

**REQUEST FOR PROPOSAL**



**Commonwealth of Pennsylvania  
Office of Administration / Information Technology**

**General Description of Documents**

RFP ISSUE DATE

November 12, 2008

PROPOSAL DUE DATE

January 20, 2009

This document includes a listing of documents included in this RFP. Some contract schedules are intentionally withheld and will be developed with the selected Offeror.

0 This document

### **RFP Parts**

Parts I - IV General Information, Proposal Requirements, Criteria for Selection, Statement of Work

### **Appendices**

Appendix A Terms and Conditions  
Appendix B Domestic Workforce Utilization Certificate  
Appendix C COSTARS Program Questionnaire  
Appendix D Proposal Cover Sheet

### **Schedules**

Schedule A Defined Terms  
Schedule F Service Level Methodology  
Schedule F-1 Service Level Matrix  
Schedule K Governance  
Schedule L Key Positions  
Schedule M Commonwealth Services Locations  
Schedule O Benchmarking Procedures  
Schedule Q Exit Rights  
Schedule R Software License

### **Exhibits**

Exhibit A Background and Objectives  
Exhibit B Current Environment  
Exhibit C SOW for Telecommunications Managed Services  
Exhibit D Service Provider Pricing Forms  
Exhibit E Volumetrics  
Exhibit F-1 CTMS Inventory  
Exhibit F-2 Miscellaneous Telephone Equipment  
Exhibit F-3 Centrex and Voice Features  
Exhibit F-4 Payphone Inventory  
Exhibit F-5 Router and Security Devices  
Exhibit F-6 PBX and Key Systems  
Exhibit G Circuit Inventory  
Exhibit H Voice Services  
Exhibit I Auto Attendant  
Exhibit J ACD Services

# REQUEST FOR PROPOSAL



## **Commonwealth of Pennsylvania Office of Administration / Information Technology**

### **Request for Proposal (“RFP”) Parts I - IV – General Information and Instructions**

RFP ISSUE DATE

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## PART I - GENERAL INFORMATION

**I-1. Purpose.** This request for proposals (RFP) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the **Office of Administration/Office for Information Technology’s (OA/OIT)** consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for **Telecommunications Managed Services** (“Project”).

**I-2. Issuing Office.** The **Department of General Services (DGS)** (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact (“Issuing Officer”) in the Commonwealth for this RFP shall be:

Kay Shaffer, Associate Commodity Manager  
DGS Bureau of Procurement  
Forum Place, 6th Floor  
555 Walnut Street  
Harrisburg, PA 17101  
Phone: 717-346-3830  
Fax: 717-783-6241  
[kashaffer@state.pa.us](mailto:kashaffer@state.pa.us)

Please refer all inquiries to the Issuing Officer.

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

### **I-4. Calendar of Events**

Activity	Responsibility	Date
RFP issue date	Issuing Office	Monday, November 12, 2008
Initial round of questions are due	Potential Offerors	Wednesday, November 19, 2008 by 5PM EST
Preproposal conference DGS Bureau of Procurement Forum Place, 6th Floor, Conf. Room 9 555 Walnut Street Harrisburg, PA 17101	Issuing Office / Potential Offerors	Thursday, November 20, 2008 1PM EST
Answers to initial round of questions	Issuing Office	Monday, December 1, 2008
Final round of questions are due	Potential Offerors	Friday, December 12, 2008 by 5PM EST
Answers to final round of questions	Issuing Office	Friday, December 19, 2008
Sealed proposals due	Potential Offerors	Tuesday, January 20, 2009 by 1PM EST
Monitor DGS website for all communications regarding the RFP.	Potential Offerors	Ongoing

**I-5. Problem Statement.** Please refer to Exhibit A, Background and Objectives.

**I-6. Type of Contract.** It is proposed that if a contract is entered into as a result of this RFP, it will be an **Established Price with Escalation** contract containing the Contract Terms and Conditions as shown in **Appendix A**. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.

**I-7. Rejection of Proposals.** The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.

**I-8. Incurring Costs.** The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

**I-9. Preproposal Conference.** The Issuing Office will hold a preproposal conference as specified in the Calendar of Events. The purpose of this conference is to provide opportunity for clarification of the RFP. Offerors should forward all questions to the Issuing Office in accordance with **Part I, Section I-10** to ensure adequate time for analysis before the Issuing Office provides an answer. Offerors may also ask questions at the conference. In view of the limited facilities available for the conference, Offerors should limit their representation three (3) individuals per Offeror. The preproposal conference is for information only. Any answers furnished during the conference will not be official until they have been verified, in writing, by the Issuing Office. All questions and written answers will be posted on the Department of General Services' (DGS) website as an addendum to, and shall become part of, this RFP. Attendance at the Preproposal Conference is optional.

**I-10. Questions & Answers.** If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line "RFP 6100004339 Question"**) to the Issuing Officer named in **Part I, Section I-2** of the RFP. If the Offeror has questions, they must be submitted via email **no later than** the date indicated on the Calendar of Events. The Offeror shall not attempt to contact the Issuing Officer by any other means. The Issuing Officer shall post the answers to the questions on the DGS website by the date stated on the Calendar of Events.

All questions and responses as posted on the DGS website are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section I-11**. Each Offeror shall be responsible to monitor the DGS website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described on the DGS website.

**I-11. Addenda to the RFP.** If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the DGS

website at <http://www.dgsweb.state.pa.us/RTA/Search.aspx>. It is the Offeror's responsibility to periodically check the website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to the website as an addendum to the RFP.

**I-12. Response Date.** To be considered for selection, hard copies of proposals must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office will **not** accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. The Issuing Office will reject, unopened, any late proposals.

**I-13. Proposals.** To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in **Part II**, providing **ten (10) paper copies of the Technical Submittal and one (1) electronic copy of the Cost Submittal (attached to your bid response in SRM) and two (2) paper copies of the Disadvantaged Business Submittal**. In addition to the paper copies of the proposal, Offerors shall submit one (1) **complete and exact** copies of the entire proposal (Technical, Cost and Disadvantaged Business Submittals, along with all requested documents) on DVD/CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. The electronic copy must be a mirror image of the paper copy and any spreadsheets must be in Microsoft Excel. The Offerors may not lock or protect any cells or tabs. Offerors should ensure that there is no costing information in the technical submittal. Offerors should not reiterate technical information in the cost submittal. The DVD/CD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the DVD/CD or Flash drive before it was submitted. The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the Proposal Cover Sheet (Appendix E to this RFP) and the Proposal Cover Sheet is attached to the Offeror's proposal, the requirement will be met. For this RFP, the proposal must remain valid for 120 days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

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

submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements.

**I-14. Disadvantaged Business Information.** The Issuing Office encourages participation by small disadvantaged businesses as prime contractors, joint ventures and subcontractors/suppliers and by socially disadvantaged businesses as prime contractors.

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

- a. Department of General Services Bureau of Minority and Women Business Opportunities (BMWBO)-certified minority business enterprises (MBEs) and women business enterprises (WBEs) that qualify as small businesses; and
- b. United States Small Business Administration-certified small disadvantaged businesses or 8(a) small disadvantaged business concerns.

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

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

Questions regarding this Program can be directed to:

Department of General Services  
Bureau of Minority and Women Business Opportunities  
Room 611, North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-3119  
Fax: (717) 787-7052  
Email: [gs-bmwbo@state.pa.us](mailto:gs-bmwbo@state.pa.us)

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

**I-15. Information Concerning Small Businesses in Enterprise Zones.** The Issuing Office encourages participation by small businesses, whose primary or headquarters facility is physically located in areas the Commonwealth has identified as *Designated Enterprise Zones*, as prime contractors, joint ventures and subcontractors/suppliers.

The definition of headquarters includes, but is not limited to, an office or location that is the administrative center of a business or enterprise where most of the important functions of the business are conducted or concentrated and location where employees are conducting the business of the company on a regular and routine basis so as to contribute to the economic development of the geographical area in which the office or business is geographically located.

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

There is no database or directory of small businesses located in Designated Enterprise Zones. Information on the location of *Designated Enterprise Zones* can be obtained by contacting:

Aldona M. Kartorie  
Center for Community Building  
PA Department of Community and Economic Development  
4<sup>th</sup> Floor, Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120-0225  
Phone: (717) 720-7409  
Fax: (717) 787-4088  
Email: [akartorie@state.pa.us](mailto:akartorie@state.pa.us)

**I-16. Economy of Preparation.** Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.

**I-17. Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.

**I-18. Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification.

**I-19. Prime Contractor Responsibilities.** The contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by



subcontract. The Issuing Office will consider the selected Offeror to be the sole point of contact with regard to contractual matters.

**I-20. Proposal Contents.**

- a. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c.(2) below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes commencing January 1, 2009
- b. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- c. Public Disclosure. Public records requests for proposals are governed by and shall be handled in the following manner:
  - i) Public records requests received prior to January 1, 2009, are subject to the Right to Know Act, 65 P.S. §§ 66.1 – 66.9, and Section 106 (b) of the Commonwealth Procurement Code, 62 Pa.C.S. §106(b), which do not expressly exempt confidential proprietary information or trade secrets contained in proposals from disclosure. Unsuccessful proposals and financial capability information submitted in response to Part II, Section II-7 of this RFP are exempt from public records disclosure under 62 Pa.C.S. § 106(b) until January 1, 2009.
  - ii) After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq., commencing January 1, 2009. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests made

commencing January 1, 2009. Financial capability information submitted in response to Part II, Section II-7 of this RFP is exempt from public records disclosure under 65 P.S. § 67.708(b)(26) commencing January 1, 2009.

**I-21. Best and Final Offers.** The Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers.” To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following:

- i) Enter into pre-selection negotiations, including the use of an online auction;
- ii) Schedule oral presentations; and
- iii) Request revised proposals.

The Issuing Office will limit any discussions to responsible Offerors (those that have submitted responsive proposals and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance) whose proposals the Issuing Office has determined to be reasonably susceptible of being selected for award. The Criteria for Selection found in **Part III, Section III-4**, shall also be used to evaluate the best and final offers. Price reductions offered through any reverse online auction shall have no effect upon the Offeror’s Technical Submittal. Dollar commitments to Disadvantaged Businesses and Enterprise Zone Small Businesses can be reduced only in the same percentage as the percent reduction in the total price offered through negotiations, including the online auction.

**I-22. News Releases.** Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

**I-23. Restriction of Contact.** From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror’s proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror’s proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.

**I-24. Debriefing Conferences.** Offerors whose proposals are not selected will be notified of the name of the selected Offeror and given the opportunity to be debriefed. The Issuing Office will schedule the time and location of the debriefing. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror’s proposal in relation to all other Offeror proposals. An Offeror’s exercise of the opportunity to be debriefed does not constitute the filing of a protest.

**I-25. Issuing Office Participation.** Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-25**. The Issuing Office will not provide Offerors with office space, reproduction facilities or other logistical support for the production of Offeror proposals.

**I-26. Term of Contract.** The term of the contract will commence on the Effective Date and will have a term length of seven (7) years with three (3) optional one-year renewals. The option may be exercised, in the Commonwealth's sole discretion as three one year renewals, as one multiple year renewal, or as a one year renewal and a multiple year renewal. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

**I-27. Offeror's Representations and Authorizations.** By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- a. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- b. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential Offeror.
- c. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential Offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- d. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- e. The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- f. To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not

currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.

- g. To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- h. The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- i. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- j. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- k. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

**I-28. Notification of Selection.** The Issuing Office will notify the selected Offeror in writing of its selection for negotiation after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.

**I-29. RFP Protest Procedure.** The RFP Protest Procedure is on the DGS website at <http://www.dgsweb.state.pa.us/comod/ProtestProcedures.doc>. A protest by a party not submitting a proposal must be filed within seven days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within seven days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than seven days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office.

**I-30. Use of Electronic Versions of this RFP.** This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full

responsibility to insure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

**I-31. Federal Regulatory Requirements.** Not applicable.

**I-32. Contract Participants.** The Commonwealth will make the services described in Part IV and Exhibit C of this RFP available to Commonwealth agencies and other state-affiliated entities. The categories of Contract Participants are as follows:

Category 1 Users:

Commonwealth users which fall under the Governor's jurisdiction. These entities must acquire services for telecommunications services within the resulting contract.

Category 2 Users:

State affiliated and related entities and community colleges. These organizations, at their discretion, may choose to use services provided by the resulting contract. Pricing to Category 2 entities must be the same as Category 1.

Category 3 Users:

Identified as the Broader Commonwealth Community (BCC). Includes any Commonwealth county, municipal government, or a political subdivision, public library, K-12 public education entity (such as a public school, public school district, or Intermediate Unit). These entities may, at their discretion, choose to purchase services provided within the resulting contract. Pricing to Category 3 entities may be different than to Category 1 and 2 entities. However, the difference in pricing between Categories 1 and 2 Users and Category 3 Users will be considered as a factor in the RFP evaluation.

### **I-33. COSTARS PROGRAM**

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

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

1. A "local public procurement unit" is:

- Any political subdivision;
  - Any public authority;
  - Any tax exempt, nonprofit educational or public health institution or organization;
  - Any nonprofit fire, rescue, or ambulance company; and
  - To the extent provided by law, any other entity, including a council of governments or an area government that expends public funds for the procurement of supplies, services, and construction.
2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education.
- B. COSTARS Purchasers have the option to purchase from a Contract awarded under this procurement, from any DGS contract established exclusively for COSTARS Purchasers in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that any prospective COSTARS Purchaser will place an order under this Contract, and that it is within the sole discretion of the registered COSTARS Purchaser whether to procure from this Contract or to use another procurement vehicle.
- C. DGS is acting as a facilitator for COSTARS Purchasers who may wish to purchase under this Contract. Registered COSTARS Purchasers who participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a Purchaser unless substantial interests of the Commonwealth are involved.
- D. Registered COSTARS Purchasers electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.
- E. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter’s Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.

