vendor:
0000145908
Liquidity Services Operations LLC, dba GovDeals
100 Capitol Commerce Blvd., Suite 110
Montgomery, AL 36117

Contact: Rebecca Murphy
Email: rmurphy@govdeals.com
Telephone No.: (980) 254-8908

Agreement Number: **20-00000-22-000051AB**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **As Requested**

Ship To:
As Requested

Invoice:
As Requested

For questions regarding this agreement please contact:
Vanessa LeBlanc (505) 629-9525

VL

Procurement Specialist: **Vanessa LeBlanc**

Telephone No.: **(505) 629-9525**

Email: **Vanessa.LeBlanc@state.nm.us**

Title: **On-Line Auction Services**

Term: **September 2, 2022 thru September 1, 2024**

The attached Master Agreement is made subject to the "terms and conditions" as indicated.

Liquidity Services Operations LLC, dba GovDeals has been awarded Tiers 1 & 2.

JDL

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Master Agreement No. 20-00000-22-00051AB

THIS AGREEMENT for On-Line Auction Services is entered into by and between the **State of New Mexico, General Services Department** (hereinafter the "Lead State" or a "Participating Entity" and **Liquidity Services Operations LLC dba GovDeals** (hereinafter the "Contractor").

Contractor Information:
Liquidity Services Operations LLC
Dba GovDeals
100 Capitol Commerce Blvd., Ste 110
Montgomery, AL 36117
Contact: Rebecca Murphy
Telephone: (980) 254-8908
Email: Rmurphy@govdeals.com

NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

(1) A Participating Entity's Participating Addendum ("PA");
(2) NASPO ValuePoint Master Agreement Terms & Conditions;
(3) A Purchase Order issued against the Master Agreement;
(4) The Specifications or Statement of Work;
(5) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
(6) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. Definitions

Award means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

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Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.

Order or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

Participating Entity means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposal is not required to participate.

Price Agreement means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

Procuring Agency means all agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

Project means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

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Staff means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors' company.

State Agency means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. "State agency" includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.

State Purchasing Agent means the Director of the State Purchasing Division of the General Services Department for the State of New Mexico.

Subcontractor means a business agreeing to perform part or all the obligations of the awarded Contractor. This does not include those persons provided to Purchasing Entities under the awarded contracts to fulfill On-Line Auction Services.

NASPO ValuePoint Program Provisions

I. Term of Master Agreement

1.1 **The initial term** of the Contract will be two (2) years with the option, upon mutual written agreement, for four (4) additional renewal periods of two (2) years each. The State reserves the right to implement renewal periods of other duration if the State finds it advantageous to do so. In no way shall this agreement exceed ten (10) years. Upon mutual agreement, the contract may be extended or amended.

1.2 **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

1.3 **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-up competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-up master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

II. Order of Precedence

2.1 **Order.** Any Order placed under this Master Agreement will consist of the following documents:

2.1.1 A Participating Entity's Participating Addendum ("PA");

2.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;

2.1.3 A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;

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2.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

2.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

2.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2.3 **Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

III. Participants and Scope

3.1 **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

3.2 **Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section II. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

3.3 **Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

3.4 **Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

3.5 **Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

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3.6 Eligibility for a Participating Addendum. Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

3.7 Individual Customers. Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

3.8 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

3.9 No Representations. The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

IV. NASPO ValuePoint Provisions

4.1 Applicability. NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

4.2 Administrative Fees

4.2.1 NASPO ValuePoint Fee. Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping) and other revenues including commission fees charged. The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

4.2.2 State Imposed Fees. Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless

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agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

4.3 NASPO ValuePoint Summary and Detailed Usage Reports

4.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://calculator.naspovaluepoint.org or other method provided by NASPO ValuePoint. All sales of products or services under this Master Agreement must be reported as cumulative totals by state, including all revenues collected through commission fees charged. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales or other revenues, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

4.3.2 Detailed Sales Data. Contractor shall also report detailed sales and commission revenue data by completing and submitting the reporting template attached to the RFP as Attachment K or as otherwise required by NASPO ValuePoint. Reports are due on a quarterly basis and must be received by NASPO ValuePoint no later than thirty (30) days after the end of the reporting period. Reports must be delivered to NASPO ValuePoint electronically through a designated portal or other method as determined by NASPO ValuePoint. Detailed sales data reports must include sales information for all sales/revenues under Participating Addenda executed under this Master Agreement.

4.3.3 Executive Summary. Contractor shall, upon request, provide NASPO ValuePoint with an executive summary that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with, and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

4.3.4 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will have exclusive ownership of the media containing the reports. NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

4.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

4.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum

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process, and the manner in which eligible entities can participate in the Master Agreement.

4.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

4.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

4.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

4.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

4.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

4.6 Canadian Participation. Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

4.7 Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint

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related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

V. Pricing & Payment

5.1 Pricing. The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.

5.1.1 All prices and rates must be guaranteed for the initial term of the Master Agreement.

5.1.2 Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least 90 days prior to the effective date.

5.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

5.1.4 No retroactive adjustments to prices or rates will be allowed.

5.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

VI. Ordering

6.1 Order Numbers. Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, invoices, and correspondence.

6.2 Quotes. Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated, or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

6.3 Applicable Rules. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

6.4 Required Documentation. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

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6.5 **Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

6.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

6.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

6.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

6.5.4 Notwithstanding the expiration, cancellation, or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

6.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

6.6 **Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:

6.6.1 The services or supplies being delivered;

6.6.2 A billing address;

6.6.3 Purchasing Entity contact information;

6.6.4 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;

6.6.5 A not-to-exceed total for the Products or Services being ordered; and

6.6.6 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

6.7 **Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

6.8 **Contract Provisions for Orders Utilizing Federal Funds**. Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is

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placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

VII. Reserved

VIII. Inspection and Acceptance

8.1 **Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

8.2 **Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

8.3 **Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

8.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

8.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

8.4 **Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

8.5 **Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

8.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

8.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

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8.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

8.5.4 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

IX. Warranty

9.1 **Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section will apply.

9.2 **Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.

9.3 **Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

9.4 **Rights Reserved.** The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

9.5 **Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section VIII.

X. Product Title

10.1 **Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

10.2 **Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

10.3 **License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and

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dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XI. Indemnification

11.1 General Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

11.2 Intellectual Property Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

11.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

11.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

11.2.1.2 specified by the Contractor to work with the Product;

11.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

11.2.1.4 reasonably expected to be used in combination with the Product.

11.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

11.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or

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settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

11.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XII. Insurance

12.1 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

12.2 **Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

12.3 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

12.3.1 Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence and $2 million general aggregate;

12.3.2 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

12.4 **Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

12.5 **Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

12.6 **Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

12.7 **Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30)

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calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

12.8 **Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIII. General Provisions

13.1 Records Administration and Audit

13.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

13.1.2 Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

13.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

13.2 Confidentiality, Non-Disclosure, and Injunctive Relief

13.2.1 **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

13.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this

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Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

13.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

13.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

13.2.2 **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

13.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

13.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

13.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

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13.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

13.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

13.2.4 **Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

13.2.5 **NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

13.2.6 **Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

13.3 Assignment/Subcontracts

13.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

13.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

13.4 **Changes in Contractor Representation.** The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

13.5 **Independent Contractor.** Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or

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understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

13.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

13.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

13.8 Defaults and Remedies

13.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

13.8.1.1 Nonperformance of contractual requirements;

13.8.1.2 A material breach of any term or condition of this Master Agreement;

13.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

13.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

13.8.1.5 Any default specified in another section of this Master Agreement.

13.8.2 Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

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13.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

13.8.3.1 Any remedy provided by law;

13.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;

13.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;

13.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;

13.8.3.5 Suspension of Contractor's performance; and

13.8.3.6 Withholding of payment until the default is remedied.

13.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

13.9 Waiver of Breach. Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

13.10 Debarment. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

13.11 No Waiver of Sovereign Immunity

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13.11.1 In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

13.11.2 This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

13.12 Governing Law and Venue

13.12.1 The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

13.12.2 Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

13.12.3 If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

13.13 Assignment of Antitrust Rights. Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

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IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By: Duffy Rodriguez Date: 9/2/2022
John Garcia, Cabinet Secretary
General Services Department

By: Steve Kranzusch Date: 8/31/2022
Steve Kranzusch, Vice President
Liquidity Services Operations LLC dba GovDeals

Approved for legal sufficiency:

By: Paul Kippert Date: 9/1/2022
Paul Kippert
General Services Department, State Purchasing Division

The records of the Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

CRS ID Number: **02-474900-00-1**

NOTE: **Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.**

By: Ann Marie Lucero Date: 8/31/2022
Taxation and Revenue

This Agreement has been approved by the State Purchasing Agent of New Mexico:

Valerie Paulk _____ 9/2/2022 _____
State Purchasing Agent Date

X This Agreement is signed on behalf of the State Purchasing Agent

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ATTACHMENT A – SCOPE OF WORK

1. Awarded Tiers.

A. Tier 1 – Use of Website Only. Use of an Offeror's website as a marketing and/or publicizing tool by a Purchasing Entity. Includes both the Contractor's product (the on-line auction system) as well as the Contractor's services in either a simple use of an Offeror's website as a marketing tool, a publicizing tool by a Purchasing Entity

   a. Will allow Participating Entity options for posting photos and details of the property on the website and perform all work in auctioning, transporting and administration of the property, including handling of any related titles and funds.

B. Tier 2 – Use of Website and Accounting. Includes all items and services noted in Tier 2 plus an accounting operation.

II. Minimum System Requirements.

A. Tier 1 – Use of Website Only.

1. The Contractor shall supply a fully functional, customizable and secure web-based auction software service for the purpose of reallocating and/or selling the State's surplus property.

2. The Contractor will provide and absorb all cost of a secure hosting facility to operate the web-based "Software as a Service" (SaaS) application for an online auction system and allow the Lead State or other Purchasing Entity full access to the account. The Lead State or other Purchasing Entity will not be required to install any additional computer hardware or software at their location. The only requirements will be that the Lead State or other Purchasing Entity have an internet connection via a common web browser and a digital camera. The auction service shall not interact with any Lead State or other Purchasing Entity computer hardware, software or data base systems other than accessing its account through a common web browser. Offeror must submit a statement of concurrence with this requirement.

3. All hardware, software and servers needed to operate the online auction service will be provided by the Contractor. The Contractor must give the Lead State and Purchasing Entity full access to their assigned online auction account and the Lead State or other Purchasing Entity must be allowed to load their auction items via a common internet browser. In the alternative, the Offeror must be able to create the listing in a timely fashion (especially for Tier Three, but Purchasing Entities in other Tiers may wish to leverage this service as well.) The system should be available to the Lead State or other Purchasing Entity 24 hours a day, 7 days a week. Items the Lead State or other Purchasing Entity wishes to sell can be loaded at any time that best suits the schedule of the Lead State or other Purchasing Entity. Offeror must submit a statement of concurrence with this requirement.

4. All maintenance and upgrades to the hardware and software that the Contractor provides over the term of the contract shall be made at no cost to the Lead State or other Participating Entity. Offeror must submit a statement of concurrence with this requirement.

5. The Contractor will supply all operating software and applications needed for the auction site to function. Offeror must submit a statement of concurrence with this requirement.

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6. All connectivity to the internet shall be accessible through industry standard internet connections, web browsers and email. The system must allow access from Windows based systems. Offeror must submit a statement of concurrence with this requirement.

7. Contractor shall provide the Purchasing Entity the ability to create users with varying levels of access permission(s).

8. Contractor software service shall provide the ability for the following:
   a. The ability to create listings, determine category, select duration, input a description and upload photos of assets;
   b. Provide the auction-bidder/buyer the ability to register, log-in, view photographs, descriptions and technical specifications of items being bid on during the auction process;
   c. Provide real time information regarding participating auction bidder/buyer during the auction and once the auction has closed;
   d. Provide the Purchasing Entity with the ability to revise existing listings, copy existing listing for creation of new listing and the ability to retract or end listings;
   e. Provide an option/platform for automated email notices based on templates provided by the Purchasing Entity to be generated by the system at the end or closing of auctions. These automated email notices should only be accessed by specific administrative roles and the specific template should be selectable at the time of auction closing;
   f. Auction multiple line items per lot;
   g. Auction one asset per listing;
   h. Add or remove the sales tax for the winning bids;
   i. List specific times for public viewing and different times for pick-up;
   j. List multiple locations and complete descriptions including terms of sale;
   k. List multiple starting and ending times;
   l. Embed “You Tube” video or other video images into auction listings;
   m. Provide auction detail and summary data to the Client Agency;
   n. Provide detailed reporting and records in both paper and electronic format;
   o. Set reserve and minimum bid amounts for asset to be sold;
   p. Block or otherwise decline auction-bidders/buyers who have defaulted on previous bids;
   q. Offer asset to the next highest auction bidder/buyer if an auction-bidder/buyer defaults;
   r. Auction-bidder/buyer to estimate shipping charges so that they can bid more efficiently knowing in advance the shipping expenses;
   s. Provide private auction functionality to allow the Purchasing Entity to sell assets to a select group of pre-qualified/screened auction-bidder/buyers;
   t. Track payment and payment collection;
   u. Provide an audit trail of all surplus asset sales and transactions processed through the Contractor’s website to the Purchasing Entity;
   v. Host software and provide technology upgrades as they become available and;
   w. Provide notification of sales, transactions, and revenues to the Purchasing Entity and or State Agency;
   x. Please describe any applicable value added features of your software
9. Contractor shall provide all support, including email and telephone support needed to operate the auction site. Live, 24/7 support via online chat, email or toll-free phone. Offeror must submit a statement of concurrence with this requirement.