1. Until such time as DGS may provide the Contractor written notice of automated report filing, the Contractor shall either e-mail the reports to [GS-PACostars@state.pa.us](mailto:GS-PACostars@state.pa.us) or send the reports on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6<sup>th</sup> Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101. When DGS has instituted automated reporting, the Contractor shall comply with DGS's written notice and instructions on automated Contract reports. DGS will provide these instructions with sufficient advance time to permit the Contractor to undertake automated reporting.
  2. The Contractor shall include on each report the Contractor's name and address, the Contract number, and the period covered by the report. For each PO received, the Contractor shall include on the report the name of each COSTARS-Registered Purchaser that has used the Contract along with the total dollar volume of sales to the specific Purchaser for the reporting period.
  3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.
- F. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at <http://www.dgsweb.state.pa.us/COSTARSReg/RegForm.aspx>.
1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at <http://www.dgsweb.state.pa.us/COSTARSReg/RegForm.aspx>, where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.
  2. Direct all questions concerning the COSTARS Program to:

Department of General Services  
COSTARS Program  
555 Walnut Street, 6<sup>th</sup> Floor  
Harrisburg, PA 17101

Telephone: 1-866-768-7827

**E-mail:** [GS-PACostars@state.pa.us](mailto:GS-PACostars@state.pa.us)

**I-34. Participating Addendum with an External Procurement Activity.**

Section 1902 of the *Commonwealth Procurement Code*, 62 Pa.C.S. § 1902, permits external procurement activities to participate in cooperative purchasing agreements for the procurement of services, supplies or construction.

a. **Definitions.** The following words and phrases have the meanings set forth in this subsection a of **Part I, Section I-32**:

- 1) *External procurement activity:* The term, as defined in 62 Pa. C. S. § 1901, means a “buying organization not located in the Commonwealth [of Pennsylvania] which if located in this Commonwealth would qualify as a public procurement unit [under 62 Pa. C.S. §1901]. An agency of the United States is an external procurement activity.”
- 2) *Participating addendum:* A bilateral agreement executed by the Contractor and an external procurement activity that clarifies the operation of the Contract for the external procurement activity concerned. The terms and conditions in any participating addendum shall affect only the procurements of the purchasing entities under the jurisdiction of the external procurement activity signing the participating addendum.
- 3) *Public procurement unit:* The term, as defined in 62 Pa. C. S. § 1901, means a “local public procurement unit or purchasing agency.”
- 4) *Purchasing agency:* The term, as defined in 62 Pa. C. S. § 103, means a “Commonwealth agency authorized by this part or any other law to enter into contracts for itself or as the agent of another Commonwealth agency.”

b. **General.** A participating addendum shall incorporate the terms and conditions of the Contract resulting from this RFP. The Contractor shall not be required to enter into any participating addendum.

c. **Additional Terms.**

- 1) A participating addendum may include additional terms that are required by the law governing the external procurement activity.
- 2) A participating addendum may include new, mutually agreed upon terms that clarify ordering procedures specific to a participating external procurement activity.
- 3) The construction and effect of any participating addendum shall be governed by and construed in accordance with the laws governing the external procurement activity.



- 4) If an additional term requested by the external procurement activity will result in an increased cost to the Contractor, the Contractor shall adjust its pricing up or down accordingly.

d. **Prices.**

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

- a) State and local taxes;
- b) Unemployment and workers compensation fees;
- c) E-commerce transaction fees; and
- d) Costs associated with additional terms, established pursuant to this **Part I, Section I-32.**

- 2) The Contractor's pricing for an external procurement activity shall be firm and fixed for the duration of the initial term of the Contract. After the initial term of the Contract, if the Contract is renewed, the Contractor's pricing may be adjusted up or down based on market conditions only with the mutual agreement of both the Contractor and any external procurement activity.

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

- f. **Electronic Copy of Participating Addendum.** The Contractor, upon request of the Contracting Officer, shall submit **one** electronic copy of the participating addendum to the Contracting Officer within **ten** days after request.

## PART II

### PROPOSAL REQUIREMENTS

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

- a. Technical Submittal, which shall be a response to RFP **Part II, Sections II-1 through II-5**;
- b. Disadvantaged Business Submittal, in response to RFP **Part II, Section II-6**; and
- c. Cost Submittal, in response to RFP **Part II, Section II-7**.

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

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

**II-1. Executive Summary.** The Offeror must provide, as a separate Microsoft Word document, a file entitled "Offeror-Name Executive Summary.doc".

The Executive Summary should be written to communicate to the Commonwealth executive management team. The Offeror should summarize its offering, its approach and the value provided by the Offeror. Additionally, this should include any major features, functionality, or areas of support crucial to the Commonwealth achieving and exceeding its stated goals in this RFP. The Commonwealth is not looking for a generic or boilerplate approach, but rather for a description of how the Offeror would approach the scope of work at the Commonwealth specifically and why and how the Offeror will be able to achieve all stated goals and objectives. The overall process this project will follow is important to note. The inherited responsibilities will be constantly evolving. The Commonwealth is looking for an Offeror who understands it will be inheriting a network "as is", it will propose a new model of approach with direction, and then it will propose how it will get there, ensuring constant process improvements at all times. This will include realistic timelines and pricing across the scope of the project. The Offeror must

not, under any circumstances, include any financial information or estimated savings in the Executive Summary.

**II-2. Technical Solution.** Describe in narrative form the technical plan for accomplishing the work. Use the service requirements described in **Exhibit C** of this RFP as the reference point.

The Offeror must provide, as a separate Microsoft Word document, a thorough description of its technical solution and overall approach. This file must be entitled “Offeror-Name Technical Solution Document.doc”. No appendices or additional information associated with the Technical Solution Document will be accepted unless otherwise indicated below.

The description of the technical solution should be written to communicate to the Commonwealth technical and management staff. The descriptions should contain sufficient detail for the Commonwealth to understand the overall approach, key changes, and timeframe associated with the Offeror’s solution.

The Offeror will include materials specific to its solution for the Commonwealth. The Offeror will refrain from providing “marketing materials” and background information already provided to the Commonwealth, or otherwise available in the public domain.

All information provided in the Technical Solution Document **MUST** be consistent with the commitments agreed to in other portions of this RFP. If there is any discrepancy and at the Commonwealth’s option, the answers provided by the Offeror in the Appendices and Exhibits will supersede the Technical Solution Document.

Offerors are encouraged to use diagrams within this document to further explain their solution. The Technical Solution Document must contain the following components in the order specified below.

#### Technical Solution Overview

The first section of the document will be a Technical Solution Overview. This section should begin with an overall view of the technical solution and operational approach of the Offeror. The Offeror should summarize its offering, its proposed changes to the organization and/or environment, the overall approach and the value provided by the Offeror.

The Offeror should include any planned improvements in tools and processes and expected dates that these improvements will be implemented.

NOTE: Detailed information containing the specific steps, resources, and plans associated with the transition of the services and implementation of new tools and processes should be described in the Offeror Transition Plan, as described below.

### Service Delivery Model

The Offeror should outline its overall service delivery model as well as a service specific delivery model given the scope of services that are within this RFP. What issues and concerns does the Offeror have in its ability to deliver the required set of services? What approach would the Offeror suggest that would improve (reduce) the overall cost of service delivery? Identify, based on the Offeror's experience, how these savings will be achieved and the magnitude (percentage) of these savings.

The Commonwealth leverages the skills and expertise of several internal and external service providers in the delivery of information technology services to its employees and constituents. The Offeror will describe its approach and experience in working in a multi-provider environment with a focus on the integration of tools and process. Include detail on the structure and associated roles and responsibilities of the Offeror's account management team.

### Achievement of the Commonwealth's Objectives

The Offeror will describe how its solution fulfills the Commonwealth's objectives described in **Exhibit A** of this RFP.

### Future State

The Offeror will describe how it will transition and transform the Commonwealth from the current environment (refer to Exhibit B – Current Environment) to a proposed future environment.

### Offeror Processes and Methodologies

The Offeror will describe the major processes and methodologies (including any Project Management, incident and problem management, etc.) that it will employ in delivering the services. Brochures or manuals associated with a process or methodology may be included as appendices to the Technical Solution Document, if necessary.

### Change Management and Refresh

The Offeror will describe its approach to the Change Management and refresh requirements in this RFP. The Offeror will describe general procedures associated with changes to the technical environment, including general policies and procedures, any incorporation of existing Commonwealth practices, change requests, reviews, Offeror and Commonwealth approvals, escalation, and implementation. The Offeror will also describe its approach to meeting the requirements associated with the refresh of equipment and software.

### Offeror Key Assumptions and Dependencies

The Commonwealth will rely upon representations made in the Offeror's proposal. The Offeror must therefore identify key assumptions and dependencies on which it has based

its proposal including any the Commonwealth personnel, financial, or operational retained responsibilities. The impact on schedule or functionality (including Service Levels) of any of the Offeror's assumptions must be presented to the Commonwealth in the form of a written question. If no impacts are specified, then the Commonwealth will assume there are none.

**II-3. Transition Plan.** The Offeror must provide, as a separate Microsoft Word document, a file entitled "Offeror-Name Transition Plan.doc". A project plan may be included as an appendix to the Transition Plan as a Microsoft Project file. The project plan will indicate the specific tasks, timeframes, resources, and responsibilities associated with the transition activities.

The Offeror's Transition Plan should be developed to ensure the support and management of the Commonwealth's campus backbone network ("COPANET") is included.

The Offeror will explain how, when and where it will implement the services. The Offeror will further describe how it will transition services from the Commonwealth's current environment (including any components of the environment managed by third parties) to the Offeror's proposed solution. The Offeror should also provide an estimate of any required Commonwealth resources, in which locations and for how long, in order for the Offeror to implement its solution. The Offeror's estimate of required Commonwealth resources will be used by the Commonwealth for planning purposes only. The Commonwealth makes no guarantees on the commitment or availability of these estimated resources. Additionally, the Offeror should provide the Commonwealth with an understanding of how the transition plan minimizes the Commonwealth's execution, operational, financial and business risks relative to the recommended solution.

**II-4. Offeror Background and Qualifications.** The Offeror must provide, as a separate Microsoft Word document, a file entitled "Offeror-Name Background and Qualifications.doc". No appendices or additional information will be accepted. The Offeror's Background and Qualifications should cover the topics described below.

#### Overall

The Offeror should provide information describing its background, services, experience, and qualifications relative to the scope of this RFP. To be considered will be the length, service levels, references, and quality of comparable services provided to other clients. The Offeror should also indicate any additional information that will be helpful to the Commonwealth's evaluation.

#### Corporate Information

The Offeror should provide a narrative describing its background, history, services, and corporate organization. A general overview of the corporate organization is appropriate. If the Offeror is a subsidiary or division of a larger company, this section should concentrate on the operating history of the subsidiary or division which will provide the Services.

### Financial Capability

The Offeror must be able to demonstrate to the Commonwealth its financial soundness and its ability to remain viable as a provider of the Services over the term of the agreement. The Offeror must provide the following information for Offeror's lines of business that are directly comparable to outsourcing the Services:

- » Revenues segmented by telecommunications or managed network business lines
- » Revenues from all lines of business
- » Total number of FTEs performing managed network services
- » Locations and number of employees in each location
- » Employee turnover rate
- » Long-term debt rating (Moody's or S&P)
- » Total market capitalization
- » Number of customers to which it provides managed network services
- » Length/total expected dollar value of all contracts in force

### Strategic Direction

The Commonwealth places strong emphasis on the need for a long-term strategy. The Offeror should describe its strategic direction, and the implications of that strategy for the Commonwealth. The Offeror should also indicate the relative size that a future agreement with the Commonwealth would be in relation to the Offeror's revenue.

### Dedication to Quality

The Offeror should provide details of its approach to measuring and maintaining high quality services. The Offeror should provide details of any industry-recognized quality standard to which it is, or will become, compliant (including a timeframe for compliance, if not already achieved), as well as any awards received over the past 18 months. Please indicate all quality programs that are externally measured (e.g., Six Sigma, ISO 9001:2000) and how such certifications would directly benefit the Commonwealth. A detailed approach and quality plan should be included in the response to this section.

### Client References

The Offeror will list three (3) to five (5) of its clients where similar services are provided. The Offeror is encouraged to include clients having similar scope of services, geographies, industry, and scale as the Commonwealth.

The Offeror will include a client contact name, title, address, email address and phone number for each of the references provided. The Offeror will provide a brief description of the services provided for each client. The Offeror will also ensure that the Commonwealth is able to discuss with the client or clients listed, the client's experience with the Offeror's services.

**II-5. Objections and Additions to Standard Contract Terms and Conditions.** The Offeror will identify which, if any, of the terms and conditions (contained in **Appendix A**) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider

late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Appendix A**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal.

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

## **II-6. Disadvantaged Business Submittal.**

### **a. Disadvantaged Business Information.**

- i) To receive credit for being a Small Disadvantaged Business or a Socially Disadvantaged Business or for entering into a joint venture agreement with a Small Disadvantaged Business or for subcontracting with a Small Disadvantaged Business (including purchasing supplies and/or services through a purchase agreement), an Offeror must include proof of Disadvantaged Business qualification in the Disadvantaged Business Submittal of the proposal, as indicated below:
  - 1) A Small Disadvantaged Businesses certified by BMWBO as an MBE/WBE must provide a photocopy of their BMWBO certificate.
  - 2) Small Disadvantaged Businesses certified by the U.S. Small Business Administration pursuant to Section 8(a) of the *Small Business Act* (15 U.S.C. § 636(a)) as an 8(a) or small disadvantaged business must submit proof of U.S. Small Business Administration certification. The owners of such businesses must also submit proof of United States citizenship.
  - 3) All businesses claiming Small Disadvantaged Business status, whether as a result of BMWBO certification or U.S. Small Business Administration certification as an 8(a) or small disadvantaged business, must attest to the fact that the business has 100 or fewer employees.
  - 4) All businesses claiming Small Disadvantaged Business status, whether as a result of BMWBO certification or U.S. Small

Business Administration certification as an 8(a) or small disadvantaged business, must submit proof that their gross annual revenues are less than \$20,000,000 (\$25,000,000 for those businesses in the information technology sales or service business). This can be accomplished by including a recent tax return or audited financial statement.

- ii) All businesses claiming status as a Socially Disadvantaged Business must include in the Disadvantaged Business Submittal of the proposal clear and convincing evidence to establish that the business has personally suffered racial or ethnic prejudice or cultural bias stemming from the business person's color, ethnic origin or gender. The submitted evidence of prejudice or bias must:
- 1) Be rooted in treatment that the business person has experienced in American society, not in other countries.
  - 2) Show prejudice or bias that is chronic and substantial, not fleeting or insignificant.
  - 3) Indicate that the business person's experience with the racial or ethnic prejudice or cultural bias has negatively impacted his or her entry into and/or advancement in the business world.

BMWBO shall determine whether the Offeror has established that a business is socially disadvantaged by clear and convincing evidence.

- iii) In addition to the above verifications, the Offeror must include in the Disadvantaged Business Submittal of the proposal the following information:
- 1) The name and telephone number of the Offeror's project (contact) person for the Small Disadvantaged Business.
  - 2) The business name, address, name and telephone number of the primary contact person for each Small Disadvantaged Business included in the proposal. The Offeror must specify each Small Disadvantaged Business to which it is making commitments. The Offeror will not receive credit for stating that it will find a Small Disadvantaged Business after the contract is awarded or for listing several businesses and stating that one will be selected later.
  - 3) The specific work, goods or services each Small Disadvantaged Business will perform or provide.



- 4) The estimated dollar value of the contract to each Small Disadvantaged Business.
  - 5) Of the estimated dollar value of the contract to each Small Disadvantaged Business, the percent of the total value of services or products purchased or subcontracted that will be provided by the Small Disadvantaged Business directly.
  - 6) The location where each Small Disadvantaged Business will perform these services.
  - 7) The timeframe for each Small Disadvantaged Business to provide or deliver the goods or services.
  - 8) The amount of capital, if any, each Small Disadvantaged Business will be expected to provide.
  - 9) The form and amount of compensation each Small Disadvantaged Business will receive.
  - 10) For a joint venture agreement, a copy of the agreement, signed by all parties.
  - 11) For a subcontract, a signed subcontract or letter of intent.
- iv) The Offeror is required to submit **two** copies of its Disadvantaged Business Submittal. The submittal shall be clearly identified as Disadvantaged Business information and sealed in its own envelope, separate from the remainder of the proposal.
  - v) The Offeror must include the dollar value of the commitment to each Small Disadvantaged Business in the same sealed envelope with its Disadvantaged Business Submittal. The following will become a contractual obligation once the contract is fully executed:
    - 1) The amount of the selected Offeror's Disadvantaged Business commitment;
    - 2) The name of each Small Disadvantaged Business; and
    - 3) The services each Small Disadvantaged Business will provide, including the timeframe for performing the services.
  - vi) A Small Disadvantaged Business can be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

- vii) An Offeror that qualifies as a Small Disadvantaged Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

**b. Enterprise Zone Small Business Participation.**

- i) To receive credit for being an enterprise zone small business or entering into a joint venture agreement with an enterprise zone small business or subcontracting with an enterprise zone small business, an Offeror must include the following information in the Disadvantaged Business Submittal of the proposal:
  - 1) Proof of the location of the business' headquarters (such as a lease or deed or Department of State corporate registration), including a description of those activities that occur at the site to support the other businesses in the enterprise zone.
  - 2) Confirmation of the enterprise zone in which it is located (obtained from the local enterprise zone office).
  - 3) Proof of United States citizenship of the owners of the business.
  - 4) Certification that the business employs 100 or fewer employees.
  - 5) Proof that the business' gross annual revenues are less than \$20,000,000 (\$25,000,000 for those businesses in the information technology sales or service business). This can be accomplished by including a recent tax return or audited financial statement.
  - 6) Documentation of business organization, if applicable, such as articles of incorporation, partnership agreement or other documents of organization.
- ii) In addition to the above verifications, the Offeror must include in the Disadvantaged Business Submittal of the proposal the following information:
  - 1) The name and telephone number of the Offeror's project (contact) person for the Enterprise Zone Small Business.
  - 2) The business name, address, name and telephone number of the primary contact person for each Enterprise Zone Small Business included in the proposal. The Offeror must specify each Enterprise Zone Small Business to which it is making commitments. The Offeror will not receive credit for stating that it will find an

Enterprise Zone Small Business after the contract is awarded or for listing several businesses and stating that one will be selected later.

- 3) The specific work, goods or services each Enterprise Zone Small Business will perform or provide.
  - 4) The estimated dollar value of the contract to each Enterprise Zone Small Business.
  - 5) Of the estimated dollar value of the contract to each Enterprise Zone Small Business, the percent of the total value of services or products purchased or subcontracted that each Enterprise Zone Small Business will provide.
  - 6) The location where each Enterprise Zone Small Business will perform these services.
  - 7) The timeframe for each Enterprise Zone Small Business to provide or deliver the goods or services.
  - 8) The amount of capital, if any, each Enterprise Zone Small Business will be expected to provide.
  - 9) The form and amount of compensation each Enterprise Zone Small Business will receive.
  - 10) For a joint venture agreement, a copy of the agreement, signed by all parties.
  - 11) For a subcontract, a signed subcontract or letter of intent.
- iii) The dollar value of the commitment to each Enterprise Zone Small Business must be included in the same sealed envelope with the Disadvantaged Business Submittal of the proposal. The following will become a contractual obligation once the contract is fully executed:
- 1) The amount of the selected Offeror's Enterprise Zone Small Business commitment;
  - 2) The name of each Enterprise Zone Small Business; and
  - 3) The services each Enterprise Zone Small Business will provide, including the timeframe for performing the services.

**II-7. Cost Submittal.** The information requested in this **Part II, Section II-7** shall constitute the Cost Submittal. The Cost Submittal presented here as Exhibit D – Service Provider Pricing

Forms, must be completed electronically and submitted by attaching to the bid response in SRM. The Cost Submittal will be prepared using **Exhibit D – Service Provider Pricing Forms**.

Within the Offeror Pricing Forms, the Offeror is requested to provide Rate Tables for specific Transport categories (Frame Relay, ATM, Voice Services, Premise Wiring).

If the Offeror includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office pursuant to **Part I, Section I-10**, of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

**The Issuing Office will reimburse the selected Offeror for work satisfactorily performed after execution of a written contract and the start of the contract term, in accordance with contract requirements, and only after the Issuing Office has issued a notice to proceed.**

**II-8. Domestic Workforce Utilization Certification.** Complete and sign the Domestic Workforce Utilization Certification contained in **Appendix B** of this RFP. Offerors who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Cost Submittal.

**II-9. COSTARS Program Questionnaire.** Complete and sign the questionnaire regarding the COSTARS program contained in Appendix C of this RFP. Submit the signed questionnaire in the same sealed envelope with the Technical Submittal.

## PART III

### CRITERIA FOR SELECTION

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

- a. Timely received from an Offeror;
- b. Properly signed by the Offeror.

**III-2. Technical Nonconforming Proposals.** The Issuing Office reserves the right, in its sole discretion, to waive technical or immaterial nonconformities in an Offeror's proposal.

**III-3. Evaluation.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BMWBO will evaluate the Disadvantaged Business Submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors. The Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, *Contractor Responsibility Program*.

**III-4. Criteria for Selection.** The following criteria will be used, in order of relative importance from the highest to the lowest weighted factors, in evaluating each proposal. *In order for a proposal to be considered for selection for best and final offers or selection for contract negotiations, the total score for the technical submittal of the proposal must be greater than or equal to 70% of the highest scoring technical submittal.*

- a. **Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as 50% of the total points. Evaluation will be based upon the following sub-criteria in order of importance:
  - i) *Technical Approach:* The Offeror's proposed approach to perform the work and meeting the requirements outlined in Exhibit C.
  - ii) *Service Management Approach:* The Offeror's capabilities and approach to managing telecommunications as a service. Specifically, the methodologies, disciplines and tools used by the Offeror to support key business processes such as incident management, problem management and change management.
  - iii) *Transition Plan and Approach:* The Offeror's demonstration of previous experience with large-scale telecommunications transitions and the quality and feasibility of the proposed Transition Plan.

- iv) *Account Management Approach:* The Offeror's proposed organizational structure and how it promotes a culture focused on customer service and quality management. Prior experience with similar enterprise accounts with relevant client references will be considered.
  - v) *Understanding of the Scope/Objectives:* The Offeror's demonstration of their understanding of the Commonwealth's goals and objectives outlined in Exhibit A.
  - vi) *Financial Capability.*
- b. **Cost.** The Issuing Office has established the weight for the Cost criterion for this RFP as 30% of the total points.
- c. **Disadvantaged Business Participation:** The BMWBO has established the weight for the Disadvantaged Business Participation criterion for this RFP as 20% of the total points. Evaluation will be based upon the following in order of priority:

<b>Priority Rank 1</b>	Proposals submitted by Small Disadvantaged Businesses.
<b>Priority Rank 2</b>	Proposals submitted from a joint venture with a Small Disadvantaged Business as a joint venture partner.
<b>Priority Rank 3</b>	Proposals submitted with subcontracting commitments to Small Disadvantaged Businesses.
<b>Priority Rank 4</b>	Proposals submitted by Socially Disadvantaged Businesses.

Each proposal will be rated for its approach to enhancing the utilization of Small Disadvantaged Businesses and/or Socially Disadvantaged Businesses. Each approach will be evaluated, with Priority Rank 1 receiving the highest score and the succeeding options receiving scores in accordance with the above-listed priority ranking

To the extent that an Offeror qualifies as a Small Disadvantaged Business or a Socially Disadvantaged Business, the Small Disadvantaged Business or Socially Disadvantaged Business cannot enter into subcontract arrangements for more than **40%** of the total estimated dollar amount of the contract. If a Small Disadvantaged Business or a Socially Disadvantaged Business subcontracts more than **40%** of the total estimated dollar amount of the contract to other contractors, the Disadvantaged Business Participation scoring shall be proportionally lower for that proposal.

- d. **Enterprise Zone Small Business Participation:** In accordance with the Priority Ranks listed below, bonus points in addition to the total points for this RFP, will be given for the Enterprise Zone Small Business Participation criterion. The following options will be considered as part of the final criteria for selection:

<b>Priority Rank 1</b>	Proposals submitted by an Enterprise Zone Small Business will receive the highest score.
<b>Priority Rank 2</b>	Proposals submitted by a joint venture with an Enterprise Zone Small Business as a joint venture partner will receive the next highest score for this criterion.
<b>Priority Rank 3</b>	Proposals submitted with a subcontracting commitment to an Enterprise Zone Small Business will receive the lowest score for this criterion.
<b>Priority Rank 4</b>	Proposals with no Enterprise Zone Small Business Utilization shall receive no points under this criterion.

To the extent that an Offeror is an Enterprise Zone Small Business, the Offeror cannot enter into contract or subcontract arrangements for more than **40%** of the total estimated dollar amount of the contract in order to qualify as an Enterprise Zone Small Business for purposes of this RFP.

- e. **Domestic Workforce Utilization:** Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum bonus points for this criterion is 3% of the total points for this RFP. To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. Offerors who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed

envelope with the Cost Submittal. The certification will be included as a contractual obligation when the contract is executed.

## PART IV

### STATEMENT OF WORK

**IV-1. Objectives.** Exhibit A of this RFP describes the Commonwealth's goals and objectives.

**IV-2. Nature and Scope of the Project.** The nature and scope of the Project is to consolidate existing telecommunications contracts into a single agreement. The Commonwealth's telecommunications services encompass voice and data communications services and information security services. The following provides an overview of the Services and the associated technologies:

#### Data Communications Services

The Commonwealth's data communication network provides cost-effective service that ensures reliability and predictability in computer access and performance to centrally managed computer systems. These services include, but are not be limited to:

- » ATM
- » Frame Relay
- » Metro Ethernet
- » Point-to-point
- » Enterprise Internet
- » Broadband Internet
- » Wireless LAN
- » Premise wiring
- » Metro Fiber

#### Security Services

The Commonwealth's network security services protect the network and network accessible resources from unauthorized access, provide intrusion detection and prevention and deliver secure remote access and business partner connectivity. These services include, but may not be limited to:

- » Firewalls
- » Intrusion Detection Systems (IDS)
- » Intrusion Prevention Systems (IPS)
- » Virtual Private Networking (VPN)
- » Proxy services
- » Content filtering and load balancing



## Voice Communications Services

The Commonwealth's voice services environment is inclusive of standard and specialized voice products and services which facilitate day-to-day business communications, operations and productivity. These services include, but may not be limited to:

- » Local Service (dial tone)
- » Long Distance (switched and dedicated)
- » Voice messaging and Auto Attendant services
- » Inbound toll free service (switched and dedicated)
- » Audio and video conferencing
- » Payphones
- » Miscellaneous Telephone Equipment (PBX and Key systems)
- » Premise wiring

## Out of Scope Services

The following are out of scope for the purposes of this RFP:

- » Wireless/Cellular Voice services
- » Satellite communication services
- » Inmate telephone services
- » Calling cards

**IV-3. Requirements.** The business and technical requirements are detailed in Exhibit C of this RFP. In addition to the requirements detailed in Exhibit C, the Offeror's Technical Solution Document should include the following Emergency Preparedness items.

### a. Emergency Preparedness

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

1. Describe how it anticipates such a crisis will impact its operations.
2. Describe its emergency response continuity of operations plan. Please attach a copy of the plan, or at a minimum, summarize how it addresses the following aspects of pandemic preparedness:
  - employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)

- identified essential business functions and key employees (within Offeror's organization) necessary to carry them out
- contingency plans for:
  - How Offeror's organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
  - How employees in Offeror's organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
- How Offeror's organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
- How and when Offeror's emergency plan will be tested, and if the plan will be tested by a third-party.

**IV-4. Tasks.** Exhibit C of this RFP details the specific tasks that support Telecommunications Managed Services. Schedule F-1 details the Service Levels required by the Commonwealth.

**IV-5. Contract Requirements—Disadvantaged Business Participation and Enterprise Zone Small Business Participation.** All contracts containing Disadvantaged Business participation and/or Enterprise Zone Small Business participation must also include a provision requiring the selected contractor to meet and maintain those commitments made to Disadvantaged Businesses and/or Enterprise Zone Small Businesses at the time of proposal submittal or contract negotiation, unless a change in the commitment is approved by the BMWBO. All contracts containing Disadvantaged Business participation and/or Enterprise Zone Small Business participation must include a provision requiring Small Disadvantaged Business subcontractors, Enterprise Zone Small Business subcontractors and Small Disadvantaged Businesses or Enterprise Zone Small Businesses in a joint venture to perform at least **50%** of the subcontract or Small Disadvantaged Business/Enterprise Zone Small Business participation portion of the joint venture.

The selected contractor's commitments to Disadvantaged Businesses and/or Enterprise Zone Small Businesses made at the time of proposal submittal or contract negotiation shall be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to BMWBO, which will make a recommendation to the Contracting Officer regarding a course of action.

If a contract is assigned to another contractor, the new contractor must maintain the Disadvantaged Business participation and/or Enterprise Zone Small Business participation of the original contract.

The selected contractor shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to the contracting officer of the Issuing Office and BMWBO within **10** workdays at the end of each quarter the contract is in force. This information will be used to determine the actual dollar amount paid to Small Disadvantaged Business and/or Enterprise Zone Small Business subcontractors and suppliers, and Small Disadvantaged Business and/or Enterprise Zone Small Business participants involved in joint ventures. Also, this information will serve as a record of fulfillment of the commitment

the selected contractor made and for which it received Disadvantaged Business and Enterprise Zone Small Business points. If there was no activity during the quarter then the form must be completed by stating “No activity in this quarter.”