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10. The system should allow the Lead State or other Purchasing Entity to post their own Terms and Conditions for each asset offered for sale and also provide a quick link to the Lead State or other Purchasing Entity Terms and Conditions. The systems must also provide a section for posting special instructions such as when payment should be made, etc. Offeror must submit a statement of concurrence with this requirement.

11. Contractor shall provide all security systems, anti-virus and firewalls capable of preventing the hacking of any auction information from the auction servers, capable of preventing the assimilation or distribution of viruses and other programs and capable of preventing any bidder from learning the identity of any other bidder. Offeror must submit a written narrative explaining how the Offeror shall meet this requirement. The information supplied in this narrative will be scored.

12. Contractor shall provide contingency plans to backup information and recover information. The Contractor shall have a disaster recovery plan that covers internet failure, electricity failure or systems failures.

13. Contractor's system should allow the Lead State or other Purchasing Entity to charge freight costs if the bidder is unable to pick up the winning bid items. Offeror must submit a statement of concurrence with this requirement.

14. Contractor's systems must be capable of withdrawing and cancelling an auction without penalty. The Contractor shall describe its system of notifying bidders if an auction has been withdrawn and cancelled.

15. Licensure and Insurance. Contractor must be properly licensed and insured. Contractor shall provide proof of required licensing, as applicable, in Lead State or other Participating Entity, including all applicable licensure and bonding for the proposed services at the time of contracting.

16. Training.

    a. Contractor shall provide on-site and/or online training to the Purchasing Entity users of the system at no cost, and shall work with members of the Client Agency's Information Technology group to ensure adequate testing and functionality with the State's websites. Offeror must submit a statement of concurrence with this requirement.

    b. Contractor shall provide the Purchasing Entity end user training in a group type forum via an online presentation and training program. Users shall be able to interact and voice questions during the presentation, and on certain occasions video conferencing tools may be implemented. Offeror must submit a statement of concurrence with this requirement.

    c. Contractor shall coordinate and provide on-site training and/or seminars on an as needed basis throughout the term of the contract period. Offeror must submit a statement of concurrence with this requirement.

    d. Contractor shall provide user manuals and other written support documentation as requested from the Client Agency. There shall be no limit on the number or location of on-site user training. Offeror must submit a statement of concurrence with this requirement.

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e. Contractor shall provide the Purchasing Entity with 24/7 administrative access to their accounts including: current and held auctions completed and cancelled listings, bidder/buyer information, and a comprehensive reporting suite of common activity reports. Offeror must submit a statement of concurrence with this requirement.

17. Customer Support.
    a. Contractor will provide easily accessible, highly responsive technical support and customer service to the Participating Entity. Typical response time is under an hour, and Contractor commits to always respond within 24 hours. Purchasing Entity's Account Manager may be reached by cell phone or email 24 hours a day, 7 days a week. If for any reason, your Account Manager is not immediately available, Purchasing Entity may contact GovDeals' Client Help Desk. Staffed by fully trained Client Services Representatives, the Help Desk provides technical support and problem-solving by toll-free phone, live chat, and email.

B. Tier 2 – Use of Website and Accounting.

When servicing Tier 2 Contractor must meet all requirements listed in Tier 1 as well as the following:

1. Accounting. Contractor shall provide a complete accounting of items from pick up to final sale or disposition.
    a. Contractor shall be fully responsible for the collection of monies and reimbursement to the Participating Entity.
    b. Contractor shall collect and process all taxes due.
    c. Contractor shall keep records of all financial matters pertaining to the sales in accordance with generally accepted accounting principles. The financial records must be made available to representatives of the Lead State or other Purchasing Entity or any other governmental agency with jurisdiction to audit. The records must be maintained for a period of six (6) years after the term of the Master Agreement.

2. Revenue Collection and Payments.
    a. Contractor accepts payments from winning Bidders by credit card (Visa, MasterCard, Discover and American Express), PayPal and Wire Transfer. (All payments over $4,999 must be made by Wire Transfer.) These methods of payment are consistent with the payment methods generally available to Internet shoppers and allow for all of the advantages users of these payment methods are accustomed to enjoying. The ability to pay via electronic funds rather than by purchasing a cashier's check or money order andthen expediting delivery of these funds is considered to be an advantage by most Internet shoppers. GovDeals also accepts payment through use of P-cards.

    b. The transaction cost for Contractor bidders who purchase from our Clients who use our Financial Settlement Service (FSS) is included in the proposed buyer's premium; therefore there will be no additional fee charged to the State of New Mexico and Participating Entities for collection of auction proceeds. For our Clients who utilize Contractor's Financial Settlement Services (Price Proposal, Exhibit A), Contractor agrees to remit auction proceeds weekly and to accept all liability for fraud and chargebacks that occur.

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This means that Contractor is willing to guarantee that our Clients will never lose any money or assets using our Financial Settlement Services.

c. Contractor is fully PCI compliant and does not store any financial data from buyers. Fees and Buyer's Premium amounts are discussed in depth in Contractor's Price Schedule.

d. Each week, a payment totaling the sales (minus agreed-upon buyer's premium and sales taxes collected) of all assets paid for and picked up in the previous week will be remitted to the Client. If required by a Participating Entity's policy, Contractor will remit gross proceeds collected less applicable sales tax and then bill the Participating Entity for the buyer's premium.

e. Clients have a choice of remittance by check or Automated Clearing House (ACH) direct deposit. Contractor does not withhold payment of its Clients' auction proceeds during the 30-day charge-back liability window; our charge-back liability is funded using a portion of the Buyers' Premium charged to buyers when they make electronic payments.

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ATTACHMENT C - PRICE SCHEDULE

A. Tier 1 – Use of Website Only.

1. Contractor / GovDeals offers a success-based fee structure that is charged only on successfully completed auctions. There will be no additional fees or charges for our standard services. There will be no fee if an auction does not result in a completed sale, and there will be no charges to the State or Participating Entity for any marketing efforts, training, software upgrades, or consultation and client support provided on-site or remotely.

2. Tier One enables the Participating Entity to collect its own payments and be invoiced by GovDeals (Non-FSS). If the Entity prefers to utilize GovDeals' system and service with our payment collection and remittance service, Financial Settlement Services (FSS) included, the Entity should utilize our Tier Two services.

3. GovDeals is strongly encouraging use of our Tier Two service for the following reasons:

- The majority of states now require applicable tax collection on internet purchases, to include the purchase of government-owned surplus assets. Some states extend tax collection to vehicles.
- This expansion of tax collection creates an added level of responsibility and additional liability for state surplus operations.
- Tier Two service transfers this responsibility and liability to GovDeals – we become the Marketplace Facilitator for your surplus operation.
- As your Marketplace Facilitator, GovDeals assumes responsibility and liability for:
  - ✓ Monitoring tax rates and tax law changes to ensure that the proper sales tax is applied to each auction based on the type of asset being sold and its location.
  - ✓ Maintenance and application of tax exemption status – we collect buyers' tax- exempt documents, apply these accordingly, and ensure these remain current.
  - ✓ Remittance of taxes to the proper taxing authorities.

4. Entities already using GovDeals may continue at their current fee structure or adopt the updated pricing and program benefits outlined below. The pricing provided below is GovDeals' ceiling pricing. GovDeals reserves the right to negotiate lower pricing and/or payment terms on a case- by-case basis based on asset type, asset value, or sales volume.

5. Pricing: US- 0% Seller Fee with 12.5% Buyer's Premium

6. Elevated Services Pricing: Offered on a case-by-case basis. GovDeals recognizes that government agencies have different needs. In this spirit, we offer ceiling pricing of an additional 20% fee to accommodate special circumstances warranting that GovDeals provides various additional services.

a. These services may include, in addition to the services offered herein, taking photographs/videos of assets for promotion and sale purposes; uploading descriptive content and media to create auction listings; tasks such as transportation and storage of assets (limited to areas where such service is offered), etc.

b. Note: When a client requests additional services, GovDeals will review the client's specific needs, projected sales volume, and other relevant

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details of the prospective account to determine service availability and pricing on a per-case basis.

7. Real Estate related Services Pricing: Real estate category fees are based on the specific type and the potential value of each parcel or the potential aggregated value of the opportunity.

GovDeals' fee for the auction of real estate assets is lower than the 12.5% ceiling fee proposed.

8. Rebate: Entities may be eligible for GovDeals' Volume Discount Program (VDP). This program pays a rebate on completed sales. The volume discount payments are applied to each transaction, or if requested, may be remitted annually. If reduced upfront pricing is offered to a specific client for all assets and/or for higher-valued assets such as aviation assets or asset categories such as real estate, a rebate will not be paid on these sales since their fee has already been discounted.

9. TIER ONE: Use of an Offeror's website as a marketing and/or publicizing tool by a Purchasing Entity:

Item	Description of Commodity and/or Services	Percentage Fee to Buyer	Percentage Fee to Seller
1.	Online Auction Fee *Entities already using GovDeals may continue at their current fee structure or adopt the updated pricing and program benefits outlined herein. The pricing provided herein is GovDeals' ceiling pricing. GovDeals reserves the right to negotiate lower pricing and/or payment terms on a case-by- case basis based on asset type, asset value, or sales volume.* **Most often clients have buyers pay GovDeals' Fee as a Buyer's Premium, making the percentage fee to the Seller 0%. Or this fee can be paid entirely by the seller or split.*	12.5%	0%*
2.	Please list any percentage fees that are different from the percentage fee listed above or percentage fees that are specific to an auction category (example: vehicles, heavy equipment, real estate) and/or any additional percentage Fees (charged to either Buyer or Seller)		

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2a.	Volume Discount Program/Fee Rebate** *The Percentage of the standard auction fee proposed that is returned to sellers is determined on a case-by-case basis with a minimum rebate of 1.25%.* *Entities who use GovDeals or begin using GovDeals at a fee that is below 12.5% based on asset type, asset value, or their aggregated sales volume are already receiving a rebate in the form of a fee reduction and are therefore not eligible for an additional rebate.*	0%	-1.25%**
2b.	Additional Services (Customized Services to meet specific client needs) This additional fee may be split between buyer and seller.	Additional Fee determined on a case-by-case basis with a 20% Ceiling	

TIER ONE

		Unit of Measure	Total Cost/% (if applicable)
3.	Value Added Services: (Any services not specified above. If the price for these services is included in above charges, mark Total Cost field, INCL.)		
3a.	Training (On-Site or Remote)		INCL
3b.	On-Call Support, & Auction Guidance/Best Practices		INCL
3c.	Asset Marketing Services		INCL
3d.	Custom Landing Page and Custom-Built Templates		INCL
3e.	Real-Time, Audit-Level Reporting Tools & Accounting Support		INCL
3f.	Asset Redistribution Functionality		INCL

B. Tier 2 – Use of Website and Accounting.

1. GovDeals offers a success-based fee structure that is charged only on successfully completed auctions. There will be no additional fees or charges for our standard services. There will be no fee if an auction does not result in a completed sale, and there will be no charges to the State or Participating Entity for any marketing efforts, training, software upgrades, or consultation and client support provided on-site or remotely.

2. Tier Two enables the Participating Entity to utilize GovDeals' system and service with our payment collection and remittance service, Financial Settlement Service (FSS) included. If the Entity elects to collect its own payments and be invoiced by GovDeals (Non-FSS), the Entity should utilize our Tier One services.

3. GovDeals is strongly encouraging use of our Tier Two service for the following reasons:

- The majority of states now require applicable tax collection on internet purchases, to include the purchase of government-owned surplus assets. Some states extend tax collection to vehicles.
- This expansion of tax collection creates an added level of responsibility and additional liability for state surplus operations.
- Tier Two service transfers this responsibility and liability to GovDeals – we

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become the Marketplace Facilitator for your surplus operation.

- As your Marketplace Facilitator, GovDeals assumes responsibility and liability for:
  - ✓ Monitoring tax rates and tax law changes to ensure that the proper sales tax is applied to each auction based on the type of asset being sold and its location.
  - ✓ Maintenance and application of tax exemption status – we collect buyers' tax- exempt documents, apply these accordingly, and ensure these remain current.
  - ✓ Remittance of taxes to the proper taxing authorities.

4. Entities already using GovDeals may continue at their current fee structure or adopt the updated pricing and program benefits outlined below. The pricing provided below is GovDeals' ceiling pricing. GovDeals reserves the right to negotiate lower pricing and/or payment terms on a case- by-case basis based on asset type, asset value, or sales volume.

5. Pricing: US- 0% Seller Fee with 12.5% Buyer's Premium

6. Elevated Services Pricing: Offered on a case-by-case basis. GovDeals recognizes that government agencies have different needs. In this spirit, we offer ceiling pricing of an additional 20% fee to accommodate special circumstances warranting that GovDeals provides various additional services.

A. These services may include, in addition to the services offered herein, taking photographs/videos of assets for promotion and sale purposes; uploading descriptive content and media to create auction listings; tasks such as transportation and storage of assets (limited to areas where such service is offered), etc.

B. Note: When a client requests additional services, GovDeals will review the client's specific needs, projected sales volume, and other relevant details of the prospective account to determine service availability and pricing on a per-case basis.

7. Real Estate related Services Pricing: Real estate category fees are based on the specific type and potential value of each parcel or the potential aggregated value of the opportunity. GovDeals' fee for the auction of real estate assets is lower than the 12.5% ceiling fee proposed.

8. Rebate: Entities may be eligible for GovDeals' Volume Discount Program (VDP). This program pays a rebate oncompleted sales. The volume discount payments are applied to each transaction, or if requested, may be remitted annually. If reduced upfront pricing is offered to a specific client for all assets and/or for higher-valued asset categories such as real estate, a rebate will not be paid on these sales since the fee has already been discounted.