**NOTE: EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE STATEMENTS REFERRING TO COMPANY EQUAL EMPLOYMENT OPPORTUNITY POLICIES OR PAST CONTRACT COMPLIANCE PRACTICES DO NOT CONSTITUTE PROOF OF DISADVANTAGED BUSINESSES STATUS OR ENTITLE AN OFFEROR TO RECEIVE CREDIT FOR DISADVANTAGED BUSINESSES UTILIZATION.**

**APPENDIX A**  
**TERMS AND CONDITIONS**

## TERMS AND CONDITIONS

### 1. TERM AND SCOPE OF CONTRACT

- (a) The term of the Contract shall commence on the Effective Date and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Effective Date shall be: a) the date the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained or b) the date referenced in the Contract, whichever is later. The Contract shall not be a legally binding contract until after the fully-executed Contract has been sent to the Contractor.
- (b) The Commonwealth may, in its sole discretion, renew the Contract for three 1-year periods, or any combination thereof, on the terms and conditions in force at the date of the renewal and utilizing pricing to be negotiated but consistent with and no less favorable than the pricing in force at the date of the renewal. Further, the Commonwealth reserves the right to extend this Contract or any part of this Contract up to three (3) months, or as necessary to prevent a lapse in Contract coverage.
- (c) The fully executed Contract shall not contain ink signatures by the Commonwealth. The Contractor understands and agrees that the receipt of an electronically-printed Contract with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent on the Contract represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Contract. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- (d) The Contractor shall not start performance until all of the following have occurred:
  - (1) The Effective Date has arrived;
  - (2) The Contractor has received a copy of the fully executed Contract; and
  - (3) The Contractor has received a Purchase Order.

The Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred before the Effective Date or before the Contractor receives a copy of the fully executed Contract or before the Contractor has received a Purchase Order. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date.

- (e) The Contractor agrees to provide the Services to the Commonwealth as such services are defined in this Contract, the RFP and the Contractor's Proposal, and in accordance with the terms of this Contract.
- (f) The Contractor shall provide to Commonwealth the following Services pursuant to the terms of the Contract:
  - (1) Commencing as of the Effective Date, the Transition and Transformation Services set forth in Schedule D (Transition and Transformation Methodology);
  - (2) Commencing as of the Effective Date and continuing until the Expiration Date:
    - (i) The Services, function and responsibilities described in the Contract, including the Services set forth in Schedule B (Services and Statements of Work);
    - (ii) The services being performed in the thirteen (13) months prior to the Effective Date by Commonwealth employees and contractors whose scope of work is being taken over or replaced as a result of the Contract, even if the service, function or responsibility is not specifically described in the Contract;
    - (iii) Any incidental services, functions or responsibilities not specifically described in the Contract, but which are required for the proper performance and delivery of the Services identified in (i) through (ii) above; and
    - (iv) The services, functions and responsibilities related to those categories of Services which Contractor is assuming pursuant to the Contract; and
  - (3) Commencing upon written notice by Commonwealth to Contractor in accordance with Article 28 (TERMINATION ASSISTANCE), the Termination Assistance Services.

The services set forth in (1) through (3) above shall be collectively referenced as the "Services," as they may evolve during the Term of the Contract or be supplemented, enhanced, modified or replaced pursuant to the terms hereof.

- (g) The Services shall be provided from and to the Services Locations. Contractor shall not:
  - (1) Provide the Services from a location other than a Services Location; or

- (2) Use any Commonwealth Services Location to provide Services to a third party without Commonwealth's consent.

Authorized representatives of Commonwealth, Commonwealth agents and agents of the Federal government shall be permitted access to any Contractor Services Location.

## **2. PURCHASE ORDERS**

- (a) The Commonwealth may issue Purchase Orders against the Contract. These orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Contractors are not permitted to accept Purchase Orders which require performance in excess of those performance time periods specified in the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.
- (b) Purchase Orders will not include an ink signature by the Commonwealth. The electronically-printed name of the purchaser represents the signature of the individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.
- (c) Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor.
- (d) Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order.
- (e) Purchase Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.
- (f) The Commonwealth and the Contractor specifically agree as follows:
  - (1) No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
  - (2) Upon receipt of a Purchase Order, the Contractor shall promptly and properly transmit an acknowledgement in return. Any order which is issued electronically shall not give rise to any obligation to deliver on the part of the Contractor, or any obligation to receive and pay for delivered products on the part of the Commonwealth, unless and until the Commonwealth agency transmitting the order has properly received an acknowledgement.

- (3) The parties agree that no writing shall be required in order to make the order legally binding. The parties hereby agree not to contest the validity or enforceability of the Contract or a genuine Purchase Order or acknowledgement that have been issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements shall be in writing and signed by the party bound thereby. The Contract and any genuine Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of the Contract or any genuine Purchase Order or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- (4) Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.
- (g) Purchase Orders under five thousand dollars (\$5,000) in total amount may also be made in person or by telephone using a Commonwealth Procurement VISA Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. The Contractor agrees to accept payment through the use of the Commonwealth Procurement VISA card.

### **3. CONTRACT SCOPE**

- (a) If the Contractor must perform work at a Commonwealth facility outside of the daily operational hours set forth by the Commonwealth, it must make arrangements with the Commonwealth to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access, unless the Commonwealth fails to provide access as set out in the RFP.
- (b) Except as set out in this Contract, the Contractor shall not offer for sale or provide Commonwealth agencies with any hardware or software (i.e., personal computers, file servers, laptops, personal computer packaged software, etc.). Contractor may recommend the use of tools such as hardware and software, without requiring agencies to purchase those tools. If not on a statewide contract, the recommended hardware or software will be acquired through separate purchase agreements. Contractor shall not be considered for award of those purchase agreements.



- (c) The Contractor shall review the standards set out in IT Bulletins. The Contractor shall ensure that Services procured under this Contract comply with the applicable standards. In the event such standards change during Contractor's performance, and the Commonwealth requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

**4. IDENTIFICATION NUMBER**

The Contractor must have a SAP vendor number.

**5. ORDER OF PRECEDENCE, DEFINITIONS AND CONSTRUCTION**

- (a) If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence shall be:
  - (1) This Contract (first, the Contract, second the Schedules and Appendices); then
  - (2) The Contractor's Proposal, as accepted by the Commonwealth; and then
  - (3) The RFP.
- (b) Except as otherwise expressly provided in the Contract, all capitalized terms used in the Contract shall have the meanings set forth in Schedule A (Defined Terms).
- (c) Interpretation:
  - (1) The terms defined in the Contract include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to the Contract as a whole and not to any particular Article, Section, subsection or other subdivision. The words "include" and "including" shall not be construed as terms of limitation.
  - (2) Headings preceding the text of Articles or Sections, and headings to Schedules and Appendices, the table of contents and the table of Schedules and Appendices included in or attached to the Contract are used for convenience only and are not to be considered in construing or interpreting the Contract.
  - (3) References to any law refer to such law in changed or supplemented form, or to a newly adopted law replacing a previous law.

- (4) Except as may be expressly set forth herein, all references to time herein refer to Eastern Standard Time or Eastern Daylight Time, as applicable.
- (d) The Contract includes each Schedule and Appendix referenced herein, all of which are incorporated into the Contract by this reference

**6. CONTRACT INTEGRATION**

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

**7. PERIOD OF PERFORMANCE**

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

**8. SPECIAL REQUIREMENTS**

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

**9. SUBCONTRACTS**

The Contractor may subcontract any portion of the Services described in this Contract to third parties selected by Contractor and approved in writing by the Commonwealth, whose approval shall not be unreasonably withheld and who shall be listed at Schedule I (Approved Subcontractors). Notwithstanding the above, if Contractor has disclosed the identity of Subcontractor(s) together with the scope of work to be subcontracted in the Contractor's Proposal, award of the Contract is deemed approval of all named Subcontractors for the specified scope of work and a separate approval is not required.

The existence of any subcontract shall not change the obligations of Contractor to the Commonwealth under this Contract. Upon request of the Commonwealth, the Contractor must provide the Commonwealth with a copy of the subcontract agreement between the Contractor and the subcontractor. The Commonwealth reserves the right, for good cause, to require that the Contractor remove a subcontractor from the project. The Commonwealth will not be responsible for any costs incurred by the Contractor in replacing the subcontractor if good cause exists.

## **10. OTHER CONTRACTORS**

- (a) 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 work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.
- (b) Throughout the Term, Commonwealth may request that Contractor work together with Commonwealth and/or third parties to identify ways to achieve reductions in the cost of service delivery and corresponding reductions in the price(s) quoted in the Contract. If so requested by Commonwealth, Contractor will, at its own expense, promptly prepare a detailed proposal identifying all viable means of achieving the desired reductions without (to the extent practically possible) adversely impacting business objectives or requirements identified by Commonwealth. Commonwealth shall not be obligated to accept or implement any such proposal.

## **11. PRIME CONTRACTOR RESPONSIBILITIES**

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

## **12. COMPENSATION**

- (a) In consideration of Contractor providing the Services, subject to the terms of this Contract, Commonwealth shall pay to Contractor the Fees as set out at Schedule C (Fee Methodology). All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

- (b) Unless the Contractor has been authorized by the Commonwealth for evaluated receipt settlement, the Contractor shall send an invoice itemized by Purchase Order line item to the address referenced on the Purchase Order promptly after items are satisfactorily delivered. The invoice should include only amounts due under the Contract/Purchase Order. The Purchase Order number must be included on all invoices. In addition, the Commonwealth shall have the right to require the Contractor to prepare and submit a “Work In Progress” sheet that contains, at a minimum, the tasks performed, number of hours, hourly rates, and the purchase order or task order to which it refers.

### **13. PAYMENT**

- (a) The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
  - (1) The date on which payment is due under the terms of the Contract; or
  - (2) Thirty (30) calendar days after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Commonwealth accepts the Service as satisfactorily performed).

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

- (b) Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract, if any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the Service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the Service if such post payment testing or inspection discloses a defect or a failure to meet specifications.
- (c) Contractor shall continue to provide the Services even in the event payment is delayed or is not made in timely fashion.
- (d) All charges shall be exclusive of any taxes and fees and shall be supported by a line-item detailed analysis of the charges, showing how the charges are authorized under the Contract, and providing details of any allocation, algorithm or other calculation that was used to derive the charges, and providing sufficient detail that Commonwealth will be able to (i) reconcile the charges to the contractual commitments that give rise to them, and (ii) operate its internal cross charging

protocols to re-charge the amounts billed by Contractor to the applicable business units.

#### **14. SIGNIFICANT EVENTS**

Commonwealth requires the right to adjust the scope or volume of Services to be provided in response to an event, or series of events taken together, that have or will have a significant and sustained impact on Commonwealth's demand for the Services, and requires Contractor to equitably adjust the price for the Services to reflect any such changes to the scope or volume of the Services.

#### **15. ASSIGNABILITY**

- (a) Subject to the terms and conditions of this Article 15 (ASSIGNABILITY), 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.

## **16. STEP-IN RIGHTS**

- (a) In the event that Contractor is failing to deliver all or part of the Services, Commonwealth may assign Commonwealth staff or third parties to step in and perform any failing elements of the Services until such time as Contractor can demonstrate the ability to resume provision of such Services.
- (b) All costs associated with the exercise of such step-in rights shall be borne by Contractor.
- (c) Commonwealth's exercise of its step-in rights shall not constitute a waiver by Commonwealth of any termination rights or rights to pursue a claim for damages arising out of the failure that led to the step-in rights being exercised.

## **17. TRANSITION AND TRANSFORMATION**

Contractor shall plan, prepare for and conduct the transition of the Services in accordance with the Transition Plan set out in Schedule D (Transition and Transformation Methodology). The transition of the Services shall be completed no later the final Transition date specified in the Transition Plan. Contractor's responsibilities with respect to the transition include:

- (a) Transfer of the Services to Contractor and subsequent transformation of the Services to realize any planned cost reductions and Service performance improvements in accordance with detailed Transition and Transformation Plans agreed to by Commonwealth and including a number of Transition and Transformation Milestones (which shall include Critical Milestones);
  - (1) Performing the transition without disruption to Commonwealth's operations;
  - (2) Paying all costs associated with the transition; and
  - (3) Otherwise performing such transition and migration tasks as are necessary to enable Contractor to provide the Services in accordance with the terms of the Contract, including the applicable Service Levels.

## **18. COMPLETION OF TRANSITION AND TRANSFORMATION**

- (a) Commonwealth reserves the right to monitor, test and otherwise observe and participate in transition. Contractor will notify Commonwealth without delay if any Commonwealth monitoring, testing or participation has caused (or Contractor expects it to cause) a problem or delay in transition and work with Commonwealth to prevent or circumvent the problem or delay.

- (b) In Contractor's performance and completion of transition and transformation activities, no functionality of Commonwealth's then current business operations or environment will be discontinued until Contractor demonstrates to Commonwealth's reasonable satisfaction that the affected processes and operations have been successfully migrated to Contractor's target environment and are functioning properly in that environment.
- (c) If any Transition Milestone, Transformation Milestone or Critical Milestone is not completed on or before the given date for such milestone as applicable, due to the fault of Contractor and a Milestone Credit is applicable, then for the period of delay Contractor shall pay to Commonwealth the Milestone Credit as set out in Schedule D (Transition and Transformation Methodology), until such Transition Milestone, Transformation Milestone or Critical Milestone is completed.

## **19. INSPECTION AND ACCEPTANCE**

- (a) Acceptance of Services will occur in accordance with the Acceptance Testing Plan submitted by the Contractor and approved by the Commonwealth. Upon approval of the plan by the Commonwealth, the Acceptance Testing Plan becomes part of this Contract. The Acceptance Testing Plan will provide for a Final Acceptance Test, and may provide for Milestone acceptance tests. Each Acceptance Test will be designed to demonstrate that the Services conform with the relevant functional specification, if any, and/or the requirements of this Contract. Contractor shall notify the Commonwealth when the deliverable is completed and ready for acceptance testing. The Commonwealth will not unreasonably delay commencement of acceptance testing.
- (b) Contractor shall certify, in writing, to the Commonwealth when a particular Deliverable is completed and ready for acceptance (hereinafter Acceptance). Unless otherwise agreed to by the Commonwealth, the Acceptance period shall be ten (10) business days for Transition and Transformation Milestones and thirty (30) days for Critical Milestones and the Final Acceptance Test. On or before the 10<sup>th</sup> business day for Transition and Transformation Milestones, or 30<sup>th</sup> business day for Critical Milestones and the Final Acceptance Test, following receipt by the Commonwealth of Contractor's certification of completion of a particular milestone, the Commonwealth shall either: (1) provide the Contractor with Commonwealth's written conditional acceptance of the Deliverable, subject to satisfactory completion of the Final Acceptance Test or (2) identify to Contractor, in writing, the failure of the Services to comply with the specifications, listing all such errors and omissions with reasonable detail.
- (c) If the Services are in compliance with the specifications, then the Commonwealth shall provide the Contractor with Commonwealth's written conditional acceptance of the Deliverable. If the Deliverable is not in compliance with the specifications, then the Commonwealth shall provide the Contractor with Commonwealth's written rejection of the Deliverable. Payment will only be

made if the Commonwealth has accepted the Deliverable through written acceptance.

- (d) If the Deliverables do not meet an accessibility standard, the Contractor must provide written justification for its failure to meet the standard. The justification must provide specific details as to why the standard has not been met. The Commonwealth may either waive the requirement as not applicable to the Commonwealth's business requirements or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.
- (e) Upon the Contractor's receipt of the Commonwealth's written notice of rejection, which must identify the reasons for the failure of the Deliverable to comply with the specifications, the Contractor shall have fifteen (15) business days, or such other time as the Commonwealth and Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected Deliverable, certifying to the Commonwealth, in writing, that the failures have been corrected, and that the Deliverable has been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted Deliverable and certification, the Commonwealth shall have thirty (30) business days to test the corrected Deliverable to confirm that it is in compliance with the specifications. If the corrected Deliverable is in compliance with the specifications, then the Commonwealth shall provide the Contractor with Commonwealth's conditional acceptance of the Deliverable in the completed milestone.
- (f) If, in the opinion of the Commonwealth, the corrected Critical Milestone or Final Acceptance Test still contains material failures, the Commonwealth may either:
  - (1) Repeat the procedure set forth above; or
  - (2) Terminate the contract in accordance with Article 27 (TERMINATION).

## **20. DEFAULT**

- (a) The Commonwealth may, subject to the provisions of Article 21 (NOTICE OF DELAYS), 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 Article 27 (TERMINATION)) the whole or any part of this Contract and shall further have the right to seek damages from Contractor for any of the following reasons:
  - (1) Failure to begin work within the time specified in the Contract or as otherwise specified;
  - (2) Failure to agree to final Transition and Transformation Plans;



- (3) Failure to successfully complete a Transition Milestone or a Transformation Milestone in accordance with the agreed Transition or Transformation Plans or for causing a material disruption to Commonwealth's business during the Transition Period or Transformation Period as applicable, or to complete specified work in accordance with the Contract terms;
- (4) Multiple failures over time of a single Service Level or a pattern of failure over time across multiple Service Levels (a Service Level Termination Event); this will include failures of Critical Service Levels and Key Service Levels;
- (5) Failure to make adjustments to the fees or Service Levels in accordance with the outcome of a Benchmarking Report;
- (6) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
- (7) Abandonment or willful refusal to provide the Services or any part of the Services;
- (8) Failure to resume delivery of Critical Services within the time periods prescribed in Schedule E (Critical Services). Regardless of any other provision in this Contract the contrary no cure period is available to Contractor should the Commonwealth terminate under this Section 20(a)(7);
- (9) Failure to perform its responsibilities under any Business Continuity or Disaster Recovery Plans, including such Business Continuity or Disaster Recovery Plans that apply to Contractor's own locations used for the delivery of the Services;
- (10) Failure to replenish any cap agreed with respect to liabilities in the event that agreed or claimed liabilities reach 75% of the cap value;
- (11) Insolvency or bankruptcy;
- (12) Assignment made for the benefit of creditors;
- (13) Failure or refusal within 10 days after written notice by the Contracting Officer, of the Contractor to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;

- (14) Failure to protect, to repair, or to make good any damage or injury to property;
  - (15) Breaches of covenants, agreements, obligations, representations or warranties in the Contract occurring simultaneously or over time, whether or not each such breach is a material breach, and whether or not each such breach was cured, that taken together constitute a material breach of the Contract after Contractor has been made aware of such breaches, on an individual basis. Regardless of any other provision in this Contract the contrary no cure period is available to Contractor should the Commonwealth terminate under this Section 20(a)(15);
  - (16) An act or omission of Contractor that results in any Regulatory Entity notifying Commonwealth that it is subjecting Commonwealth to a hearing or tribunal or withdrawing any license granted to Commonwealth or Contractor and such hearing, tribunal or withdrawal would have a material and adverse effect on Commonwealth's operations or business or the Services. Regardless of any other provision in this Contract the contrary no cure period is available to Contractor should the Commonwealth terminate under this Section 20(a)(16);
  - (17) A material increase in fees or reduction in the benefits received by the Commonwealth resulting from a change(s) to the regulatory environment or structure. Regardless of any other provision in this Contract the contrary no cure period is available to Contractor should the Commonwealth terminate under this Section 20(a)(17)
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- (b) In the event that the Commonwealth terminates this Contract in whole or in part as provided in Subsection (a) above, the Commonwealth may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.
  - (c) If the Contract is terminated as provided in Subsection (a) above, the Commonwealth, in addition to any other rights provided in this Article 20 (DEFAULT), may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Commonwealth, such partially completed work, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed work including, where

applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed work, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

- (d) The rights and remedies of the Commonwealth provided in this Article 20 (DEFAULT) 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 Article 20 (DEFAULT) 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 Article 30 (CONTRACT CONTROVERSIES), the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **21. 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 immediately 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 Article 26 (CHANGES).

## **22. CONDUCT OF SERVICES**

- (a) Following execution 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 or not the Contractor has performed with due diligence hereunder, it is agreed and understood that the Commonwealth may measure the amount and quality of the Contractor's effort against the representations made in the Contractor'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 Article 30 (CONTRACT CONTROVERSIES) of this Contract.

**23. KEY POSITIONS**

- (a) Commonwealth shall appoint an individual (the “Commonwealth Project Manager”) who, from the Effective Date of the Contract, shall serve as the primary Commonwealth representative under the Contract. The Commonwealth Project Manager shall:
  - (1) Have overall responsibility for managing and coordinating the performance of Commonwealth’s obligations under the Contract; and
  - (2) Be authorized to act for and on behalf of Commonwealth with respect to all matters relating to the Contract.

Notwithstanding the foregoing, the Commonwealth Project Manager may, upon notice to the Contractor Project Manager, delegate such of his or her responsibilities to other Commonwealth employees or third parties, as the Commonwealth Project Manager deems appropriate.

- (b) Contractor shall appoint an individual (the “Contractor Project Manager”) who, from the Effective Date of the Contract, shall serve, on a full time basis, as the primary Contractor representative under the Contract. The Contractor Project Manager shall be a Key Position and the initial appointment and subsequent replacement of the Contractor Project Manager shall be subject to all procedures related to Key Positions. The Contractor Project Manager shall:
  - (1) Have overall responsibility for managing and coordinating the performance of Contractor’s obligations under the Contract; and
  - (2) Be authorized to act for and on behalf of Contractor with respect to all matters relating to the Contract.
- (c) Contractor acknowledges that certain of the Contractor employees and subcontractors are critical to the provision of the Services hereunder (“Key Positions”). With respect to Key Positions, the Parties agree as follows:
  - (1) Each individual in a Key Position shall be dedicated to the Commonwealth account in accordance with the requirements set out in Schedule L (Key Positions);

- (2) Before assigning an individual to a Key Position, whether as an initial assignment or as a replacement, Contractor shall:
- (i) Notify Commonwealth of the proposed assignment;
  - (ii) Introduce the individual to appropriate representatives of Commonwealth;
  - (iii) Provide Commonwealth with a resume and any other information regarding the individual that may be reasonably requested by Commonwealth;
  - (iv) Allow Commonwealth to interview the individual; and
  - (v) Obtain Commonwealth's approval for such assignment.

Contractor shall only assign an individual to a Key Position who is mutually agreed upon by Commonwealth and Contractor; Contractor retains exclusive direction and control as to hiring, termination, and right to discipline or reward such individuals in connection with their employment;

- (3) Contractor shall not replace or reassign individuals in Key Positions (except as a result of voluntary resignation, involuntary termination for cause, serious illness, disability or death) for the applicable time period set out in Schedule L (Key Positions) following the date of his or her assignment to the Commonwealth account unless Commonwealth consents in writing to such reassignment or replacement or such individual in such Key Position;
- (4) If Commonwealth decides that any individual in a Key Position should not continue in that position, then Commonwealth may, in its sole discretion and upon notice to Contractor, require removal of such individual in the Key Position from the Contractor Personnel in accordance with the following:
- (i) Contractor shall, as soon as reasonably practicable, replace such individual in the Key Position with another person of suitable ability and qualifications in accordance with procedures set forth above; and
  - (ii) In the event that an individual in a Key Position is suspected of criminal conduct or breach of Contractor's obligations, Contractor shall immediately remove and replace such individual with another person of suitable ability and qualifications in accordance with the procedures set forth above.

- (5) Contractor shall not without Commonwealth consent replace or reassign greater than twenty percent (20%) of individuals in Key Positions in any rolling six (6) month period.
- (d) All of the individuals that Contractor appoints as Contractor Personnel will be dedicated to the Commonwealth account and have suitable training and functional and language skills necessary to perform the Services assigned to such individuals. Except as otherwise approved by Commonwealth (in its sole discretion), those Contractor Personnel located at a Commonwealth Services Location may only provide services on such premises in relation to the Services. Contractor will notify Commonwealth as soon as possible after dismissing or reassigning any member of the Contractor Personnel whose normal work location is at a Commonwealth Services Location. Commonwealth will have the right from time to time to require Contractor to remove any member of the Contractor Personnel from working on the Commonwealth account with or without cause, provided that Contractor may request to have a discussion regarding such removal, which discussion must be held within a reasonable time period, not to exceed five (5) days. At the end of such period, if Commonwealth desires the person to be removed, Contractor will complete such removal within twenty-four (24) hours, or as agreed by the Parties, and replace such individual as soon as practicable at no cost to Commonwealth.
- (e) It is the express intent of the Parties that all Contractor Personnel will be at all times exclusively employees of the Contractor or a Subcontractor authorized under this Contract. The Contractor will at all times ensure that no employment, labor or agency relationship is established between any Contractor Personnel and Commonwealth. Nothing in this Contract will in any way be construed to provide that Contractor Personnel are agents, employees or representatives of Commonwealth, and personnel designated by the Contractor hereunder shall be treated, at all times, as under the authority, direction, supervision and control of the Contractor. Contractor shall cause Contractor Personnel to comply at all times with all applicable Commonwealth policies and procedures.
- (f) The Contractor will be responsible for all labor obligations derived from the relationship with its employees and any Contractor Personnel, and in no case shall Commonwealth be deemed a direct or substitute employer of said employees.
- (g) Contractor shall:
- (1) Enter into, or shall have entered into, a non disclosure agreement with each Contractor Personnel prior to assigning such employee to the Commonwealth account, and cause each Contractor Personnel to maintain and enforce the confidentiality provisions of the Contract both during and after their assignment to the Commonwealth account; and

- (2) Enter into, or shall have entered into, an agreement with each Contractor Personnel which assigns, transfers and conveys to Contractor all of such employee's right, title and interest in and to any materials created pursuant to the Contract, including all rights of patent, copyright, trade secret or other proprietary rights in and to such materials.
- (h) If Commonwealth reasonably determines that the turnover rate of Contractor Personnel is unacceptable and so notifies Contractor, Contractor shall within ten (10) business days:
  - (1) Provide Commonwealth with data concerning Contractor's turnover rate; and
  - (2) Meet with Commonwealth to discuss the reasons for the turnover rate; and
  - (3) Submit a proposal for reducing the turnover rate for Commonwealth's review and approval.

Notwithstanding any transfer or turnover of Contractor Personnel, Contractor shall remain obligated to perform the Services without degradation and in accordance with the Service Levels.

#### **24. SERVICE LEVELS**

- (a) The Contractor shall comply with the procedures and requirements of Schedule F (Service Level Methodology) during the term of the Contract and through the Expiration Date.
- (b) All Services without expressly defined Service Levels must be performed at least to the same degree of accuracy, completeness, efficiency, quality and timeliness as is provided by well-managed suppliers providing services similar to the Services. Contractor will measure and report its performance against these standards on at least a monthly basis, except as may otherwise be agreed between the Parties in respect of Services performed less frequently than monthly.
- (c) The Commonwealth's acceptance of any 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 claims for liquidated damages, injunctive relief and termination rights, provided however, Service level Credits paid would be credited against any such claim for damages.

#### **25. CONTINUOUS IMPROVEMENT AND BENCHMARKING**

- (a) Contractor shall, on a continuous basis, (i) as part of its total quality management process, identify ways to improve the quality of the Services, and (ii) without

violating its non disclosure obligations owed to a third party or a third party's proprietary rights, identify and apply proven techniques and tools from other installations within its operations that would benefit Commonwealth either operationally or financially.

- (b) Generally, Contractor will commit to continuously and incrementally improving its performance of the Services provided under the Contract consistent with developments in the market for Services similar in scope, scale and geographic coverage.
- (c) Commencing 24 months after the Effective Date, Contractor will undertake annual reviews of the Services, their associated charges and the underlying technology used to deliver the Services and bring to the Commonwealth the Contractor's plan to improve performance and reduce charges in accordance with Schedule O (Benchmarking Procedures). In the event Commonwealth and Contractor do not agree to a plan for improved performance or reduction in charges, then Commonwealth will have the right, at its expense, to use a third party to benchmark the Contractor's performance of and charges for any element of the Services, selecting such a benchmarker from a list of benchmarkers mutually approved by Commonwealth and Contractor and attached to the contract.
- (d) Contractor shall automatically adjust the charges for benchmarked Services in accordance with the results of a benchmark to bring them back within the first quartile of the market range, considered from the perspective of Commonwealth's benefit, for the provision of Services similar in scope and performance requirements to the benchmarked Services within 30 days of the completion of the benchmark.
- (e) Contractor may dispute the outcome of a benchmark, and in the event that after exhaustion of the governance and dispute resolution processes Commonwealth and Contractor are unable to agree on adjustments to the performance of and charges for the Services following a benchmarking exercise, Commonwealth shall have the right to terminate the Contract or a part of the Contract without penalty or payment to Contractor.

## **26. CHANGES**

- (a) At any time during the performance of the Contract, the Commonwealth or the Contractor may request a change to the Contract in accordance with Change Control Procedure set out in Schedule G (Change Control Procedure) . Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If the Commonwealth is the requestor of the change, the Contractor will inform the Commonwealth if there will be any charges for the Contractor's Services in investigating the change request prior to incurring such charges. If the



Commonwealth and the Contractor agree on the results of the investigation and any necessary amendments to the Contract, the Contract will be modified to take into account the agreed changes and the change will be implemented. If the parties cannot agree upon the results of the investigation or the necessary amendments to the Contract, the contracting officer may unilaterally order the work to be done, and the matter will be handled in accordance with Article 30 (CONTRACT CONTROVERSIES) of this Contract. The change request will be evidenced by a Purchase Order issued by the Commonwealth. No work may begin on the change request until the Contractor has received the Purchase Order.

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

The Commonwealth may request a Mandatory Change pursuant to Schedule G (Change Control Procedure).

## **27. TERMINATION**

- (a) For Convenience

The Commonwealth may terminate this Contract without cause by giving Contractor thirty (30) calendar days prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective. The Contractor shall cease work 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 cease work date set forth in said notice, and as may be otherwise provided for in Schedule H (Termination Fees).