9. TIER TWO: Use of an Offeror's website and accounting operation by a Purchasing Entity

Participating Entity will post photos and details of the property on the website and perform all work in auctioning, transporting and administration of the property, including handling of any related titles and funds.

Item	Description of Commodity and/or Services	Percentage Fee to Buyer	Percentage Fee to Seller

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1.	Online Auction Fee *Entities already using GovDeals may continue at their current fee structure or adopt the updated pricing and program benefits outlined herein. The pricing provided herein is GovDeals' ceiling pricing. GovDeals reserves the right to negotiate lower pricing and/or payment terms on a case-by- case basis based on asset type, asset value, or sales volume.* **Most often clients have buyers pay GovDeals' Fee as a Buyer's Premium, making the percentage fee to the Seller 0%. Or this fee can be paid entirely by the seller or split.*	12.5%	0%*

2.	Please list any percentage fees that are different from the percentage fee listed above or percentage fees that are specific to an auction category (example: vehicles, heavy equipment, real estate) and/or any additional percentage Fees (charged to either Buyer or Seller)		
2a.	Volume Discount Program/Fee Rebate *The Percentage of the standard auction fee proposed that is returned to sellers is determined on a case-by-case basis with a minimum rebate of 1.25%.* ***Entities who use GovDeals or begin using GovDeals at a fee that is below 12.5% based on asset type, asset value, or their aggregated sales volume are already receiving a rebate in the form of a fee reduction and are therefore not eligible for an additional rebate.*	0%	-1.25%**
2b.	Additional Services (Customized Services to meet specific client needs) This additional fee may be split between buyer and seller.	Additional Fee determined on a case-by-case basis with a 20% Ceiling	

TIER TWO

		Unit of Measure	Total Cost/% (if applicable)
3.	Value Added Services: (Any services not specified above. If the price for these services is included in above charges, mark Total Cost field, INCL.)		
3a.	Shouldering Liability for Fraud/Chargebacks		INCL
3b.	Marketplace Facilitator – Responsible and Liable for Tax Collection and Remittance		INCL
3c.	Training, On-Call Support, & Auction Guidance/Best Practices		INCL

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3d.	Asset Marketing Services		INCL
3e.	Custom Landing Page and Custom-Built Templates		INCL
3f.	Real-Time, Audit-Level Reporting Tools & Accounting Support		INCL
3e.	Asset Redistribution Functionality		INCL

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Certificate Of Completion

Envelope Id: 274CBBDCEBCC4E9481BD5C86E246D52D
Status: Completed
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Document Pages: 32
Signatures: 5
Certificate Pages: 6
Initials: 2
AutoNav: Enabled
EnvelopeId Stamping: Enabled
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Envelope Originator:
Vanessa LeBlanc
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Vanessa.LeBlanc@state.nm.us
IP Address: 98.60.102.6

Record Tracking

Status: Original
8/25/2022 8:56:00 AM
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Vanessa.LeBlanc@state.nm.us
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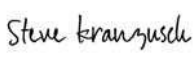
Pool: StateLocal

Storage Appliance Status: Connected
Pool: GSD
Location: DocuSign

Signer Events	Signature	Timestamp
Travis Dutton- Leyda Travis.Dutton-Leyda@state.nm.us IT & Construction Bureau Chief New Mexico General Services, State Purchasing Division Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 73.26.88.117	Sent: 8/25/2022 9:11:25 AM Viewed: 8/26/2022 4:52:38 PM Signed: 8/26/2022 4:52:45 PM
Steve Kranzusch govsteve@gmail.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 8/31/2022 10:58:53 AM ID: 5f802a63-966c-43f3-9eae-2f0531e0f26f	 Signature Adoption: Pre-selected Style Using IP Address: 69.171.205.139	Sent: 8/26/2022 4:52:47 PM Resent: 8/31/2022 9:58:08 AM Resent: 8/31/2022 10:33:34 AM Resent: 8/31/2022 10:57:09 AM Viewed: 8/31/2022 10:58:53 AM Signed: 8/31/2022 11:01:38 AM
Ann Marie Lucero AnnMarie.Lucero@state.nm.us Tax Examiner Supervisor State of New Mexico, Dept of Information Technology Signing Group: 33300 - CRS Verification Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 6/2/2020 2:28:54 PM ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.133.193	Sent: 8/31/2022 11:01:40 AM Viewed: 8/31/2022 1:03:16 PM Signed: 8/31/2022 2:18:01 PM
Paul Kippert Paul.Kippert@state.nm.us State of New Mexico, Dept of Information Technology Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:**	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 8/31/2022 2:18:03 PM Viewed: 9/1/2022 10:30:37 AM Signed: 9/1/2022 10:30:52 AM

Signer Events	Signature	Timestamp
Accepted: 9/9/2020 1:49:21 PM ID: 666bb93b-caef-4912-aa64-05b4aa8bcffb		
Duffy Rodriquez Duffy.Rodriguez@state.nm.us Acting Cabinet Secretary State of New Mexico, Dept of Information Technology Signing Group: 35000 - Cabinet Secretary Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 9/1/2022 10:30:54 AM Resent: 9/2/2022 7:50:28 AM Viewed: 9/2/2022 9:20:06 AM Signed: 9/2/2022 9:20:29 AM
Electronic Record and Signature Disclosure: Accepted: 6/10/2021 9:32:00 AM ID: 4e0b31be-fba7-4a31-92c3-4b1f0898eaaa		
Valerie Paulk valerie.paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 67.0.254.210	Sent: 9/2/2022 9:20:31 AM Viewed: 9/2/2022 9:21:10 AM Signed: 9/2/2022 9:22:57 AM
Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff		
Vanessa LeBlanc vanessa.leblanc@state.nm.us New Mexico General Services Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 98.60.102.6	Sent: 9/2/2022 9:22:59 AM Viewed: 9/2/2022 9:23:25 AM Signed: 9/2/2022 9:24:24 AM
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In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/25/2022 9:11:25 AM
Certified Delivered	Security Checked	9/2/2022 9:23:25 AM
Signing Complete	Security Checked	9/2/2022 9:24:24 AM
Completed	Security Checked	9/2/2022 9:24:24 AM

Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a $1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: *GSD.SPDinfo@state.nm.us*

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a $1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to *GSD.SPDinfo@state.nm.us* and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:
https://support.docusign.com/guides/signer-guide-signing-system-requirements

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to "I agree to use electronic records and signatures," before you click "CONTINUE" within the DocuSign system.

By selecting the check-box next to "I agree to use electronic records and signatures," you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

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Master Agreement No. 20-00000-22-00051AB
Amendment No. 1

THIS AMENDMENT for On-Line Auction Services is entered into by and between the **State of New Mexico, General Services Department** (hereinafter the "Lead State" or a "Participating Entity" and **Liquidity Services Operations LLC dba GovDeals.** (hereinafter the "Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

Update Contractor Information:
From:
Liquidity Services Operations LLC
Dba GovDeals
100 Capitol Commerce Blvd., Ste 110
Montgomery, AL 36117
Contact: Rebecca Murphy
Telephone: (980) 254-8908
Email: Rmurphy@govdeals.com

To:
Liquidity Services Operations LLC
Dba GovDeals
6931 Arlington Rd. Suite 460
Bethesda, MD 20814
Contact: Mimi Limmeroth
Telephone: (301) 635-9448
Email: mlimmeroth@govdeals.com

1. Term of Master Agreement

1.1. The initial term of the Contract will be two (2) years with the option, upon mutual written agreement, for four (4) additional renewal periods of two (2) years each. **This Master Agreement is extended from September 2, 2024 through September 1, 2026**. The State reserves the right to implement renewal periods of other duration if the State finds it advantageous to do so. In no way shall this agreement exceed ten (10) years. Upon mutual agreement, the contract may be extended or amended.

All remaining clauses under this section remain the same.

All other Articles and Deliverables of the original contract remain the same.

Docusign Envelope ID: 9BFFE0EA-E757-4A63-B623-3CFC5BA697A2

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By: Robert Doucette Date: 7/24/2024
Robert Doucette, Cabinet Secretary
General Services Department

By: Michael Price Date: 7/24/2024
Michael Price, Vice President, Revenue
Liquidity Services Operations LLC dba GovDeals

Approved for legal sufficiency:

By: Brian Fitzgerald Date: 7/24/2024
Brian Fitzgerald, General Counsel
General Services Department, State Purchasing Division

The records of the Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

BTIN: **02-474900-00-1**

NOTE: **Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.**

By: Ann Marie Lucero Date: 7/24/2024
Taxation & Revenue Department

This Agreement has been approved by the State Purchasing Agent of New Mexico:

By: Natalie Martinez Date: 7/24/2024
State Purchasing Agent

X This Amendment was signed on behalf of the State Purchasing Agent

MS YW

DocuSign

Certificate Of Completion

Envelope Id: 9BFFE0EAE7574A63B6233CFC5BA697A2 Status: Completed

Subject: NASPO Master Agreement No. 20-00000-22-00051AB Amendment No. 1 - Online Auction Services

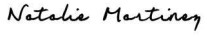
Source Envelope:

Document Pages: 2	Signatures: 5	Envelope Originator:
Certificate Pages: 5	Initials: 2	Yuliastuti Wulandari
AutoNav: Enabled		1100 S Saint Francis Dr
EnvelopeId Stamping: Enabled		Santa Fe, NM 87502
Time Zone: (UTC-07:00) Mountain Time (US & Canada)		Yuliastuti.Wulandari@gsd.nm.gov
		IP Address: 164.64.62.10

Record Tracking

Status: Original 7/24/2024 2:53:28 PM	Holder: Yuliastuti Wulandari Yuliastuti.Wulandari@gsd.nm.gov	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: General Services Department	Location: DocuSign

Signer Events	Signature	Timestamp
Michael Saavedra Michael.Saavedra@gsd.nm.gov IT and Const. Bureau Chief New Mexico General Services Security Level: Email, Account Authentication (None)	MS Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 7/24/2024 3:04:11 PM Viewed: 7/24/2024 3:23:34 PM Signed: 7/24/2024 3:23:38 PM
Electronic Record and Signature Disclosure: Accepted: 6/4/2020 11:04:51 AM ID: 9cac1b3e-4279-4c8f-b2b4-c607ea9821d8		
Michael Price mprice@govdeals.ca Vice President Revenue Security Level: Email, Account Authentication (None)	Michael Price Signature Adoption: Pre-selected Style Using IP Address: 174.119.175.194	Sent: 7/24/2024 3:23:40 PM Viewed: 7/24/2024 3:29:02 PM Signed: 7/24/2024 3:29:25 PM
Electronic Record and Signature Disclosure: Accepted: 7/24/2024 3:29:02 PM ID: bd92fc0b-5eff-4695-9483-944d3be05518		
Ann Marie Lucero annmarie.lucero@tax.nm.gov District Mgr. State of New Mexico Taxation and Revenue Signing Group: 33300 - CRS Verification Security Level: Email, Account Authentication (None)	Ann Marie Lucero Signature Adoption: Pre-selected Style Using IP Address: 164.64.133.192	Sent: 7/24/2024 3:29:26 PM Viewed: 7/24/2024 3:30:19 PM Signed: 7/24/2024 4:00:16 PM
Electronic Record and Signature Disclosure: Accepted: 6/2/2020 2:28:54 PM ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910		
Brian Fitzgerald brian.fitzgerald@gsd.nm.gov SPD Attorney New Mexico General Services Security Level: Email, Account Authentication (None)	Brian Fitzgerald Signature Adoption: Pre-selected Style Using IP Address: 98.249.111.21	Sent: 7/24/2024 4:00:17 PM Viewed: 7/24/2024 4:37:08 PM Signed: 7/24/2024 4:40:34 PM
Electronic Record and Signature Disclosure:		

Signer Events	Signature	Timestamp
Accepted: 11/10/2022 2:20:03 PM ID: 13d2333a-0cb1-4ca7-8071-f912306f24a1		
Robert Doucette robert.doucette@gsd.nm.gov Cabinet Secretary New Mexico General Services Signing Group: 35000 - Cabinet Secretary Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 174.205.164.113 Signed using mobile	Sent: 7/24/2024 4:40:35 PM Viewed: 7/24/2024 4:44:45 PM Signed: 7/24/2024 4:45:17 PM
Natalie Martinez natalie.martinez1@gsd.nm.gov Deputy Director New Mexico General Services Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 7/24/2024 4:45:18 PM Viewed: 7/24/2024 4:52:31 PM Signed: 7/24/2024 4:52:47 PM
Yuliastuti Wulandari yuliastuti.wulandari@gsd.nm.gov Procurement Specialist New Mexico General Services Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 7/24/2024 4:52:48 PM Viewed: 7/25/2024 8:27:57 AM Signed: 7/25/2024 8:28:09 AM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/24/2024 3:04:11 PM
Certified Delivered	Security Checked	7/25/2024 8:27:57 AM
Signing Complete	Security Checked	7/25/2024 8:28:09 AM
Completed	Security Checked	7/25/2024 8:28:09 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a $1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: *GSD.SPDinfo@state.nm.us*

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at *GSD.SPDinfo@state.nm.us* and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a $1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to *GSD.SPDinfo@state.nm.us* and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:
https://support.docusign.com/guides/signer-guide-signing-system-requirements

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to "I agree to use electronic records and signatures," before you click "CONTINUE" within the DocuSign system.