- (b) Change in Control

In the event of the sale by Contractor of all or substantially all of its assets (in a single transaction or a series of related transactions) or the sale of a controlling interest in Contractor's outstanding stock, Contractor shall be entitled to assign this Contract to its successor upon written notice thereof to Commonwealth. Commonwealth shall be entitled to receive from Contractor, upon Commonwealth's request, such information as is reasonably requested by Commonwealth to enable

Commonwealth to assess the financial, technical and management capabilities of such successor to assume Contractor's obligations under this Contract. If Commonwealth determines, in the exercise of its reasonable discretion, that such successor does not or may not have such requisite financial, technical or management capabilities, and if Commonwealth informs Contractor thereof in writing and describing in reasonable detail its basis therefor, then, and only then, such assignment by Contractor shall be subject to Commonwealth's prior written consent, which consent may be withheld, delayed or conditioned in Commonwealth's sole discretion. If Commonwealth withholds such consent, then Commonwealth shall have the exclusive option of continuing under the terms and conditions of this Contract with Contractor or its successors or assigns for the full remaining term of this Contract, or continuing under the terms and conditions of this Contract with Contractor or its successors or assigns for such period of time as is necessary or desirable to terminate this Contract. Upon assignment, Contractor's successor or assigns will be required to execute a new contract with the Commonwealth containing terms and conditions identical to those set forth herein.

(b) Non-Appropriation

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

(c) Default

The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor fails to perform any of its material obligations or breaches any material representations under this Contract, and such failure is not cured within 30 days after notice is given to Contractor specifying the nature of the default, 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 writing) after receipt of written notice from the Commonwealth specifying such failure, or if the Contractor repeatedly fails to perform any material portion of its obligations or breaches any of its material representations under this Contract, regardless of whether such failures or breaches are cured. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

- (1) Subject to Article 36 (LIMITATION OF LIABILITY) of this Contract, in the event the Commonwealth terminates this Contract in whole or in part as provided in this Section 27 (1), 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, as the Commonwealth's sole and exclusive remedy for such default, for the difference between the Contract price for the terminated portion of the Services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated Services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.

- (2) Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism, and unusually severe weather. The Contractor shall notify the Contracting Officer immediately in writing of its inability to perform because of a cause beyond the control of the Contractor.
  - (3) Nothing in this Subsection 27 (c) shall abridge the Commonwealth's right to suspend, debar, or take other administrative action against the Contractor.
  - (4) If it is later determined that the Commonwealth erred in terminating the Contract for default, then the Contract shall be deemed to have been terminated for convenience under Section 27(a).
  - (5) If this Contract is terminated as provided by this Subsection 22(c), the Commonwealth may, in addition to any other rights provided in this Subsection, and subject to Article 48 (OWNERSHIP RIGHTS) of this Contract, require the Contractor to deliver to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such reports and other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Payment for such reports and documentation will be made consistent with the Contract.
- (d) Termination Fees
- (1) In the event of termination other than for non-appropriation, Contractor shall receive the applicable termination fee as set out in Schedule H (Termination Fees).
  - (2) 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.

- (4) Any dispute regarding termination costs shall be a dispute handled in accordance with Article 30 (CONTRACT CONTROVERSIES) of this Contract.

This section 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.

## 28. TERMINATION ASSISTANCE

- (a) Commonwealth shall have the right to receive Termination Assistance Services from Contractor upon request after notification of termination, and such Termination Assistance Services for a period of up to 24 months (the "Termination Assistance Period"), which services shall provide all assistance reasonably necessary to ensure the continuation of the affected Services and their performance in accordance with the Service Levels and the successful transfer of the affected Services to Commonwealth or to any new Contractor selected by Commonwealth. Such Termination Assistance Services shall first be rendered using resources already working on Commonwealth's account and included within the fees, provided that the use of such resources shall not adversely impact Contractor's adherence to Service Levels; then by resources already working on Commonwealth's account and included within the fees, to the extent that Commonwealth permits Service Levels to be relaxed; and finally, using additional resources at costs determined by a rate card attached to the contract.
- (b) At the end of a Termination Assistance Period the provisions of Schedule Q (Exit Rights) shall apply.

## 29. BACKGROUND CHECKS

- (a) The Contractor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Commonwealth Services Locations, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access by a Contractor Personnel and annually thereafter.
- (b) Before the Commonwealth will permit Contractor Personnel access to Commonwealth facilities, the Contractor must provide written confirmation to the office designated by the agency that the background check has been conducted. If, at any time, it is discovered that Contractor Personnel has a criminal record

that includes a felony or misdemeanor involving terroristic threats, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems, unless the agency consents, in writing, prior to the access being provided. The agency may withhold its consent at its sole discretion. Failure of the Contractor to comply with the terms of this paragraph may result in default of the Contractor under its contract with the Commonwealth.

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

### **30. CONTRACT CONTROVERSIES**

- (a) All disputes between the parties arising under or relating to this Contract shall initially be referred in writing by either party to the Contractor Project Manager and the Commonwealth Project Manager. If the Contractor Project Manager and the Commonwealth Project Manager are unable to resolve the dispute within ten (10) Commonwealth business day(s) after referral of the matter to them or upon the earlier request by either the Contractor Project Manager or the Commonwealth Project Manager, the parties shall submit the dispute to the Management Committee for immediate review.
- (b) Within ten (10) Commonwealth business days after any dispute between the parties is submitted to the Management Committee pursuant to Section 30(a), the Management Committee shall meet for the purpose of attempting to resolve such dispute. At any meeting of the Management Committee at which more than one (1) dispute will be considered, Commonwealth may establish the order in which such disputes shall be addressed. If the Management Committee is unable to resolve a dispute within fifteen (15) Commonwealth business days after the date of the initial meeting of the Management Committee during which such dispute was considered, the Management Committee shall immediately notify Commonwealth and Contractor pursuant to Section 30(c).
- (c) In the event of a controversy or claim arising from the Contract that has not been resolved by the above process, the Contractor must, within six months, 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
  - (1) The Commonwealth 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 Commonwealth shall send its written determination to the Contractor. If

the Commonwealth fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Commonwealth's determination shall be the final order of the purchasing agency.

- (2) Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims.
- (3) Each of Commonwealth and Contractor acknowledge that the provision of the Services is critical to the operations of Commonwealth. Accordingly, in the event of a dispute between Commonwealth and Contractor arising under or relating to this Contract, Contractor shall continue to provide the Services in accordance with the terms of this Contract during the pendency of the resolution of such dispute, including the final judicial resolution thereof by Commonwealth's Board of Claims or any appeal thereof, and Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

### **31. CONFIDENTIALITY**

- (a) The Contractor agrees to guard the confidentiality of the Commonwealth with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Article 31 (CONFIDENTIALITY). The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to Section 27(c) .
- (b) The obligations stated in this Article 31 (CONFIDENTIALITY) do not apply to information:

- (1) Already known to the recipient at the time of disclosure other than through the contractual relationship;
  - (2) Independently generated by the recipient and not derived from the information supplied by the disclosing party;
  - (3) Known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
  - (4) Disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
  - (5) Required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- (c) 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.

## **32. INSURANCE**

- (a) During the Contract term, Contractor shall maintain at its own expense, and require subcontractors listed in Schedule I (Approved Subcontractors) and their respective successors as subcontractors to Contractor under this Contract to maintain at their own expense or Contractor's expense, insurance of the type and in the amounts specified below and issued by companies authorized to conduct such business under the laws of Pennsylvania:
- (1) Statutory workers' compensation in accordance with all applicable Federal, state and local requirements, and employer liability in an amount not less than \$2,000,000 per occurrence;
  - (2) Comprehensive general public liability (including contractual liability insurance) in an amount not less than \$5,000,000 per occurrence;
  - (3) Comprehensive automobile liability covering all vehicles that Contractor or such subcontractors owns, hires, or leases in an amount not less than \$5,000,000 per occurrence (combined single limit for bodily injury and property damages).
  - (4) Personal property insurance, on a replacement basis, covering all of Contractor's and Contractor's Agents' personal property located at any Contractor Services Location.

- (5) Professional liability/error & omission in the amount of not less than \$15,000,000 per claim.
- (6) Comprehensive crime insurance in an amount of not less than \$15,000,000 per claim.
- (7) Umbrella/excess in an amount of not less than \$15,000,000 per occurrence.

For purposes hereof, Contractor and such subcontractors may maintain "umbrella" insurance policies to fulfill the foregoing insurance requirements, as appropriate.

- (b) Prior to the expiration of any then effective insurance policy, Contractor shall furnish to Commonwealth certificates of insurance or other appropriate documentation (including evidence of renewal of insurance) evidencing all coverage referenced above and naming Commonwealth as an additional insured to the extent of Contractor's indemnities contained in this Contract. Contractor shall have included in all policies of insurance required hereunder a waiver by the insurer of all right of subrogation against Commonwealth in connection with any loss or damage thereby insured against. Such certificates or other documentation will include a provision whereby thirty (30) days' notice must be received by Commonwealth prior to coverage cancellation or alteration of the coverage by either Contractor or its subcontractors or the applicable insurer. Such cancellation or alteration shall not relieve Contractor of its continuing obligation to maintain insurance coverage in accordance with this Article 32 (INSURANCE).
- (c) During the Contract term, Contractor shall require each of its Approved Subcontractors and any other subcontractors performing any Services on-site at any of the Contractor Services Locations to maintain at their own expense or Contractor's expense, insurance of the type and in the amounts specified below:
  - (1) Statutory workers' compensation in accordance with all applicable Federal, state and local requirements, and employer liability in an amount not less than \$500,000 per occurrence;
  - (2) Comprehensive general public liability (including contractual liability insurance) in an amount not less than \$1,000,000 per occurrence;
  - (3) If any of the Subcontractor personnel will be on-site at any of Commonwealth's or Contractor's facilities, comprehensive automobile liability covering all vehicles owned, hired or leased by that Subcontractor and in an amount not less than \$1,000,000 per occurrence (combined single limit for bodily injury and property damages); and
  - (4) If the Subcontractor personnel will be on-site at any of Commonwealth's or Contractor's facilities, personal property insurance, on a replacement basis,



covering all of that Subcontractor's personal property located at any such facilities.

### 33. CONTRACTOR RESPONSIBILITY PROGRAM

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

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125

Telephone No. (717) 783-6472  
FAX No. (717) 787-9138

**34. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS**

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

**35. TAXES-FEDERAL, STATE, AND LOCAL**

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this Article 35 (TAXES-FEDERAL, STATE, AND LOCAL) 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.

**36. LIMITATION OF LIABILITY**

(a) Except to the extent that the required Contractor insurance coverage under Article 32 (INSURANCE) exceeds the Contract value, the Contractor's liability to the Commonwealth under this Contract shall be limited to the value of this Contract. This limitation will apply, except as otherwise stated in this Article 36 (LIMITATION OF LIABILITY), regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to damages for:

- (1) Bodily injury;
- (2) Death;
- (3) Intentional injury;
- (4) Damage to real property or tangible personal property for which the Contractor is legally liable; or

- (5) The Contractor's indemnity of the Commonwealth for patent, copyright, trade secret or trademark protection;
  - (6) Third party claims related to confidential or proprietary data misuse of confidential information or data;
  - (7) Milestone Credits;
  - (8) Commonwealth's losses resulting from Contractor's gross negligence, willful misconduct, breach of representation or warranty; or
  - (9) Contractor's abandonment of any Services, wrongful termination of the Contract or willful refusal to provide Termination Assistance Services.
- (b) Except as provided for in Section 36(b)(1) below, neither Party will be liable for indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the Contract ("Excluded Damages").
- (1) In the case of Commonwealth, the following shall not constitute Excluded Damages:
    - (i) Additional costs to maintain the Services arising from a default by Contractor including the cost of work-arounds;
    - (ii) Loss of or corruption to Commonwealth data including, without limitation, the cost and expense of rectification of the data arising out of a default (including for recovering, reconstructing, reformatting or reloading data);
    - (iii) Expenditure or charges incurred by Commonwealth and rendered necessary as a result of a default by Contractor; and
    - (iv) Any regulatory losses, fines, expenses or other losses suffered by Commonwealth as a result of Contractor's failure to comply with any law or regulation.

**37. COMMONWEALTH HELD HARMLESS**

- (a) Except as set out in Article 45 (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET PROTECTION), the Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it

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

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

### **38. DISASTER RECOVERY AND BUSINESS CONTINUITY**

- (a) As part of the Services, Contractor shall have responsibility for execution of that portion of the disaster recovery plan relating to the Services as described in Schedule J (Disaster Recovery and Business Continuity Plan). Contractor will immediately provide Commonwealth with notice of the occurrence of any disaster affecting the provision or receipt of all or any material portion of the Services and implement the disaster recovery plan then in effect. Jointly with the Commonwealth, Contractor shall at least annually review and update the disaster recovery plan, it being understood and agreed that the parties will work together and cooperate in good faith on any such review or updated of the disaster recovery plan. With the Commonwealth's support as specified in the disaster recovery plan, Contractor shall semi-annually test the operability of the disaster recovery plan then in effect. Contractor will certify to Commonwealth:
  - (1) Within 15 business days of completion of a disaster recovery test, that the disaster recovery plan was fully, timely and successfully implemented, or, if the disaster recovery plan was not fully, timely and successfully implemented, report all deficiencies (including root cause analysis) and corrective actions, and certify that such corrective actions addressed all deficiencies; and
  - (2) Annually and at additional times at the request of Commonwealth, that any applicable third-party business recovery center agreement then remains in full force and effect without any default, including payment, thereunder by any party thereto, and that Commonwealth is entitled, pursuant to the terms of the business recovery center agreement, to assume that agreement upon the expiration or termination of this Contract.

In the event Contractor fails its obligations set forth in this Article 38 (DISASTER RECOVERY AND BUSINESS CONTINUITY), Commonwealth shall have the right to terminate this Contract for cause without an opportunity for Contractor to cure if, 10 days after delivery of written notice by the

Commonwealth, Contractor has not corrected the failure and complied fully with such obligations.

- (b) Contractor shall use commercially reasonable efforts to reinstitute the Critical Services within the timeframes indicated in Schedule E (Critical Services). If the Critical Services are not fully reinstated within the designated timeframes, Commonwealth shall have the right to terminate this Contract for critical failure pursuant to the provisions of Section 20(a), and Contractor shall, prior to or at the expiration of the applicable restitution period, deliver to Commonwealth a written report detailing the cause of the disaster, Contractor's plans to reinstitute the Critical Services and its anticipated schedule to do so. Thereafter, Contractor and Commonwealth shall develop a plan to reinstitute the Critical Services as promptly as is possible under the circumstances, with Contractor making such reinstatement its highest priority throughout its outsourcing organization. Contractor shall prepare and deliver to Commonwealth updated reports such that Commonwealth shall at all times be fully informed as to the status of Contractor's efforts and anticipated schedule to reinstitute the Critical Services. In the event that any Contractor equipment is required to be replaced as a result of the disaster, Contractor shall replace such equipment with current or improved technology to the extent then available. In the event of a declared disaster that results in the provision of the Critical Services or a portion thereof from a business recovery center, Commonwealth shall be responsible for paying any third party declaration fee and the fees for use of the business recovery center (unless the disaster was caused by an omission, negligence or willful misconduct of Contractor or any Contractor Agent or any of their respective employees, in which case Contractor shall be responsible for such declaration and usage fees), and Commonwealth shall continue to pay the Fees to Contractor, prorated for any Services that are not being delivered to Commonwealth. In addition to the prorated Fees, Commonwealth shall also pay to Contractor, at the then-effective time and materials hourly rates as set out in the Schedule C (Fee Methodology), charges assessed by Contractor for disaster recovery services requested by Commonwealth and performed by Contractor or any of the Contractor Agents to reconstitute the Services (unless the disaster was caused by the omission, negligence or willful misconduct of Contractor or any of its agents any of their respective employees, in which case such services shall be performed at no additional cost or expense to Commonwealth.) In the event Contractor provides the Critical Services from a business recovery center for more than 45 days due to Contractor's inability to reinstate the Critical Services because of Contractor's negligence or willful misconduct, Commonwealth may, in addition to any other remedy it may have under this Contract, at law or in equity, terminate this Contract for cause under Section 27(c), without regard to any additional cure periods. Any Contractor obligations to implement a disaster recovery plan set forth in this paragraph can be triggered by a notice of disaster provided to Contractor by Commonwealth. Payment of travel and living expenses of Contractor in connection with the provision of the Critical Services from a business recovery center shall be reimbursed by Commonwealth, but shall be

subject to Commonwealth's travel and reimbursement policies then in effect generally.

**39. CRITICAL SERVICES**

Contractor shall provide the Critical Services as listed in Schedule E (Critical Services) to this Contract.

**40. GOVERNANCE**

The Parties shall comply with the provisions for the governance of this Contract and the Services delivered pursuant hereto are set out in Schedule K (Governance) to this Contract.

**41. POLICIES AND PROCEDURES**

Contractor shall comply with the most stringent of:

- (a) Commonwealth standards set out in IT Bulletins, standards and procedures related to the Services, including but not limited to those governing security, treatment of personal information, quality, change, and problem management, safety, data privacy and data security, and pervasive and transaction controls; or
- (b) The policies, standard and procedures that are generally adopted by leading providers of Services similar in scope, scale and geographic coverage to the outsourced Services.

**42. TECHNICAL ARCHITECTURE**

As part of the Services, Contractor shall suggest to Commonwealth information management technical architecture and product standards to be in effect at the Contractor Services Locations during the Contract term and the parties shall work together in good faith to develop information management technical architecture and product standards that are mutually acceptable to the parties and consistent with the Services Levels then in effect.

**43. QUALITY ASSURANCE AND INTERNAL CONTROLS**

- (a) Contractor will develop and implement quality assurance and internal controls, including implementing tools and methodologies, to ensure that the Services are performed in an accurate and timely manner, in accordance with the contract. Without limiting the foregoing, Contractor will:
  - (1) Maintain a strong control environment in day-to-day operations;
  - (2) Develop and execute a process to ensure regular internal control self-assessments are performed with respect to all Services and report the

outcome of such self-assessments to Client;

- (3) Maintain an internal audit function sufficient to monitor the processes and systems used to provide the Services (i.e., perform audits, track control measures, communicate status to management, drive corrective action, etc.); and
  - (4) Provide to Commonwealth a summary of audit activity performed, associated significant findings, status of follow-up activity, summary of control incidents (i.e., frauds, conflict of interest situations, etc.) and related corrective action, every six months.
- (b) Contractor shall implement and maintain independently audited quality certification (such as ISO9001-2000 accreditation or a comprehensively implemented Six Sigma program) and provide copies of its certification under such program and also any relevant audit or report documentation whenever so requested by Commonwealth.
- (c) As part of the Services and included in the Fees Contractor will;
- (1) Undertake at least annually, and shall cause to be undertaken by Contractor's material sub-contractors, a SAS 70 Type II audit that covers the common controls for any Contractor sites where Contractor performs work for Client;
  - (2) Provide the reports from such audits to Client; and
  - (3) Will perform these SAS 70 Type II audits at such time(s) that shall mean the audit report is recent enough for Commonwealth to rely upon it in meeting its reporting obligations.

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

- (a) Notwithstanding any other provision in this Contract to the contrary, the Contractor shall be liable for any damage to any data and/or software owned or licensed 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 result 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.

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

- (a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the



Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act 71 P.S. § 732-101, *et seq.*, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement which prevents the Commonwealth from continuing to use the Developed Materials as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth to provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor will, at its expense, provide whatever cooperation OAG requests in the defense of the suit.

- (b) The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all works produced under this Contract do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that work produced for the Commonwealth under this contract shall be free and clear from all claims of any nature.
- (c) If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.
- (d) If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at the Contractor's option and expense, obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.

- (e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- (f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
  - (1) Any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
  - (2) Any license fee less an amount for the period of usage of any software; and
  - (3) The prorated portion of any Fees representing the time remaining in any period of service for which payment was made.
- (g) The obligations of the Contractor under this Article 45 (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET PROTECTION) continue without time limit and survive the termination of this contract.
- (h) Notwithstanding the above, the Contractor shall have no obligation for:
  - (1) Modification of any product, service, or deliverable provided by the Commonwealth;
  - (2) Any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
  - (3) Use of the product, service, or deliverable in other than its specified operating environment;
  - (4) The combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
  - (5) Infringement of a non-Contractor product alone;
  - (6) The Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or

- (7) The Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.
- (i) The obligation to indemnify the Commonwealth, under the terms of this Article 45 (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET PROTECTION), shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

#### **46. SENSITIVE INFORMATION**

- (a) The Contractor shall not publish or otherwise disclose, except to the Commonwealth or the Contractor's subcontractors, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a way that allows the information or data furnished by or about any particular person or establishment to be identified.
- (b) The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Contract for any purpose not connected with the parties' Contract responsibilities.
- (c) Contractor, as directed, shall comply with all federal or state laws and regulations related to the use of information that constitutes protected health information (PHI) as defined by the regulations promulgated pursuant to the *Health Insurance Portability and Accountability Act* (HIPAA). By signing this Contract, the Contractor agrees to the terms of the Business Associates Agreement, which is incorporated into this Contract as Appendix A. If Contract Participant, or relevant portion thereof, is a Covered Entity as defined in HIPAA, and the Contractor is performing the work of a Business Associate (which determination will be made solely in the discretion of the Issuing Agency), the Contract Participant will fill in the blanks in the attached Appendix. It is understood that Appendix A is only applicable if the Contract Participant so indicates, and, if not applicable to the entire Contract Participant, is only applicable with respect to the internal entities indicated by the Contract Participant.
- (d) Contractor will comply with all obligations applicable to it under all applicable data protection legislation in relation to all personal data that is processed by it in the course of performing its obligations under this Contract including by:
  - (1) Maintaining a valid and up to date registration or notification under the data protection legislation; and
  - (2) Complying with all data protection legislation applicable to cross border data flows of personal data and required security measures for personal data.

## **47. CONTRACT CONSTRUCTION**

As set out in Article 70 (GOVERNING LAW), the provisions of this Contract shall be construed in accordance with the provisions of all applicable laws and regulations of the Commonwealth of Pennsylvania. However, by executing this Contract, the Contractor agrees that it has and will continue to abide by the intellectual property laws of the United States of America.

## **48. OWNERSHIP RIGHTS**

### **(a) Ownership of Properties**

- (1) All “Developed Works” shall be owned according to the provisions set forth in this Article 48 (OWNERSHIP RIGHTS).
- (2) All software owned by the Commonwealth or its licensors (“Commonwealth Software”) as of the Effective Date, shall be and shall remain the exclusive property of the Commonwealth or its licensors, and Contractor shall acquire no rights or interests in the Commonwealth Software or Tools or that of its licensors except as described in this Article 48 (OWNERSHIP RIGHTS) or in another provision set forth in this Contract. The Contractor shall not use any Commonwealth Software, Commonwealth Tools or software or tools of its licensors for any purpose other than for completion of work to be performed under this Contract.

### **(b) Commonwealth Property—Non-Exclusive, License Grant and Restrictions**

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

- (1) Obtain access to and use of the Commonwealth Software in accordance with the terms of this Contract.
- (2) Reproduce the Commonwealth Software for archival purposes or for other purposes expressly provided for under this Contract.
- (3) Modify the Commonwealth Software consistent with the terms and conditions of this Contract provided that Contractor agrees to assign to the Commonwealth, its rights, if any, in any derivative works resulting from

Contractor's modification of the Commonwealth Software. Contractor agrees to execute any documents required to evidence this assignment and to waive any moral rights and rights of attribution provided for in Section 106A of Title 17 of the United States Code, the Copyright Act of 1976.

- (4) Allow the Contractor's subcontractors approved by the Commonwealth to obtain access to the Commonwealth Software for the purposes of complying with the terms and conditions of this Contract; provided, however, that neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Software. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this Article 48 (OWNERSHIP RIGHTS).
- (5) To the extent that Contractor uses Commonwealth Software, Commonwealth Tools or software or tools of its licensor, Contractor agrees to protect the confidentiality of these works and maintain these proprietary works with the strictest confidence.

(c) Impact of Third Party Agreements

- (1) Subject to the terms of any third party agreement to which the Commonwealth is a party, (i) the Commonwealth shall, at no cost to Contractor, provide Contractor with access to the Commonwealth Software in the form in use by Commonwealth as of the Effective Date of this Contract and, (ii) Contractor, as part of the Services to be rendered under this Contract, shall compile and, as changes are made, update a list of all of the Commonwealth Software then in use by Contractor or any of its subcontractors in connection with Contractor's performance of the Services required by this Contract.
- (2) Contractor shall have financial and administrative responsibility for obtaining any third party consents and any additional licenses that may be necessary for Commonwealth to transfer the Services to Contractor and for Contractor to provide the Services to Commonwealth.

(d) Reservation of Rights

All rights, not expressly granted here to Contractor on a nonexclusive basis, including the right to grant non-exclusive licenses and other rights are reserved by the Commonwealth.

(e) Termination of Commonwealth License Grant

Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, all rights granted to Contractor in this

Article 48 (OWNERSHIP RIGHTS) shall immediately cease. Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Software and Tools (including any related source code then in Contractor's possession or under its control) in the form in use as of the Effective Date of such expiration or termination. Within fifteen (15) calendar days after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Software in use as of the date of such expiration or termination. Concurrently therewith, Contractor shall destroy or erase all other copies of any of the Commonwealth Software then in Contractor's possession or under its control unless otherwise instructed by Commonwealth, in writing; provided, however, that Contractor may retain one archival copy of such Commonwealth Software and Tools, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.

(f) Effect of License Grant Termination

Consistent with the provisions of this Article 48 (OWNERSHIP RIGHTS), Contractor shall refrain from manufacturing, copying, marketing, distributing, or use of any Commonwealth Software or any other work which incorporates the Commonwealth Software. The obligations of this Article 48 (OWNERSHIP RIGHTS) shall survive any termination of this Contract.

(g) Use of Contractor-Owned Software

All software owned by Contractor (Contractor Software) and tools owned by Contractor (Contractor Tools) prior to the Effective Date of this Contract shall be and shall remain the exclusive property of Contractor. The Commonwealth shall acquire no rights or interests in the Contractor Software or the Contractor Tools by virtue of this Contract except as set forth in this Article 48 (OWNERSHIP RIGHTS).

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

(1) Contractor must provide a list of all Contractor Tools and Contractor Software to be delivered in connection with the deliverables or Developed Materials prior to commencing any work under the Contract. Contractor must also provide a list of all other Contractor Tools and Contractor Software intended to be used by Contractor to provide the Services under this Contract but will not become part of or necessary for the use of the Developed Materials. All Contractor Tools and Contractor Software necessary to use deliverables or Developed Materials shall be delivered to the Commonwealth along with the license set forth in Section 48(f). Contractor may amend these lists from time to time while the Contract is being carried out or upon its completion. Any Contractor Tools or

Contractor Software not included on the lists will be deemed to have been created under this Contract.

- (2) During the term of this Contract, Contractor shall maintain at its principal office books of account and records showing its actions under this Contract. Upon reasonable notice by Commonwealth, Contractor shall allow Commonwealth to inspect these records and accounts for purposes of verifying the accuracy of such accounts and records.
  - (3) In the event that Contractor fails to list a Contractor Tool or Contractor Software, but is able to demonstrate that such tool or software was independently developed by Contractor prior to the Effective Date of this Contract, Contractor shall retain complete ownership of such Contractor Tool or Contractor Software that is necessary to use the deliverables or Developed Works, provided that notice is given to the Commonwealth prior to use on the Contract.
- (i) Expiration or Termination NonExclusive License Grant—Non-Commercial Contractor Tools and Software

During the Termination Assistance Period and upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, Contractor shall (i) grant to Commonwealth a royalty-free, paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works and grant to third parties engaged by Commonwealth the right to use, modify, and prepare derivative works based upon all or any portion of the non-commercially available Contractor Software and the non-commercially available Contractor Tools owned by Contractor and used by Contractor in connection with the Services, the foregoing rights being granted to the full extent necessary to facilitate Commonwealth's or such third party's completion of and maintenance of the Services to be provided by Contractor under this Contract immediately prior to such expiration or termination without service degradation or interruption or loss of quality, and (ii) deliver to Commonwealth the object code version of such non-commercially available Contractor Software and such non-commercially available Contractor Tools in the form used by Contractor in connection with the Services immediately prior to such expiration or termination to allow the Commonwealth to complete and maintain such work. If Commonwealth enters into a contract that allows for the use of the Contractor Software or Contractor Tools for which a license is granted under this Article 48 (OWNERSHIP RIGHTS), the Commonwealth will include a provision in that contract that limits the use of the Contractor Software or Contractor Tools as delineated in this Article 48 (OWNERSHIP RIGHTS).

- (j) Rules of Usage for Developed Works

- (1) If Developed Works modify, improve, or enhance application software programs or other materials generally licensed by the Contractor, then such Developed Works shall be the property of the Contractor, and Contractor hereby grants Commonwealth an irrevocable, nonexclusive, worldwide, fully paid-up license (to include source code and relevant documentation) in perpetuity to use, modify, execute, reproduce, display, perform, prepare derivative works from and distribute, within the Commonwealth, of such Developed Works. For purposes of distribution under the license grant created by this section, Commonwealth includes any government agency, department, instrumentality, division, unit or other office that is part of the Commonwealth of Pennsylvania, together with the State System of Higher Education (including any of its universities), any county, borough, commonwealth, city, municipality, town, township special purpose district, or other similar type of governmental instrumentality located within the geographical boundaries of the Commonwealth of Pennsylvania. If federal funds are used in creation of the Developed Works, the Commonwealth also includes any other state government as well as the federal government.
- (2) If Developed Works modify, improve, or enhance application software or other materials not licensed to the Commonwealth by the Contractor, then such modifications, improvements and enhancements shall be the property of the Commonwealth or its licensor. To the extent Commonwealth owns the software or other materials, it hereby grants to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform, prepare derivative works from, and distribute copies of such Developed Works. To the extent Commonwealth has a license to the software or other materials, and to the extent that it, in its sole discretion determines it is able to do so the Commonwealth will grant to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform and distribute copies of such Developed Works.
- (3) If Developed Works have been funded by Commonwealth, to any extent, with either Commonwealth or federal funds, and the Developed Works do not include pre-existing materials generally licensed by the Contractor, then the Commonwealth shall have all right, title, and interest (including ownership of copyright and trademark) to such Developed Works and the Commonwealth hereby grants to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform, prepare derivative works from, and distribute copies of such Developed Works. The Commonwealth shall exclusively own all software products first developed under the terms of this contract by the Contractor, its subcontractors or other third party vendors that are specifically developed for, engineered and integrated into the Developed Works.