By selecting the check-box next to "I agree to use electronic records and signatures," you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

Docusign Envelope ID: 43B8A335-C756-4099-88AE-6CA19B5E60EB

PARTICIPATING ADDENDUM TO THE
NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION
ONLINE AUCTION SERVICES
CONTRACT NO. 20-00000-22-000051AB

This Participating Addendum is entered into pursuant to Online Auction Services contract No. 20-00000-22-000051AB (the "Master Agreement") between Liquidity Services Operations LLC dba GovDeals ("Contractor") and the State of New Mexico ("New Mexico") on behalf of the NASPO Valuepoint Cooperative Purchasing Organization. The parties to this participating addendum hereby create a separate contract between the Contractor and the Commonwealth of Pennsylvania ("Commonwealth") acting through its Department of General Services ("DGS").

New Mexico entered into the Master Agreement with the Contractor, pursuant to which the Contractor provides various Online Auction Services and related services, as described in the Master Agreement; and

The Commonwealth desires to participate in the Master Agreement as an additional contracting party under the Master Agreement for the sale of surplus tangible personal property from the Contractor under the Master Agreement, including assets confiscated from travelers by the Transportation Safety Administration (TSA) and forwarded to DGS for sale or disposal (TSA Property).

DGS is authorized under Sections 1902 and 1908 of the Commonwealth Procurement Code, 62 Pa. C. S. §§ 1902 and 1908, to undertake and make this type of contractual arrangement on behalf of the Commonwealth.

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

1. **Recitals.** The recitals set forth above are incorporated by reference as a material part of this participating addendum.

2. **Effective Date and Term.** This participating addendum shall become effective on the date the Commonwealth sends the fully executed and approved participating addendum to the Contractor ("Effective Date") and shall terminate or expire upon the earlier of (a) expiration or termination of the Master Agreement, or (b) termination of this participating addendum in accordance with its terms. If the Master Agreement is renewed or extended, this participating addendum shall automatically renew or extend for a term consistent with the term of the Master Agreement.

3. **Participating Addendum Terms.** DGS and the Contractor agree to be bound to the Commonwealth of Pennsylvania Terms and Conditions attached as Exhibit A and made part of this participating addendum.

4. **Master Agreement Terms.** Except as set forth in this participating addendum, DGS and Contractor agree to be bound by the terms and conditions as stated in the Master Agreement, which is attached as Exhibit B and made part of this participating addendum.

Docusign Envelope ID: 43B8A335-C756-4099-88AE-6CA19B5E60EB

5. **Order of Precedence.** To the extent that there is a conflict between the contract documents, the order of precedence shall be:

a. this participating addendum;
b. the Commonwealth of Pennsylvania IT Contract Terms and Conditions attached as Exhibit A to this participating addendum; and then.
c. the Master Agreement attached as Exhibit B to this participating addendum.

6. **Supplies and Services Available to Procure.** The Commonwealth may procure all the Tier 2 – Use of Website and Accounting services set forth in Section B of Attachment C to the Master Agreement (the "Price Schedule") to sell surplus tangible personal property and TSA property to the general public. Real property is excluded from the scope of this participating addendum. These services will be subject to the following fee structure that is made available to existing customers of Contractor pursuant to Section B.4 of the Price Schedule and Commonwealth Contract Number 4400024264.
Pricing: 0% US Seller Fee with 10.0% Buyers Premium

7. **Required Forms.** The Contractor must complete and provide the following certifications:

a. Iran Free Procurement Certification Form, BOP-1701;
b. Lobbying Certification and Disclosure Form, BOP-1307; and
c. Worker Protection and Investment Certification, BOP-2201.

8. Primary Contact; Notice. The primary contacts for this participating addendum, as well as the recipients of any written notices shall be the individuals identified below or such other individuals as may be identified from time to time in a Notice sent by a designating party to the other parties set forth below, except that a Purchase Order issued pursuant to this participating addendum will identify the Commonwealth Contact Person identified in the Purchase Order.

The Commonwealth's primary contact, Issuing Officer and Contracting Officer for this participating addendum is as follows:

Amy Layman
Department of General Services
1802 Herr Street
Harrisburg, PA 17103
(717) 346-3826
alayman@pa.gov

The Contractor's primary contact for this participating addendum, including and notice is as follows:

Docusign Envelope ID: 43B8A335-C756-4099-88AE-6CA19B5E60EB

Mimi Limmeroth
Liquidity Services Operations LLC dba GovDeals
6931 Arlington Road, Suite 460
Bethesda, MD 20814
(800) 613-0156
mlimmeroth@govdeals.com

All notices, approvals, consents and requests pursuant to this participating addendum shall be sent to the parties at their respective addresses listed above, or to such other address as may be designated from time to time by the parties without the need to further amend the participating addendum: Changes to the Contractor's contact information, company name, legal address, payment address, tax identification number, authorized signatories, or EFT information must be promptly reported via email to the Contracting Officer, and updated in the PA Supplier Portal: https://pasupplierportal.state.pa.us/irj/portal/anonymous. In some cases, additional paperwork will be required.

9. **Electronic Signatures.** This agreement may be electronically signed in accordance with the Electronic Transactions Act, 73 P.S. § 2260.301, *et seq.*

[SIGNATURES ARE ON THE FOLLOWING PAGE]

Docusign Envelope ID: 43B8A335-C756-4099-88AE-6CA19B5E60EB

The parties, through their authorized representatives, have signed this participating addendum on the dates indicated below.

LIQUIDITY SERVICES OPERATIONS LLC, dba GOVDEALS

DocuSigned by:
Michael Price 2/20/2026
CCB19588953C4C0...
Signature Date

Michael Price, Vice President, Revenue
Printed Name and Title

546200
SAP Number

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES

By: To be obtained electronically
Deputy Secretary for Procurement Date

APPROVED:

To be obtained electronically
Comptroller Date

APPROVED AS TO FORM AND LEGALITY:

To be obtained electronically
Office of Chief Counsel Date

To be obtained electronically
Office of General Counsel Date

To be obtained electronically
Office of Attorney General Date

COMMONWEALTH OF PENNSYLVANIA
IT CONTRACT TERMS AND CONDITIONS (NEGOTIATED)

1. DEFINITIONS.

(a) Agency. The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this Contract, that entity shall also be identified as "Agency."

(b) Commonwealth. The Commonwealth of Pennsylvania.

(c) Contract. The integrated documents as defined in the Participating Addendum.

(d) Contracting Officer. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.

(e) Data. Any recorded information, regardless of the form, the media on which it is recorded or the method of recording. For the avoidance of doubt and notwithstanding any provision to the contrary, any Data related to buyers on the Services shall be considered the Contractor's Data and not the Commonwealth's Data and is not part of the deliverables hereunder.

(f) Days. Calendar days, unless specifically indicated otherwise.

(g) Developed Works. [Reserved]

(h) 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.

(i) Expiration Date. The last valid date of the Contract, as indicated in the Contract documents to which these IT Contract Terms and Conditions are attached.

(j) Purchase Order. Written authorization for Contractor to proceed to furnish Supplies or Services.

(k) Proposal. Contractor's response to a Solicitation issued by the Issuing Agency, as accepted by the Commonwealth.

(l) Services. All Contractor activity necessary to satisfy the Contract.

(m) Software. A collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).

(n) 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.

(o) 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.

(a) Term. 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.

(b) Effective Date. The Effective Date shall be one of the following:

(i) the date the Contract has been fully executed by the Contractor and all approvals required by Commonwealth contracting procedures have been obtained; or

(ii) the date stated in the Contract, whichever is later.

3. COMMENCEMENT OF PERFORMANCE.

(a) General. The Contractor shall not commence performance and the Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred, until both of the following have occurred:

(i) the Effective Date has occurred; and

(ii) the Contractor has received a Purchase Order or other written notice to proceed signed by the Contracting Officer.

(b) Prohibition Prior to Effective Date. No Commonwealth employee has the authority to verbally direct the commencement of any Service or delivery of any Supply under this Contract prior to the date performance may commence. The Contractor hereby waives any claim or cause of action for any Service performed or Supply delivered prior to the date performance may commence.

4. 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.

5. ELECTRONIC SIGNATURES.

(a) The Contract and/or Purchase Orders may be electronically signed by the Commonwealth.

(i) *Contract*. "Fully Executed" at the top of the first page of the Contract output indicates that the signatures of all the individuals required to bind the Commonwealth to the terms of the Contract have been obtained. If the Contract output form does not have "Fully Executed" at the top of the first page, the Contract has not been fully executed.

(ii) *Purchase Orders*. The electronically-printed name of the Purchasing Agent on the Purchase Order indicates that all approvals required by Commonwealth contracting procedures have been obtained.

(b) The Commonwealth and the Contractor specifically agree as follows:

(i) *Written signature not required.* No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.

(ii) *Validity; admissibility*. The parties agree that no writing shall be required in order to make the Contract or Purchase Order legally binding, notwithstanding contrary requirements in any law 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.

(c) 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.

6. 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 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.

7. CONTRACT SCOPE.

The Contractor agrees to furnish the requested Services and Supplies to the Commonwealth as such Services and Supplies are defined in this Contract.

8. ACCESS TO COMMONWEALTH FACILITIES.

If the Contractor must perform work at a Commonwealth facility outside of the daily operational hours set forth by the Commonwealth, it must make arrangements with the Commonwealth to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access.

9. NON-EXCLUSIVE CONTRACT.

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

10. 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 https://www.oa.pa.gov/Policies/Pages/itp.aspx), including the Digital Accessibility Policy ("IP 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 Information Technology Policy (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.

11. ORDER OF PRECEDENCE.

[Reserved]

Notwithstanding the foregoing, to the extent a provision of this Contract, an IP Policy, or other incorporated contract document is not applicable to the Services or to Contractor's obligations under this Contract, such provision, IP Policy, or incorporated contract document shall be deemed not to apply.

12. CONTRACT INTEGRATION.

(a) Final contract. This Contract constitutes the final, complete, and exclusive Contract between the parties, containing all the terms and conditions agreed to by the parties.

(b) Prior representations. All representations, understandings, promises, and agreements pertaining to the subject matter of this Contract made prior to or at the time this Contract is executed are superseded by this Contract.

(c) Conditions precedent. There are no conditions precedent to the performance of this Contract except as expressly set forth herein.

(d) Sole applicable terms. No contract terms or conditions are applicable to this Contract except as they are expressly set forth herein.

(e) Other terms unenforceable. The Contractor may not require the Commonwealth or any user of the Services or Supplies acquired within the scope of this Contract to sign, click through, or in any other way agree to any terms associated with use of or interaction with those Services and/or Supplies, unless the Commonwealth has

approved the terms in writing in advance under this Contract, and the terms are consistent with this Contract. Further, changes to terms may be accomplished only by processes set out in this Contract; no quotations, invoices, business forms or other documentation, or terms referred to therein, shall become part of this Contract merely by their submission to the Commonwealth or their ordinary use in meeting the requirements of this Contract. Any terms imposed upon the Commonwealth or a user in contravention of this subsection (e) must be removed at the direction of the Commonwealth and shall not be enforced or enforceable against the Commonwealth or the user.

13. PERIOD OF PERFORMANCE.

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

14. INDEPENDENT PRIME CONTRACTOR.

(a) Independent contractor. In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.

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

15. 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.

16. OTHER CONTRACTORS.

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

17. ENHANCED MINIMUM WAGE.

(a) Enhanced Minimum Wage. Contractor shall pay no less than $15.00 per hour to its employees for all hours worked directly performing the services called for in this contract/lease, and for an employee's hours performing ancillary services necessary for the performance of the services or lease when the employee spends at least 20% of their time performing ancillary services in a given work week.

(b) Adjustment. Beginning July 1, 2023, and annually thereafter, the minimum wage rate will be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.

(c) Exceptions. These Enhanced Minimum Wage Provisions do not apply to employees

(i) Exempt from 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. The Contractor shall: (1) post this Enhanced Minimum Wage Provision for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.

(e) Records. Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.

(f) Sanctions. Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.

(g) Subcontractors. The Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contact or lease to ensure that these provisions are binding on its subcontractors.

18. COMPENSATION.

(a) General. The Contractor shall be required to perform at the price(s) quoted in the Contract. All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and Services performed to the satisfaction of the Commonwealth.

(b) Travel. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract. If not otherwise specified in the Contract, travel and related expenses shall be reimbursed in accordance with Management Directive 230.10 Amended, *Commonwealth Travel Policy*, and Manual 230.1, *Commonwealth Travel Procedures Manual*.

19. BILLING REQUIREMENTS.

(a) Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

(i) Vendor name and "Remit to" address, including SAP Vendor number;

(ii) Bank routing information, if ACH;

(iii) SAP Purchase Order number;

(iv) Delivery Address, including name of Commonwealth agency;

(v) Description of the supplies/services delivered in accordance with SAP Purchase Order (include Purchase Order line number if possible);

(vi) Quantity provided;

(vii) Unit price;

(viii) Price extension;

(ix) Total price; and

(x) Delivery date of supplies or services.

(b) If an invoice does not contain the minimum information set forth in this section, and comply with the provisions located at https://www.budget.pa.gov/Programs/Pages/E-Invoicing.aspx, relating to the Commonwealth E-Invoicing Program, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

(c) Any sales proceeds that are remitted to the Commonwealth pursuant to this Contract shall be done in accordance with the following:

Contractor will collect payment from the buyer and remit sales proceeds to the Commonwealth by ACH (as defined below) on a weekly basis. Contractor will withhold a Buyer's Premium amount as Contractor's commission and Contractor will remit 100% of the Winning Bid to the Commonwealth weekly. The Commonwealth will never be invoiced for the Services but will still have access to transaction summary statements. Contractor's system automatically calculates the applicable Buyer's Premium for each sale. The Commonwealth's Account Manager will provide quality control to ensure that each asset is correctly categorized, applying the appropriate Buyer's Premium. Registered bidders will have the ability to clearly see the buyer's premium percentage for each auction when logged into Contractor's Service.

20. PAYMENT.

(a) Payment Date. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:

(i) the date on which payment is due under the terms of the Contract;

(ii) **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

(iii) the payment date specified on the invoice if later than the dates established by paragraphs (a)(i) and (a)(ii), above.

(b) Delay; Interest. 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 **15 days** after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act of December 13, 1982, P.L. 1155, No. 266, 72 P. S. § 1507, (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ 2.31—2.40 (relating to interest penalties for late payments to qualified small business concerns).

(c) 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.

21. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS.

(a) Payment Method. The Commonwealth shall make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the contract or purchase order, the Contractor must submit or must have submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).

(b) Unique Identifier. The Contractor must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Contractor's unique invoice number on its ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.

(c) ACH Information in SRM. The Contractor shall ensure that the ACH information contained in SRM is accurate and complete. The Contractor's failure to maintain accurate and complete information may result in delays in payments.

22. 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.

23. INSPECTION AND ACCEPTANCE.

(a) Developed Works and Services.[Reserved]

(b) Supplies.

(i) *Inspection prior to Acceptance*. No Supplies received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the Supplies.

(ii) *Defective Supplies*. Any Supplies discovered to be defective or that fail to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Supplies or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection.

(1) The Contractor shall remove rejected item(s) from the premises without expense to the Commonwealth within **15 days** after notification.

(2) Rejected Supplies left longer than **30 days** will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Commonwealth's costs and expenses in regard to the storage and sale of the Supplies.

(3) Upon notice of rejection, the Contractor shall immediately replace all such rejected Supplies with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the Commonwealth may procure, in such manner as it determines, supplies similar or identical to the those that Contractor failed, neglected or refused to replace, and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to the Commonwealth.

24. DEFAULT.

The Commonwealth may, subject to the provisions of **Section 25, Notice of Delays**, and **Section 66, Force Majeure**, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in **Section 28, Termination**) the whole or any part of this Contract for any of the following reasons:

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

(b) Failure to perform the Services with sufficient labor, equipment, or material to insure the completion of the specified Services in accordance with the Contract terms;

(i) Unsatisfactory performance of the Services;

(ii) Failure to meet requirements within the time periods(s) specified in the Contract;

(iii) Multiple failures over time of a single service level agreement or a pattern of failure over time of multiple service level agreements;

(iv) Failure to provide a Supply or Service that conforms with the specifications referenced in the Contract;

(v) Failure or refusal to remove material, or remove, replace or correct any Supply rejected as defective or noncompliant;

(vi) Discontinuance of Services without approval;

(vii) Failure to resume a Service, which has been discontinued, within a reasonable time after notice to do so;

(viii) Insolvency;

(ix) Assignment made for the benefit of creditors;

(x) Failure or refusal, within **10 days** after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due subcontractors for materials furnished, labor supplied or performed, for equipment rentals or for utility services rendered;

(c) Failure to protect, repair or make good any damage or injury to property;

(i) Breach of any provision of this Contract;

(ii) Any breach by Contractor of the security standards or procedures of this Contract;

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

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

25. NOTICE OF DELAYS.

Whenever the Contractor encounters any difficulty that delays or threatens to delay the timely performance of this Contract (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to the Commonwealth stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Commonwealth of any rights or remedies to which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with **Section 27, Changes**.

26. CONDUCT OF SERVICES.

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

(b) In determining whether the Contractor has performed with due diligence under the Contract, it is agreed and understood that the Commonwealth may measure the amount and quality of the Contractor's effort against the representations made in the Contractor's Proposal. The Contractor's Services hereunder shall be monitored by the Commonwealth and the Commonwealth's designated representatives. If the Commonwealth reasonably determines that the Contractor has not performed with due diligence, the Commonwealth and the Contractor will attempt to reach

agreement with respect to such matter. Failure of the Commonwealth or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of **Section 30, Contract Controversies**.

27. CHANGES.

(a) At any time during the performance of the Contract, the Commonwealth or the Contractor may request a change to the Contract. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If the Commonwealth is the requestor of the change, the Contractor will inform the Commonwealth of any charges for investigating the change request prior to incurring such charges. If the Commonwealth and the Contractor agree on the results of the investigation and any necessary changes to the Contract, the parties must complete and execute a change order to modify the Contract and implement the change. The change order will be evidenced by a writing in accordance with the Commonwealth's change order procedures. No work may begin on the change order until the Contractor has received the executed change order. If the parties are not able to agree upon the results of the investigation or the necessary changes to the Contract, a Commonwealth-initiated change request will be implemented at Commonwealth's option and the Contractor shall perform the Services; and either party may elect to have the matter treated as a dispute between the parties under **Section 30, Contract Controversies**. During the pendency of any such dispute, Commonwealth shall pay to Contractor any undisputed amounts.

(b) Changes outside the scope of this Contract shall be accomplished through the Commonwealth's procurement procedures, and may result in an amended Contract or a new contract. No payment will be made for services outside of the scope of the Contract for which no amendment has been executed.

28. TERMINATION.

(a) For Convenience.

(i) The Commonwealth may terminate the Contract, or a Purchase Order issued against the Contract, in whole or in part, without cause by giving Contractor **30 days'** prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective.

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

(1) all Services performed consistent with the terms of the Contract prior to the effective date of termination;

(2) all actual and reasonable costs incurred by Contractor as a result of the termination of the Contract; and

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

Failure to agree on any termination costs shall be a dispute handled in accordance with **Section 30, Contract Controversies**, of this Contract.

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

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

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

(c) Default. The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within **30 days**, or if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and diligently and

continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

(i) Subject to **Section 38, Limitation of Liability**, in the event the Commonwealth terminates this Contract in whole or in part as provided in this subsection (c), the Commonwealth may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the Services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated Services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.

(ii) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism and unusually severe weather. The Contractor shall notify the Contracting Officer promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.

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

(iv) If it is later determined that the Commonwealth erred in terminating the Contract for default, then the Contract shall be deemed to have been terminated for convenience under subsection (a).

(v) If this Contract is terminated as provided by this subsection (c), the Commonwealth may, in addition to any other rights provided in this subsection (c), and subject law and to other applicable provisions of this Contract, require the Contractor to deliver to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such Software, Data, Documentation and other materials as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated.

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

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

(f) Following exhaustion of the Contractor's administrative remedies as set forth in **Section 30, Contract Controversies**, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

29. BACKGROUND CHECKS.

(a) The Contractor, at its expense, must arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth Data or Commonwealth facilities (including leased facilities or facilities owned by third parties but utilized by the Commonwealth), either through on-site access or through remote access. Background checks shall be conducted via the Request for Criminal Record Check for in-state Contractor employees or via a criminal background check through the appropriate State Agency for the out of state Contractor employees. The background check shall be conducted prior to initial access by the Contractor employee and annually thereafter.

(b) Before the Commonwealth permits access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that an employee of the Contractor or an employee of a subcontractor of the Contractor has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to cure any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.

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

30. CONTRACT CONTROVERSIES.

(a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code,* 62 Pa. C.S. § 1712.1, in the event of a claim arising from the Contract or a purchase order, the Contractor, within **six (6) months** after the cause of action accrues, must file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is

filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx.

(b) If the Contractor or the Contracting Officer requests mediation, and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.

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

31. 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 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 pursuant to **Subsection 28(c)**, 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 Services 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). It is understood that **Exhibit A, *Commonwealth of Pennsylvania Business Associate Agreement***, is only applicable if and to the extent indicated in the Contract.

(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, or Documentation 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.

32. PCI SECURITY COMPLIANCE.

(a) General. By providing the Services under this Contract, the Contractor may create, receive, or have access to credit card records or record systems containing cardholder data including credit card numbers (collectively the "Cardholder Data").

Contractor shall comply with the Payment Card Industry Data Security Standard ("PCI DSS") requirements for Cardholder Data that are prescribed by the payment brands (including, but not limited to, Visa, MasterCard, American Express, and Discover), as they may be amended from time to time. The Contractor acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment brands, for purposes of this Contract or as required by applicable law or regulations.

(b) Compliance with Standards. The Contractor shall conform to and comply with the PCI DSS standards as defined by The PCI Security Standards Council at: https://www.pcisecuritystandards.org/security_standards/index.php. The Contractor shall monitor these PCI DSS standards and will promptly notify the Commonwealth if its practices should not conform to such standards. The Contractor shall provide a letter of certification to attest to meeting this requirement within **seven (7) days** of the Contractor's receipt of a written request from Commonwealth for such a letter of certification.

33. DATA BREACH OR LOSS.

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

(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 **twenty-four hours** of when the Contractor confirms that a reportable Incident has occurred, 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) The Contractor shall provide timely notice to all individuals that may require notice under any applicable law or regulation as a result of an Incident. 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) The Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.

34. INSURANCE.

(a) General. Unless otherwise indicated in the Solicitation, 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 *Workers' 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.

35. CONTRACTOR RESPONSIBILITY.

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

(b) Contractor Representations.

(i) The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the

Contractor cannot make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.

(ii) The Contractor represents that as of the date of its execution of this contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

(c) Notification. The Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.

(d) Default. The Contractor's failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the contract with the Commonwealth.

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

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

36. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS.

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

37. TAXES-FEDERAL, STATE AND LOCAL.

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-7400001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed

diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

38. LIMITATION OF LIABILITY.

(a) General. The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of **$250,000** or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:

(i) for bodily injury;

(ii) for death;

(iii) for gross negligence or intentional or willful misconduct;

(iv) for damage to real property or tangible personal property for which the Contractor is legally liable;

(v) under **Section 42, Patent, Copyright, Trademark and Trade Secret Protection**;

(vi) under **Section 33, Data Breach or Loss**; or

(vii) under **Section 41, Virus, Malicious, Mischievous or Destructive Programming**.

(b) The Contractor will not be liable for consequential or incidental damages, except for damages as set forth in **paragraphs (a)(i)—(vii)** above, or as otherwise specified in the Contract.

39. INDEMNIFICATION.

(a) Contractor Obligations. The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Contractor or

its employees and agents that are related to this contract, as determined by the Commonwealth in its sole discretion.

(b) Commonwealth Attorneys Act. The Commonwealth shall provide the Contractor with prompt notice of any claim or suit of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under any terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

(c) Settlement. Notwithstanding the above, neither party may enter into a settlement of any claim or suit without the other party's written consent, which will not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

40. 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.

41. 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.

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

(a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, trademarks or trade dress, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act*, Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG, however, in its sole discretion and under the terms it deems appropriate, may delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth provide support to the Contractor in defending any such claim,

the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor, at its expense, will provide whatever cooperation OAG requests in the defense of the suit.

(b) The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all works produced under this Contract do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that work produced for the Commonwealth under this contract shall be free and clear from all claims of any nature.

(c) If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

(d) If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, trademark or trade dress, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense:

(i) substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs; or

(ii) obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.

(e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.

(f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:

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

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

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

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

(i) modification of any product, service, or deliverable provided by the Commonwealth;

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

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

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

(v) infringement of a non-Contractor product alone;

(vi) the Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or

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

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

43. CONTRACT CONSTRUCTION.

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

44. USE OF CONTRACTOR AND THIRD PARTY PROPERTY.

(a) Definitions.

(i) "Contractor Property" refers to Contractor-owned tangible and intangible property.

(ii) "Third Party" refers to a party that licenses its property to Contractor for use under this Contract.

(iii) "Third Party Property" refers to property licensed by the Contractor for use in its work under this Contract.

(b) Contractor Property shall remain the sole and exclusive property of the Contractor. Third Party Property shall remain the sole and exclusive property of the Third Party. The Commonwealth acquires rights to the Contractor Property and Third Party Property as set forth in this Contract.

(i) Where the Contractor Property is integrated into the Supplies or Services, or the Contractor Property is otherwise necessary for the Commonwealth to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor hereby grants to the Commonwealth a non-exclusive, fully-paid up, worldwide license to use the Contractor Property as necessary to meet the requirements of the Contract, including the rights to reproduce, distribute, publicly perform, display and create derivative works of the Contractor Property. These rights are granted for a duration and to an extent necessary to meet the requirements under this Contract. If the Contractor requires a separate license agreement, such license terms shall include the aforementioned rights, be acceptable to the Commonwealth and will be separately negotiated and executed between the Commonwealth and the Contractor.

(ii) If Third Party Property is integrated into the Supplies or Services, or the Third Party Property is otherwise necessary for the Commonwealth to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor shall gain the written approval of the Commonwealth prior to the use of the Third Party Property or the integration of the Third Party Property into the Supplies or Services. Third Party Property approved by the Commonwealth is hereby licensed to the Commonwealth as necessary to meet the Contract requirements.

(iii) If the Third Party requires a separate license agreement, the license terms shall be acceptable to the Commonwealth and will be separately negotiated and executed between the Commonwealth and the Third Party.

(iv) If the use or integration of the Third Party Property is not approved in writing under this section, the Third Party Property shall be deemed to be licensed under paragraph (b)(i) above.

(v) If the Contract expires or is terminated for default pursuant to subsection 28(c) before the Contract requirements are complete, all rights are granted for a duration and for purposes necessary to facilitate Commonwealth's or a Commonwealth-approved vendor's completion of the Supplies, Services or Developed Works under this Contract. The Contractor, in the form used by Contractor in connection with the Supplies, Services, or Developed Works, shall deliver to Commonwealth the object code version of such Contractor Property, the Third Party Property and associated licenses immediately prior to such expiration or termination to allow the Commonwealth to complete such work.

(vi) Where third party users are reasonably anticipated by the Contract, all users are granted the right to access and use Contractor Property for the purposes of and within the scope indicated in the Contract.

(c) The Commonwealth will limit its agents and contractors' use and disclosure of the Contractor Property as necessary to perform work on behalf of the Commonwealth.

(d) The parties agree that the Commonwealth, by acknowledging the Contractor Property, does not agree to any terms and conditions of the Contractor Property agreements that are inconsistent with or supplemental to this Contract.

(e) Reports. When a report is provided under this Contract, but was not developed specifically for the Commonwealth under this Contract, the ownership of the report will remain with the Contractor; provided, however, that the Commonwealth has the right to use, copy and distribute the report within the executive agencies of the Commonwealth.

45. USE OF COMMONWEALTH PROPERTY.

"Commonwealth Property" refers to Commonwealth-owned Software, Data and property (including intellectual property) and third party owned Software and property (including intellectual property) licensed to the Commonwealth.

(a) Confidentiality of Commonwealth Property. All Commonwealth 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 considered confidential information under **Section 31, Confidentiality, Privacy, and Compliance**.

(b) License grant and restrictions. During the term of this Contract, Commonwealth grants to Contractor and its subcontractors for the limited purpose of providing the Services covered under this Contract, a limited, nonexclusive, nontransferable, royalty-free right (subject to the terms of any third party agreement to which the Commonwealth is a party) to access, use, reproduce, and modify Commonwealth

Property in accordance with the terms of the Contract. The Commonwealth's license to Contractor is limited by the terms of this Contract.

(i) The Contractor hereby assigns to the Commonwealth its rights, if any, in any derivative works resulting from Contractor's modification of the Commonwealth Intellectual Property. Contractor agrees to execute any documents required to evidence this assignment and to waive any moral rights and rights of attribution provided for in Section 106A of Title 17 of the United States Code, the *Copyright Act of 1976,* as amended.

(ii) Neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Intellectual Property. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this section.

(c) Reservation of rights. All rights not expressly granted here to Contractor are reserved by the Commonwealth.

(d) Termination of Commonwealth license grant.

(i) *Rights Cease*. Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, all rights granted to Contractor under this section shall immediately cease.

(ii) *Return Commonwealth Property*. Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Intellectual Property (including any related source code then in Contractor's possession or under its control) in the form in use as of the Effective Date of such expiration or termination (except that Commonwealth Data shall be turned over in a form acceptable to the Commonwealth).

(iii) *List of utilized Commonwealth Property/Destruction*. Within **15 days** after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Intellectual Property in use as of the date of such expiration or termination. Concurrently therewith, Contractor shall destroy or erase all other copies of any of the Commonwealth Software then in Contractor's possession or under its control unless otherwise instructed by Commonwealth, in writing; provided, however, that Contractor may retain one archival copy of such Commonwealth Software, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.

(e) Effect of license grant termination. Consistent with the provisions of this section, Contractor shall refrain from manufacturing, copying, marketing, distributing or

using any Commonwealth Software or any other work which incorporates the Commonwealth Software.

(f) Commonwealth Property Protection.

(i) Contractor acknowledges Commonwealth's exclusive right, title and interest, including without limitation copyright and trademark rights, in and to Commonwealth Data and Commonwealth Software developed under the provisions of this Contract, and Contractor shall not, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title, and interest, and shall not use or disclose the Commonwealth Data or Commonwealth Software without Commonwealth's written consent, which consent may be withheld by the Commonwealth for any reason.

(ii) Contractor shall not, in any manner, represent that Contractor has any ownership interest in the Commonwealth Data or Commonwealth Software.

46. OWNERSHIP OF DEVELOPED WORKS.

[Reserved.]

47. SOURCE CODE AND ESCROW ITEMS OBLIGATIONS.

[Reserved.]

48. CONTRACTOR HOSTED SECURITY, LOCATION, STATUS AND DISPOSITION OF DATA.

Unless the Solicitation specifies otherwise:

(i) All Data must be stored within the United States;

(ii) The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor's or its subcontractors' possession;

(iii) All Data shall be provided to the Commonwealth upon request, in a form acceptable to the Commonwealth and at no cost;

(iv) Any Data shall be destroyed by the Contractor at the Commonwealth's request;

(v) 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; and

(vi) The Contractor shall comply with the provisions set forth in **Exhibit B, Requirements for Non-Commonwealth Hosted Applications/Services**.

49. PUBLICATION RIGHTS AND/OR COPYRIGHTS.

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

(b) Except as otherwise provided in the Contract, the Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

50. CHANGE IN CONTRACTOR'S OWNERSHIP.

In the event that the Contractor should change ownership, the Commonwealth shall have the exclusive option of:

(i) continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract;

(ii) continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs; or

(b) immediately terminating this Contract.

51. OFFICIALS NOT TO BENEFIT.

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

52. COMPLIANCE WITH LAWS.

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

(b) If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the Services or Supplies provided under this Contract, the Parties shall modify this Contract, via **Section 27, Changes**, to the extent reasonably necessary to:

(i) Ensure that such Services or Supplies will be in full compliance with such laws, regulations and policies; and

(ii) Modify the rates applicable to such Services or Supplies, unless otherwise indicated in the Solicitation.

53. AMERICANS WITH DISABILITIES ACT.

(a) No Exclusion. Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract.

(b) Compliance. For all goods and services provided pursuant to this contract, the Contractor shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.

(c) Indemnification. The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

54. EXAMINATION OF RECORDS.

(a) The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under this Contract to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.

(b) The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in subsection (c) below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by applicable laws or regulations, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in **Section 31, Confidentiality, Privacy and Compliance**.

(c) The Contractor shall preserve and make available its records for a period of **three (3) years** from the date of final payment under this Contract.

(i) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of **three (3) years** from the date of any resulting final settlement.

(ii) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.

(d) Except for documentary evidence retained pursuant to paragraph (c)(ii) above, the Contractor may in fulfillment of its obligation to retain its records as required by this section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of **two (2) years** following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth with the concurrence of its auditors.

(e) The provisions of this section shall be applicable to and included in each subcontract hereunder.

55. SINGLE AUDIT ACT OF 1984.

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

(a) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in the most current version of *Government Auditing Standards* (Yellow Book).

(b) The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, as amended, 31 U.S.C. § 7501, *et seq*., and all rules and regulations promulgated pursuant to the Act.

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

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

56. AGENCY-SPECIFIC SENSITIVE AND CONFIDENTIAL COMMONWEALTH DATA (IF APPLICABLE).

(a) Contractor understands that its level of access may allow or require it to view or access highly sensitive and confidential Commonwealth and third party data. This data is subject to various state and federal laws, regulations and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of the Supplies or Services, the Contractor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth agency, including but not limited to, as necessary, HIPAA Business Associate Agreements. This sign-off document, a sample of which is attached as **Exhibit C, Sample Sign-off Document**, will include a description of the nature of the data which may be implicated based on the nature of the Contractor's access, and will incorporate the Business Associate Agreement if it is applicable.

(b) The Contractor hereby certifies and warrants that, after being informed by the Commonwealth agency of the nature of the data which may be implicated and prior to the deployment of the Supplies or Services, the Contractor is and shall remain compliant with all applicable state and federal laws, regulations and policies regarding the data's protection, and with the requirements memorialized in every completed and signed sign-off document. Every sign-off document completed by a Commonwealth agency and signed by at least one signatory authorized to bind the Contractor is valid and is hereby integrated and incorporated by reference into this Contract.

(c) This section does not require a Commonwealth agency to exhaustively list the laws, regulations or policies to which implicated data is subject; the Commonwealth agency is obligated only to list the nature of the data implicated by the Contractor's access, to refer the Contractor to its privacy and security policies, and to specify requirements that are not otherwise inherent in compliance with applicable laws, regulations and policies.

(d) The requirements of this section are in addition to and not in lieu of other requirements of this Contract, its Exhibits, Appendices and Attachments, having to do with data privacy and security, including but not limited to the requirement that the Contractor comply with all applicable Commonwealth ITPs, which can be found at https://www.oa.pa.gov/Policies/Pages/itp.aspx.

(e) Contractor shall conduct additional background checks, in addition to those required in **Section 29, Background Checks**, as may be required by a Commonwealth agency in its sign-off documents. The Contractor shall educate and hold its agents, employees, contractors and subcontractors to standards at least as stringent as those contained in this Contract. The Contractor shall provide information regarding its agents, employees, contractors and subcontractors to the Commonwealth upon request.

57. FEDERAL REQUIREMENTS.

If applicable, the Contractor must receive and sign off on particular federal requirements that a Commonwealth agency may be required to include when utilizing federal funds to procure the Supplies and Services. This sign-off document, in addition to any applicable requirements of **Section 56, Agency-Specific Sensitive and Confidential Commonwealth Data**, will include a description of the required federal provisions, along with the applicable forms necessary for the Contractor and/or Software Licensor to execute, as necessary. Every sign-off document completed by a Commonwealth agency and signed by at least one signatory authorized to bind the Contractor is valid and is hereby integrated and incorporated by reference into this Contract. A sample sign-off document is attached to these Terms as **Exhibit C, Sample Sign-off Document**.

58. ADDITIONAL FEDERAL PROVISIONS.

Additional contract provisions may be incorporated into this Contract pursuant to federal law, regulation or policy.

59. ENVIRONMENTAL PROTECTION.

In carrying out this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including the *Clean Streams Law,* Act of June 22, 1937 (P.L. 1987, No. 394), as amended, 35 P.S. §§ 691.1—691.801; the *Solid Waste Management Act,* Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. §§ 6018.101—68.1003; and the *Dam Safety and Encroachment Act,* Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. §§ 693.1—693.27.

60. NONDISCRIMINATION/SEXUAL HARASSMENT.

(a) Representations. The Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the contract. The Contractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

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

(i) in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act ("PHRA") and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

(ii) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this contract.

(iii) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this contract.

(iv) in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which this contract relates.

(v) in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

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

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

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

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

61. CONTRACTOR INTEGRITY.

(a) Definitions. For purposes of these Contractor Integrity Provisions, the following definitions apply:

(i) "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

(ii) "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.

(iii) "Contractor Related Parties" means any Affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.

(iv) "Financial Interest" means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

(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, as may be amended, 4 Pa. Code §7.153(b), 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) Representations and Warranties.

(i) Contractor Representation and Warranties. The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:

(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 are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

(ii) Contractor Explanation. If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the contract.

(iii) Further Representations. By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.

(iv) Notice. The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to

change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.

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

(i) maintain the highest standards of honesty and integrity.

(ii) take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.

(iii) establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.

(iv) not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable to the provision of goods or services under this contract.

(v) not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest. The Contractor must disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.

(vi) comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.

(vii) comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.

(viii) immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has

occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.

(d) Investigations. If a State Inspector General investigation is initiated, the Contractor shall:

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

(ii) cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions and make identified Contractor employees available for interviews at reasonable times and places.

(iii) upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. This information may include, but is not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.

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

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

shall use its best efforts to ensure the subcontractor's compliance with these provisions.

62. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS.

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

63. WARRANTIES.

Except as otherwise set forth in the Contract, the Contractor warrants that the Services and Supplies will conform in all material respects to the functional specifications for the Services and Supplies and/or the requirements of the Contract. The warranty period for the Services and Supplies shall be **90 days** from final acceptance. If third-party Services or Supplies are subject to a warranty that exceeds **90 days** from final acceptance, the longer warranty period shall apply. The Contractor shall correct any non-conformity within the warranty period specified herein.

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

(b) Nonconformity. In the event of any nonconformity with the foregoing warranties, the Commonwealth will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the Commonwealth, shall within **10 days'** notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the Commonwealth, until such time as the deliverable conforms, in all material respects, to the Service requirements set forth in this Contract. The Contractor shall have no obligation with respect to nonconformities arising out of:

(i) [Reserved]

(ii) [Reserved.]

(iii) Failure by the Commonwealth to implement any corrections or enhancements made available by the Contractor;

(iv) [Reserved.]

(v) Failure of any software licensed under a separate license agreement to conform to its specifications or documentation.

(c) Industry standards. The Contractor hereby represents and warrants to the Commonwealth that the Services shall be performed in accordance with industry standards using the utmost care and skill.

(d) Right to perform. The Contractor hereby represents and warrants to the Commonwealth that the Contractor has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services under this Contract.

(e) Sole warranties. THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

64. LIQUIDATED DAMAGES.

(a) By accepting this Contract, the Contractor agrees to the delivery and acceptance requirements of this Contract. If a due date is not met, the delay will interfere with the Commonwealth's program. In the event of any such delay, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. The Commonwealth and the Contractor therefore agree that in the event of any such delay, the amount of damage shall be the amount set forth in this section, unless otherwise indicated in the Contract, and agree that the Contractor shall pay such amount as liquidated damages, not as a penalty. Such liquidated damages are in lieu of all other damages arising from such delay.

(b) The amount of liquidated damages shall be as set out in the Solicitation. If not amount is set out in the Solicitation, the amount of liquidated damages for failure to meet a due date shall be three-tenths of a percent **(.3%)** of the price of the deliverable for each calendar day following the scheduled completion date. If the price of the deliverable associated with the missed due date is not identified, liquidated damages shall apply to the total value of the Contract. Liquidated damages shall be assessed each calendar day until the date on which the Contractor meets the requirements for the deliverable associated with the due date, up to a maximum of **30 days**. If indicated in the Contract, the Contractor may recoup all or some of the amount of liquidated damages assessed if the Contractor meets the final project completion date set out in the Contract.

(c) If, at the end of the **30-day** period specified in subsection (b) above, the Contractor still has not met the requirements for the deliverable associated with the due date, then the Commonwealth, at no additional expense and at its option, may either:

(i) Immediately terminate the Contract in accordance with **Subsection 28(c)** and with no opportunity to cure; or

(ii) Order the Contractor to continue with no decrease in effort until the work is completed in accordance with the Contract and accepted by the Commonwealth or until the Commonwealth terminates the Contract. If the Contract is continued, any liquidated damages will also continue until the work is completed.

(d) At the end of a calendar month, or at such other time(s) as identified in the Contract, liquidated damages shall be paid by the Contractor and collected by the Commonwealth by:

(i) Deducting the amount from the invoices submitted under this Contract or any other contract Contractor has with the Commonwealth;

(ii) Collecting the amount through the performance security, if any; or

(iii) Billing the Contractor as a separate item.

65. SERVICE LEVELS.

(a) The Contractor shall comply with the procedures and requirements of the Service Level Agreements, if any, which are made part of this Contract.

(b) Where there are expressly defined Service Levels, Contractor shall measure and report its performance against these standards on at least a monthly basis, except as may otherwise be agreed between the parties. Regardless of the presence or absence of expressly defined Service Levels, any failure to adequately or timely perform a Service may result in consequences under this Contract, up to and including Contract termination.

(c) The Commonwealth's acceptance of any financial credit incurred by the Contractor in favor of the Commonwealth for a Service Level default ("Service Level Credit") shall not bar or impair Commonwealth's rights and remedies in respect of the failure or root cause as set forth elsewhere in this Contract, including without limitation other claims for liquidated damages, injunctive relief and termination rights; provided however, Service Level Credits paid would be credited against any such claims for damages.

66. FORCE MAJEURE.

(a) Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather

conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

(b) The Contractor shall notify the Commonwealth orally within **five (5) days** and in writing within **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, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

(c) 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.

67. PUBLICITY/ADVERTISEMENT.

The Contractor shall not issue news releases, internet postings, advertisements, endorsements, or any other public communication without prior written approval of the Commonwealth, and then only in coordination with the Commonwealth. This includes the use of any trademark or logo.

68. TERMINATION ASSISTANCE.

(a) Upon the Commonwealth's request, Contractor shall provide termination assistance services (Termination Assistance Services) directly to the Commonwealth, or to any vendor designated by the Commonwealth. The Commonwealth may request termination assistance from the Contractor upon full or partial termination of the Contract and/or upon the expiration of the Contract term, including any renewal periods. Contractor shall take all necessary and appropriate actions to accomplish a complete, timely and seamless transition of any Services from Contractor to the Commonwealth, or to any vendor designated by the Commonwealth, without material interruption of or material adverse impact on the Services. Contractor shall cooperate with the Commonwealth and any new contractor and otherwise promptly take all steps required or reasonably requested to assist the Commonwealth in effecting a complete and timely transition of any Services.

(b) Such Termination Assistance Services shall first be rendered using resources included within the fees for the Services, provided that the use of such resources shall not adversely impact the level of service provided to the Commonwealth; then

by resources already included within the fees for the Services, to the extent that the Commonwealth permits the level of service to be relaxed; and finally, using additional resources at costs determined by the Parties via **Section 27, Changes**.

69. NOTICE.

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

70. RIGHT-TO-KNOW LAW.

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

(b) Contractor Assistance. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Contractor that it requires the Contractor's assistance, and the Contractor shall provide to the Commonwealth:

(i) access to, and copies of, any document or information in the Contractor's possession (Requested Information) arising out of this contract that the Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and

(ii) any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this contract.

(c) Trade Secret or Confidential Proprietary Information. If the Contractor considers the Requested Information to include a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Contractor, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth's determination.

(d) Reimbursement.

(i) Commonwealth Reimbursement. If the Contractor fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Contractor shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

(ii) Contractor Reimbursement. The Commonwealth will reimburse the Contractor for any costs that the Contractor incurs as a direct result of complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL.

(e) Challenges of Commonwealth Release. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Contractor's legal challenge, regardless of the outcome.

(f) Waiver. As between the parties, the Contractor waives all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

(g) Survival. The Contractor's obligations contained in this Section survive the termination or expiration of this contract.

71. APPLICABLE LAW AND FORUM.

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

72. CONTROLLING TERMS AND CONDITIONS.

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's website, quotations, invoices, business forms, click-through agreements, or other documentation shall not

become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor, and not binding on the Commonwealth.

73. POST-CONSUMER RECYCLED CONTENT; RECYCLED CONTENT ENFORCEMENT.

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

The Contractor may be required, after delivery of the Contract item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

74. WORKER PROTECTION AND INVESTMENT.

(a) The Contractor shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:

(i) Construction Workplace Misclassification Act;

(ii) Employment of Minors Child Labor Act;

(iii) Minimum Wage Act;

(iv) Prevailing Wage Act;

(v) Equal Pay Law;

(vi) Employer to Pay Employment Medical Examination Fee Act;

(vii) Seasonal Farm Labor Act;

(viii) Wage Payment and Collection Law;

(ix) Industrial Homework Law;

(x) Construction Industry Employee Verification Act;

(xi) Act 102: Prohibition on Excessive Overtime in Healthcare;

(xii) Apprenticeship and Training Act; and

(xiii) Inspection of Employment Records Law.

75. SURVIVAL.

Sections 11, 30, 31, 33, 37, 38, 39, 41, 42, 45, 46, 47, 48, 49, 52, 54, 55, 56, 63, 67, 69, 70, 71 and 75 and any right or obligation of the parties in this Contract which, by its express terms or nature and context is intended to survive termination or expiration of this Contract, will survive any such termination or expiration shall survive the expiration or termination of the Contract.

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA
BUSINESS ASSOCIATE AGREEMENT

Health Insurance Portability and Accountability Act (HIPAA) Compliance

WHEREAS, the [*name of program and/or Department*] (Covered Entity) and the **Contractor (Business Associate)**, intend to protect the privacy and security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the *Health Insurance Portability and Accountability Act of 1996*, as amended, Pub. L. No. 104-191 (HIPAA), the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, as amended, Title XIII of Division A and Title IV of Division B of the *American Recovery and Reinvestment Act of 2009* (ARRA), as amended, Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (Privacy Rule), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (Security Rule), 45 C.F.R. Parts 160, 162 and 164), as amended, 42 C.F.R. §§ 431.301—431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), 35 P.S. § 7607, 50 Pa. C.S. § 7111, 71 P.S. § 1690.108(c), 62 P.S. § 404, 55 Pa. Code Chapter 105, 55 Pa. Code Chapter 5100, the Pennsylvania *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance; and

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be handled, used or disclosed only in accordance with this Business Associate Agreement (BAA), the Underlying Agreement and the standards established by HIPAA, the HITECH Act and related regulations, and other applicable laws and agency guidance.

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

1. Definitions.

(a) "**Business Associate**" shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.

(b) "**Business Associate Agreement**" or "**BAA**" shall mean this Agreement.

(c) "**Covered Entity**" shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule and agency guidance.

(d) "**HIPAA**" shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, Pub. L. No. 104-191.

(e) "**HITECH Act**" shall mean the Health Information Technology for Economic and Clinical Health (HITECH) Act, as amended, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).

(f) "**Privacy Rule**" shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164, as amended, and related agency guidance.

(g) "**Protected Health Information**" or "**PHI**" shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations, the Privacy Rule, the Security Rule (all as amended) and agency guidance.

(h) "**Security Rule**" shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.

(i) "**Underlying Agreement**" shall mean Contract/Purchase Order # _____.

(j) "**Unsecured PHI**" shall mean PHI that is not secured through the use of a technology or methodology as specified in HITECH Act regulations, as amended, and agency guidance or as otherwise defined in the HITECH Act, as amended.

2. Changes in Law.

Business Associate agrees that it will comply with any changes in the HIPAA Rules by the compliance date established by any such changes and will provide the Covered Entity with written certification of such compliance.

3. Stated Purposes for Which Business Associate May Use or Disclose PHI.

Except as otherwise limited in this BAA, Business Associate shall be permitted to use or disclose PHI provided by or obtained by or obtained on behalf of Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity which are specified in Appendix A to this BAA, provided that such use or disclosure would not violate the HIPPA Rules if done by Covered Entity. Business Associate agrees to make uses, disclosures and requests for PHI consistent with Covered Entity's minimum policies and procedures.

4. Additional Purposes for Which Business Associate May Use or Disclose Information.

Business Associate shall not use or disclose PHI provided by, or created or obtained on behalf of, Covered Entity for any other purposes except as required by law. Business Associate shall not use PHI to de-identify the information in accordance with 45 CFR § 164.514 (a)—(c) without the Covered Entity's express written authorization(s). Business

Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

5. Business Associate Obligations.

(a) **Limits on Use and Further Disclosure Established by Business Associate Agreement and Law**. Business Associate hereby agrees that the PHI provided by, or created or obtained on behalf of, Covered Entity shall not be further used or disclosed other than as permitted or required by BAA or as required by law.

(b) **Appropriate Safeguards**. Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this BAA that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity as required by Subpart C of 45 CFR Part 164. Appropriate safeguards shall include but are not limited to implementing:

(i) administrative safeguards required by 45 CFR § 164.308;

(ii) physical safeguards as required by 45 CFR § 164.310;

(iii) technical safeguards as required by 45 CFR § 164.312; and

(iv) policies and procedures and document requirements as required by 45 CFR § 164.316.

(c) **Training and Guidance**. Business Associate shall provide annual training to relevant contractors, Subcontractors, employees, agents and representatives on how to prevent the improper use or disclosure of PHI. Business Associate shall also comply with annual guidance on the most effective and appropriate technical safeguards issued by the Secretary of Health and Human Services.

(d) **Reports of Improper Use or Disclosure or Breach**. Business Associate hereby agrees that it shall notify the Covered Entity's Project Officer and the Covered Entity's Legal Office within **two (2) days** of discovery of any use or disclosure of PHI not provided for or allowed by this BAA, including breaches of unsecured PHI as required by 45 CFR § 164.410. Such notification shall be written and shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the improper use or disclosure or Breach. Business Associate shall furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to individuals under 45 CFR § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. An improper use or disclosure or Breach shall be treated as discovered by the Business Associate on the **first day**

on which it is known to the Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the Business Associate) or should reasonably have been known to the Business Associate to have occurred.

(e) Business Associate agrees that if any of its employees, agents, contractors, subcontractors or representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information, Business Associate shall ensure that such employees, agents, contractors, subcontractors and representatives shall receive training on Business Associate's procedure for compliance with the HIPAA Rules. Business Associate Agrees that if any of its employees, agents, contractors, subcontractors or representatives use or disclose PHI received from, or created or received on behalf of, Covered Entity, or any derivative de-identified information in a manner not provided for in this BAA, Business Associate shall ensure that such employees, agents, contractors, subcontractors and representatives are sanctioned or prevented from accessing any PHI Business Associate receives from, or creates or receives on behalf of Covered Entity. Use or disclosure of PHI in a manner contrary to the terms of this BAA shall constitute a material breach of the Underlying Agreement.

(f) **Contractors, Subcontractors, Agents and Representatives**. In accordance with 45 CFR § 164.502(e)(1)(ii) and 45 CFR § 164.308(b)(2), if applicable, ensure that any contractors, subcontractors, agents and representatives that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. The existence of any contractors, subcontractors, agents and representatives shall not change the obligations of Business Associate to the Covered Entity under this BAA.

(g) **Reports of Security Incidents**. Business Associate hereby agrees that it shall notify, in writing, the Department's Project Officer within **two (2) days** of discovery of any Security Incident at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available.

(h) **Right of Access to PHI**. Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within **10 business days** of receiving a written request from the Covered Entity or an authorized individual in accordance with the HIPAA Rules. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its contractors, subcontractors, agents or representatives, access to PHI, Business Associate shall notify Covered Entity of same within **five (5) business days**. Business Associate shall further conform with and meet all of the requirements of 45 CFR § 164.524.

(i) **Amendment and Incorporation of Amendments**. Within **five (5) business days** of receiving a request from Covered Entity or from the individual for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available to the Covered Entity and incorporate the amendment to enable Covered Entity to comply with 45 CFR § 164.526. If any individual requests an amendment from Business Associate or its contractors, subcontractors, agents or representatives, Business Associate shall notify Covered Entity of same within **five (5) business days**.

(j) **Provide Accounting of Disclosures**. Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 CFR § 164.528. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, the purpose of the disclosure, and shall include disclosures made on or after the date which is **six (6) years** prior to the request. Business Associate shall make such record available to the individual or the Covered Entity within **10 business days** of a request for an accounting of disclosures and in accordance with 45 CFR § 164.528.

(k) **Access to Books and Records**. Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, created or received by Business Associate on behalf of the Covered Entity, available to the Covered Entity and the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules.

(l) **Return or Destruction of PHI**. At termination of this BAA, Business Associate hereby agrees to return or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this BAA. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this BAA to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.

(m) **Maintenance of PHI**. Notwithstanding subsection 5(l) of this BAA, Business Associate and its contractors, subcontractors, agents and representatives shall retain all PHI throughout the term of the Underlying Agreement and shall continue to maintain the information required under subsection 5(j) of this BAA for a period of **six (6) years** after termination of the Underlying Agreement, unless Covered Entity and Business Associate agree otherwise.

(n) **Mitigation Procedures**. Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this BAA or the HIPAA Rules. Business Associate further agrees to

mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this BAA or the Privacy Rule.

(o) **Sanction Procedures**. Business Associate agrees that it shall develop and implement a system of sanctions for any contractor, Subcontractor, employee, agent and representative who violates this BAA or the HIPAA Rules.

(p) **Application of Civil and Criminal Penalties**. All Civil and Criminal Penalties under the HIPAA Rules shall apply to Business Associate's violation of any provision contained in the HIPAA Rules.

(q) **Breach Notification**. Business Associate shall comply with the Breach notification requirements of 45 CFR Part 164. In the event of a Breach requiring indemnification in accordance with subsection 5(v), below, Covered Entity may elect to directly comply with Breach notification requirements or require Business Associate to comply with all Breach notifications requirements of 45 CFR Part 164 on behalf of Covered Entity. If Covered Entity requires Business Associate to comply with Breach notification requirements, Business Associate shall provide Covered Entity with a detailed weekly, written report, starting one week following discovery of the Breach. The report shall include, at a minimum, Business Associate's progress regarding Breach notification and mitigation of the Breach. If Covered Entity elects to directly meet the requirements of 45 CFR Part 164, Business Associate shall be financially responsible to Covered Entity for all resulting costs and fees incurred by Covered Entity, including, but not limited to, labor, materials, or supplies. Covered Entity may at its sole option:

(i) Offset amounts otherwise due and payable to Business Associate under the Underlying Agreement; or

(ii) Seek reimbursement of or direct payment to a third party of Covered Entity's costs and fees incurred under this subsection.

Business Associate shall make payment to Covered Entity (or a third party as applicable) within **30 days** from the date of Covered Entity's written notice to Business Associate.

(r) **Grounds for Breach**. Any non-compliance by Business Associate with this BAA or the HIPAA Rules will automatically be considered to be a breach of the Underlying Agreement.

(s) **Termination by Commonwealth**. Business Associate authorizes termination of this BAA or Underlying Agreement by the Commonwealth if the Commonwealth determines, in its sole discretion that the Business Associate has violated a material term of this BAA.

(t) **Failure to Perform Obligations**. In the event Business Associate including its contractors, Subcontractors, agents and representatives fails, to perform its obligations under this BAA, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this BAA and applicable law.

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

(v) **Indemnification**. Business Associate shall indemnify, defend and hold harmless Covered Entity from and all claims and actions, whether in law or equity, resulting from Business Associate's Breach or other violation of the HIPAA Rules (this includes but is not limited to Breach and violations by Business Associate's contractors, subcontractors, employees, agents and representatives). Additionally, Business Associate shall reimburse Covered Entity for any civil monetary penalties imposed on Covered Entity as a result of a Breach or violation cognizable under this subsection 5(v).

6. Obligations of Covered Entity.

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

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

(c) **Restrictions**. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR § 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

7. Survival.

The requirements, rights and obligations created by this BAA shall survive the termination of the Underlying Agreement.

Appendix A to Exhibit A,
Commonwealth of Pennsylvania Business Associate Agreement

Permitted Purposes for the Creation, Receipt, Maintenance, Transmission, Use and/or Disclosure of Protected Health Information

1. Purpose of Disclosure of PHI to Business Associate: To allow _____ to meet the requirements of the Underlying Agreement.

2. Information to be disclosed to Business Associate: _____.

3. Use Shall Effectuate Purpose of Underlying Agreement: _____ may use and disclose PHI to the extent contemplated by the Underlying Agreement, and as permitted by law with Commonwealth approval.

EXHIBIT B

Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this Attachment is to define requirements for business or technology solutions and services procured by the Commonwealth that are hosted within the Service Organization (Contractor's) or its Subservice Organization(s) (subcontractors) managed infrastructure. Any reference to Contractor below applies to Contractor and its subcontractors.

A. Hosting Requirements

1. The Contractor shall supply and maintain all hosting equipment (hardware and software) required for the delivery of the computing services.

2. The Contractor shall provide secure access to users leveraging the principle of least privilege and delegating administration to the Commonwealth where possible.

3. The Contractor shall use commercially reasonable resources and efforts to maintain adequate network bandwidth and server capacity to meet expected service levels.

4. The Contractor shall maintain all components of the Contractor hosted solution with commercially reasonable support and replace as necessary to maintain compliance.

5. The Contractor shall monitor, prevent, and deter unauthorized system access. The Contractor shall use all commercially reasonable methods to confirm suspected breaches. In the event of any impermissible disclosure, unauthorized 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 of such Confidential Information. The Contractor shall provide the Commonwealth with any requested logs, reports, and other information concerning unauthorized access or disclosure of Commonwealth data, including any mitigation efforts by Contractor. Any such information provided by Contractor shall be treated as confidential. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the Contractor shall comply with state and federal data breach notification statutes and regulations, and shall report security incidents to the Commonwealth within **twenty-four (24) hours** of when the Contractor has reasonable confirmation of any reportable unauthorized access, use, release, or disclosure of data.

6. In the event the Contractor is not in compliance with **Section B System and Organization Controls (SOC) Reporting Requirements** relating to the hosted system's data center locations and security architecture, the Contractor shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, and with

at least **ten (10) business days'** notice, to review the hosted system's data center locations and security architecture.

7. The Contractor's employees or subcontractors, who are directly responsible for day-to-day monitoring and maintenance of the hosted system, shall have industry standard certifications applicable to the environment and system architecture used.

8. The Contractor shall house all servers and equipment in an operational environment that meets industry standards including, but not limited to, climate control, fire and security hazard detection and response, electrical needs, and physical security.

9. The Contractor shall examine applicable system and error logs, which should include, but not be limited to, security events. Such logs shall be examined on a continual basis, at least daily, to minimize and predict system problems and initiate appropriate action.

10. The Contractor shall update and patch all applicable systems and third-party software security configurations to reduce security risk in alignment with industry best practices beginning prior to service release and on an ongoing basis.

11. During the term of the contract, the Contractor shall provide or make available all Commonwealth data to the Commonwealth, at no cost and upon request in a format and method agreeable to both parties. If the parties are unable to reach an agreement regarding format or method, data shall be provided in an industry standard format and method.

B. System and Organization Controls (SOC) Reporting Requirements

1. Subject to this section and unless otherwise agreed to in writing by the Commonwealth, the Contractor shall, and shall require its subcontractors to, engage, on an annual basis, a CPA certified third-party auditing firm to conduct the following, as applicable:

   (i) [Reserved]

   (ii) a SOC 2 Type II report with respect to controls used by the Contractor relevant to internal and external procedures and systems that access, process, host or contain Commonwealth Data designated as Class "C" Classified Records or Closed Records, as defined in the Commonwealth's Data Classification Policy, or in compliance with mandates by federal or state audit requirements and/or policy.

   The Contractor shall receive and review their subcontractor's relevant SOC reports, and the Contractor shall provide the Commonwealth with a Letter of Attestation that includes an analysis of their subcontractor's SOC report.

2. Unless otherwise agreed to in writing by the Commonwealth, the Contractor's SOC Report(s) shall be provided within sixty days of contract execution and annually thereafter. While it is preferable that SOC Reports coincide with Pennsylvania's fiscal year (July 1 through June 30), SOC Reports, at the very least, must cover at least **6 consecutive months** of Pennsylvania's fiscal year.

3. SOC 2 Type II reports shall address the following:

   (i) Security of Information and Systems;
   (ii) Availability of Information and Systems;
   (iii) Confidentiality; and

4. At the request of the Commonwealth and at Contractor's expense, the Contractor shall, and shall require its subcontractors, as applicable, to complete a SOC for Cybersecurity audit in the event:

   (i) Reoccurring findings in any SOC report required by subsection 1 above; or

   (ii) A cybersecurity incident or breach that impacts the Commonwealth has occurred and was not handled in accordance with Contractor's Incident Response Plan (IRP) including, but not limited to, providing timely notice to the Commonwealth as required by Contract or applicable law; or

   (iii) As agreed upon by the parties.

   The SOC for Cybersecurity report shall detail the controls used by the Contractor or its subcontractor setting forth the description and effectiveness of the Contractor's or subcontractor's cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

   The Contractor shall provide to the Commonwealth a report of the SOC for Cybersecurity audit findings within **60 days** of its completion.

5. Additional standards, certifications or audits as required by law shall be supported by Contractor as mutually agreed upon in writing by the parties.

6. The Contractor shall adhere to the then current American Institute of Certified Public Accountants (AICPA) audit standards. The Contractor acknowledges that the AICPA guidance may be updated during the Term of this Contract, and the Contractor shall comply with such updates, which shall be reflected in the next annual SOC report.

7. In the event an audit reveals any non-conformity within Contractor's SOC Reports, the Contractor shall provide the Commonwealth, within **45 days** of the issuance of

the SOC report, a documented corrective action plan that addresses each non-conformity that is identified within the SOC report, including any subcontractor's SOC report. The corrective action plan shall provide, in detail:

(i) clear responsibilities of the personnel designated to resolve the non-conformity;
(ii) the remedial action to be taken by the Contractor or its subcontractor(s);
(iii) the dates when each remedial action is to be implemented; and
(iv) a summary of potential risks or impacts to the Commonwealth that are associated with the non-conformity(ies).

8. The Commonwealth may in its sole discretion agree, in writing, to accept alternative security report in lieu of a SOC report.

C. Security Requirements

1. The Contractor shall conduct a third-party independent security/vulnerability assessment at its own expense no less frequently than on an annual basis.

2. The Contractor shall provide, at minimum, an executive summary of vulnerability assessment results to the Commonwealth upon request. Summary shall include, at minimum, scan date, identified vulnerabilities, severity classification, and remediation status.

(a)

3. The Contractor shall remediate any security/vulnerability assessment findings to align with the industry standards.

4. The Contractor 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.

5. The Contractor shall use industry best practices to secure access to public web interfaces, which shall include, but is not limited to, web application firewall (WAF) for services that handle non-public Commonwealth records.

6. The Contractor shall use industry best practices to provide applicable system intrusion detection and prevention in order to detect intrusions in a timely manner.

7. The Contractor shall use industry best practices, such as those outlined in NIST 800-83, to provide appropriate exploit and malware controls, on all servers, endpoints, and network components.

8. The Contractor shall provide access to provided confidential Commonwealth systems and confidential data only to staff located within CONUS (any of the Continental United States and Hawaii). Notwithstanding the foregoing, and only as

necessary to perform the services, access to Commonwealth confidential systems or data may be provided to international staff who are under confidentiality obligations. Access shall be based on the principle of least privilege.

9. The Contractor shall provide the services using security technologies and techniques in accordance with industry best practices including, but not limited to, the prevention and detection of intrusions, and any other inappropriate use or access of systems and networks.

10. The Contractor shall provide the Commonwealth with access to audit logs with respect to the services being provided to the Commonwealth within 24 hours of a written request from the Commonwealth's Enterprise Information Security Office.

D. Data Protection

1. Except as set forth in Section C above, the Contractor shall only host, handle, and process confidential Commonwealth data in physical locations within CONUS.

2. The Contractor shall use industry best practices to protect their operational systems with applicable anti-virus, 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.

3. The Contractor shall be solely responsible for applicable data storage required.

4. The Contractor shall encrypt all Commonwealth data in transit and at rest. The Contractor's method of data encryption shall meet or exceed National Institute Standards and Technology (NIST) encryption guidelines and standards in alignment with Commonwealth ITPs.

5. The Contractor shall take all commercially viable and appropriate measures to protect the data availability including, but not limited to, real-time replication, traditional backup, and/or georedundant storage of Commonwealth data in accordance with industry best practices and encryption techniques.

6. The Contractor shall have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, to protect that data particularly in instances where such critical or sensitive data may be stored on a Contractor-controlled or Contractor-owned electronic device.

7. The Contractor shall utilize a secured backup solution to prevent loss of data. Stored backups must be kept in an all-hazards protective storage environment at the primary location and any additional locations where the data is being maintained. All back up data and media shall be encrypted.

E. Adherence to Policy

1. The Contractor 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 classification of each problem.

2. The Contractor shall abide by the Commonwealth's Information Technology Policies (https://www.oa.pa.gov/Policies/Pages/itp.aspx) that are applicable to the products and services provided, as set forth within the responsibilities section of each ITP.

3. The Contractor shall comply with all pertinent federal and state regulations and laws, including but not limited to, data protections, data security, privacy, and data breach notification.

F. Closeout

When the purchase order's or other procurement document's term expires or terminates, and a new purchase order or other procurement document has not been issued by a Commonwealth Agency within **60 days** of expiration or termination, or at any other time at the written request of the Commonwealth, the Contractor must promptly return to the Commonwealth all Commonwealth's data (and all copies of this information) that is in the Contractor's possession or control. The Commonwealth's data shall be returned in a format agreed to by the Commonwealth.

Upon confirmation that Commonwealth data is in possession or control of the Commonwealth, the Contractor shall ensure all residual user account(s) are promptly deleted or reset in the solution. The Contractor shall notify the Commonwealth within **10 business days** that all user account(s) have been deleted or reset.

EXHIBIT C

Sign-Off Document No. ____, under Agreement No. _____
Between
[Contractor_____] and the Commonwealth of PA, [Agency]

[Contractor_____] Agency-level Deployment

This document becomes, upon its execution by the signatories named below, a legally valid, binding part of Agreement No. _____ between the Commonwealth and _____ (Contractor), and is subject to the terms of that Agreement.

1. Scope of Deployment (need not be entire agency):

2. Nature of Data implicated or potentially implicated:

3. Agency Policies to which Contractor is subject (incorporated by reference):

4. Background checks (describe if necessary):

5. Additional requirements (describe with specificity):

6. Is Contractor a Business Associate (yes or no)?

If yes, the attached Business Associates Agreement, as completed by the Agency, is applicable and is hereby incorporated into this Sign-Off Document by reference.

Agency Contact Person Signature and Date: _____

[Contractor_____]
Authorized Signatory and Date: _____