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

(l) Patent Ownership

(1) Contractor and its subcontractors shall retain ownership to patentable items, patents, processes, inventions or discoveries (collectively, the Patentable Items) made by the Contractor during the performance of this Contract. Notwithstanding the foregoing, the Commonwealth shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. Commonwealth may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. Commonwealth understands and agrees that any third party disclosure will not confer any license to such Patentable Items.

(2) Contractor shall not use any computer program, code, or any works developed by or for Contractor independently of this Contract (“Pre-

Existing Materials”) in the performance of the Services under this Contract, without the express written consent of the Commonwealth. Any Pre-Existing Materials used by Contractor for performance of Services under this Contract without Commonwealth consent shall be deemed to be Developed Works as that term is used in this Article 48 (OWNERSHIP RIGHTS). In the event that Commonwealth provides such consent, Contractor shall retain any and all rights in such Pre-Existing Materials.

(m) Federal Government Interests

It is understood that certain funding under this Contract may be provided by the federal government. Accordingly, the rights to Developed Works or patentable items of Contractors or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. § 401, and other applicable statutes.

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

Either Party, in the ordinary course of conducting business, may use any ideas, concepts, know-how, methodologies, processes, components, technologies, algorithms, designs, modules or techniques not otherwise covered by this Article 48 (OWNERSHIP RIGHTS) relating to the Services which Contractor or Commonwealth (alone or jointly with the Commonwealth) develops or learns in connection with Contractor’s provision of Services to Commonwealth under this Contract.

(o) Commonwealth Intellectual Property Protection

Contractor acknowledges Commonwealth’s exclusive right, title and interest, including without limitation copyright and trademark rights, in and to Commonwealth Software, Commonwealth Tools and the Developed Works developed under the provisions of this Article 48 (OWNERSHIP RIGHTS), shall not in any way, at any time, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title, and interest, and shall not use or disclose the Commonwealth Software, Commonwealth Tools, or the Developed Works without Commonwealth’s written consent, which consent may be withheld by the Commonwealth for any reason. Further, Contractor shall not in any manner represent that Contractor has any ownership interest in the Commonwealth Software, Commonwealth Tools or the Developed Works. This provision is a material part of this Article 48 (OWNERSHIP RIGHTS).

(p) Contractor Intellectual Property Protection

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

(q) Source Code and Escrow Items Obligations

Simultaneously with delivery of the Developed Works to Commonwealth, Contractor shall deliver a true, accurate and complete copy of all source codes relating to the Developed Works. To the extent that the Developed Works include application software or other materials generally licensed by the Contractor, then the source code shall be placed in escrow, subject to the terms and conditions of an escrow contract to be executed by the Parties and an escrow agent that is acceptable to the Commonwealth.

(r) Contractor's Copyright Notice Obligations

Contractor will affix the following Copyright Notice to the Developed Works developed under this Article 48 (OWNERSHIP RIGHTS) and all accompanying documentation: "Copyright © [year] by the Commonwealth of Pennsylvania. All Rights Reserved." This notice shall appear on all tangible versions of the Developed Works delivered under this Contract and any associated documentation. It shall also be programmed into any all Developed Works delivered hereunder so that it appears at the beginning of all visual displays of such Developed Works.

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

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

- (a) Except as otherwise provided in Section 48 (OWNERSHIP RIGHTS), the Contractor shall not publish any of the results of the work without the written permission of the Commonwealth. The publication shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the Commonwealth of Pennsylvania." The Contractor shall not include in the documentation any copyrighted matter, unless the Contractor provides the Commonwealth with written permission of the copyright owner.

- (b) Except as otherwise provided in Article 48 (OWNERSHIP RIGHTS) and the confidentiality provisions of Article 31 (CONFIDENTIALITY), the Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the Commonwealth as part of the performance of the Contract.
- (c) Rights and obligations of the parties under this Article 49 (PUBLICATION RIGHTS AND/OR COPYRIGHTS) survive the termination of this Contract.

**50. CHANGE OF OWNERSHIP OR INSOLVENCY**

In the event that the Contractor should change ownership for any reason whatsoever, the Commonwealth shall have the exclusive option of continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract, or continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs, or immediately terminating this Contract. Nothing in this section limits the Commonwealth's exercise of any rights that the Commonwealth may have under Article 27 (TERMINATION).

**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. INDEPENDENT CAPACITY OF CONTRACTOR**

- (a) The parties to this Contract agree that the Services performed by the Contractor under the terms of this Contract are performed as an independent Contractor and nothing contained in this Contract shall be construed to make either Contractor or Commonwealth partners, joint venturers, principals, agents or employees of the other, except only to the extent that Contractor is expressly appointed under the Contract to act as the agent of Commonwealth and, in those cases, only to the limited extent of such express appointment. No officer, director, employee, agent, affiliate or contractor retained by Contractor to perform work on Commonwealth's behalf hereunder shall be deemed to be an employee, agent or contractor of Commonwealth. Neither party shall have any right, power or authority, express or implied, to bind the other. As between Contractor and Commonwealth, Contractor is solely responsible for payment of all income, disability, withholding and other employment taxes, and all medical benefit

premiums, vacation pay, sick pay and other fringe benefits resulting from Contractor's retention of any such officers, directors, employees, agents or contractors.

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

### **53. COMPLIANCE WITH LAWS**

The Contractor shall comply with all federal, state, and local laws applicable to its work, 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.

If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the Services provided under this Contract, the parties to the Contract shall modify this Contract to the extent reasonably necessary to:

- (a) Ensure that such Services will be in full compliance with such laws, regulations and/or policies; and
- (b) Modify the rates applicable to such Services; and
- (c) Address any schedule impacts.

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

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

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

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

**55. EXAMINATION OF RECORDS**

- (a) The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under this Contract to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.
- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in Section 55(c) below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by law, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in Article 31 (CONFIDENTIALITY).
- (c) The Contractor shall preserve and make available its records for a period of three (3) years from the date of final payment under this Contract:
  - (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three (3) years from the date of any resulting final settlement.
  - (2) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.
- (d) Except for documentary evidence retained pursuant to Section 55(c)(2) above, the Contractor may in fulfillment of its obligation to retain its records as required by this Article 55 (EXAMINATION OF RECORDS) substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of three (3) 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 Article 55 (EXAMINATION OF RECORDS) shall be applicable to and included in each subcontract hereunder. The term “subcontract” as used in this contract only, excludes purchase orders not exceeding \$1,000 and subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

56. **AUDIT OBLIGATIONS**

**(a) SINGLE AUDIT ACT OF 1984**

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

- (1) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in *Government Auditing Standards, 1994 Revisions* (Yellow Book).
- (2) The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984, 31 U.S.C. § 7501, et seq.*, and all rules and regulations promulgated pursuant to the Act.
- (3) 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.
- (4) 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*.

**(b) Access by Commonwealth**

- (1) Commonwealth’s internal and external auditors will have full access to Contractor’s and Contractor subcontractors’ facilities and records (excluding records evidencing Contractor’s and Contractor subcontractors’ costs of providing services) related to the Services to perform operational, technical, regulatory and financial audits as well as fraud checks;
- (2) Contractor will provide Commonwealth with summaries of any relevant findings from its internal audit reports related to the Services.
- (3) Contractor and Commonwealth shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or

recommendations arising out of any audit, and Contractor, at its own expense, shall undertake remedial action in accordance with such action plan and the dates specified therein.

**57. 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. \_\_), as amended; the *Pennsylvania Solid Waste Management Act*, Act of July 7, 1980 (P.L. 380, No. 97), as amended; and the *Dam Safety and Encroachment Act*, Act of November 26, 1978 (P.L. 1375, No. 325), as amended.

**58. NONDISCRIMINATION CLAUSE/SEXUAL HARASSMENT CLAUSE**

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

- (a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- (b) Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
- (c) Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- (d) Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
- (e) The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting



the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

- (f) The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- (g) The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility File.

## **59. CONTRACTOR INTEGRITY PROVISIONS**

- (a) Definitions.
  - (1) Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - (2) Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Contract.
  - (3) Contractor means the individual or entity that has entered into this Contract with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a five percent (5%) interest.
  - (4) Financial Interest means:
    - (i) Ownership of more than a 5% interest in any business; or
    - (ii) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - (5) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

- (b) The Contractor shall maintain the highest standards of integrity in the performance of this Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- (c) The Contractor shall not disclose to others any confidential information gained by virtue of this Contract.
- (d) The Contractor shall not, in connection with this or any other Contract with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
- (e) The Contractor shall not, in connection with this or any other Contract with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
- (f) Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Contract except as provided therein.
- (g) Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material on this project.
- (h) The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- (i) The Contractor, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
- (j) The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form which refer to or concern this contract. Such information shall be retained by the Contractor for a

period of three (3) years beyond the termination of the Contract unless otherwise provided by law.

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

## **60. 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.

## **61. WARRANTIES**

- (a) Contractor represents, warrants and covenants that:
  - (1) It is a corporation duly incorporated, validly existing, and in good standing under the laws of [ ].
  - (2) It has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Contract.
  - (3) Contractor is duly licensed, authorized and qualified to do business and is in good standing in Pennsylvania and in every other jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on Contractor's ability to fulfill its obligations under this Contract.
  - (4) The execution, delivery and performance of this Contract by Contractor has been duly authorized by Contractor.

- (5) Contractor shall comply with all applicable Federal, state and local laws and regulations applicable to Contractor and shall obtain all applicable permits and licenses required of Contractor in connection with its obligations under this Contract.
- (6) Contractor has not disclosed any Confidential Information of Commonwealth.
- (7) The Contractor Proprietary Software does not and will not, and the Developed Software and the Services will not, infringe upon the proprietary rights of any third party, provided that Contractor will have no obligation with respect to any losses to the extent the same arise out of or in connection with Commonwealth's modification or misuse of equipment, systems, programs, or products or Commonwealth's combination, operation or use with devices, data, equipment, systems, programs or products not furnished by Contractor under this Contract.
- (8) Contractor Personnel and Subcontractors that Contractor will use to provide and perform the Services have and during the Term will have, the suitable knowledge, skills, experience, qualifications and resources to provide and perform the Services:
  - (i) In accordance with the Contract; and
  - (ii) In a diligent, workmanlike manner with due care and skill, consistent with the required level of quality and performance and in accordance with the Service Levels.
- (9) The Services will comply with standards set in the Commonwealth's IT Bulletins as issued from time to time, and all internal policies and procedures as set from time to time.
- (10) Contractor shall cooperate fully with Commonwealth and with any third party appointed by Commonwealth to the extent that such cooperation may be necessary to permit Commonwealth or such third parties to complete any work related to or impacted by the Services provided to Commonwealth by Contractor under the Contract.
- (11) Contractor shall collaborate fully with Commonwealth or with any third party appointed by Commonwealth to the extent that such cooperation may be necessary to permit Commonwealth or such third parties to in-source or transfer to a third party any aspect of the Services then provided by Contractor under the Contract.

## **62. LIQUIDATED DAMAGES**

- (a) By accepting this Contract, the Contractor agrees to the delivery requirements of this Contract. If a Contract schedule is not met, including Transition Milestones set out in Transition and Transformation Plans, 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 Article 62 (LIQUIDATED DAMAGES) 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 three-tenths of a percent (.3%) of the total cost under this Contract for each calendar day (for a maximum of thirty (30) calendar days) following the scheduled completion date of the Contract until the date on which the Contractor satisfactorily completes all required work under the Contract.
- (c) If, at the end of the thirty (30) day period specified in Section 62(b) above, the Contractor has not met the schedule for completion of the Contract, then the Commonwealth, at no additional expense and at its option, may either:
  - (1) Immediately terminate the Contract and all software, documentation, reports, Developed Materials and any other materials provided for or created for the Commonwealth as a result of this Contract shall be given to the Commonwealth, and the Commonwealth shall be entitled to its remedies under Section 27(c); or
  - (2) Order the Contractor to continue with no decrease in effort until the work is completed in a manner acceptable to the Commonwealth or until the Commonwealth terminates the Contract. If the Contract is continued, the liquidated damages will also continue until the work is completed.
- (d) Liquidated damages shall be paid by the Contractor and collected by the Commonwealth by deducting them from the invoices submitted under this Contract or any other contract Contractor has with the Commonwealth, by collecting them through the performance security, if any, or by billing the Contractor as a separate item.
- (e) To the extent that the delay is caused by the Commonwealth, no liquidated damages will be applied.
- (f) Contractor shall not be liable for liquidated damages if the delay to the Contract arises out of causes beyond the control of and without the fault or negligence of the Contractor and/or its subcontractors. 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; but in every case, the delay must be beyond the control of, and without the fault or negligence of, the Contractor and/or its subcontractors. The Contractor shall notify the Commonwealth immediately in writing of its inability to perform because of a cause beyond the control of the Contractor.

- (g) If the delays are caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without their fault or negligence, the Contractor shall not be liable for liquidated damages for delays, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

**63. CONFLICT OF INTEREST**

Contractor, by signing this Contract, covenants that it has no undisclosed public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest, and that Contractor has no association, direct or indirect, which interest or association does or may conflict in any manner with the performance of the Services or any other obligations of Contractor under this Contract. Any such conflicts shall be disclosed to Commonwealth, and Commonwealth shall determine whether such conflict is cause for termination of this Contract. Contractor further covenants that, in the performance of this Contract, no person having such interest shall be employed by or associated with Contractor.

**64. SURVIVAL**

Articles 5, 28, 31, 33, 34, 36, 37, 44, 45, 46 48, 55, 56, 61 shall survive the expiration or termination of the Contract.

**65. CONSENTS, APPROVALS, NOTICES AND REQUESTS**

Unless otherwise specified in this Contract, all consents, approvals, notices and requests, acceptances or similar actions to be given by either party under this Contract shall not be unreasonably withheld, delayed or conditioned and each party shall make only reasonable requests under this Contract.

**66. SEVERABILITY**

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Contract or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision of this Contract shall be valid and enforceable to the extent permitted by law.

**67. WAIVER**

No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

**68. ENTIRE CONTRACT**

This Contract is the entire Contract between the parties with respect to its subject matter, and there are no other representations, understandings or Contracts between the parties relative to such subject matter

**69. AMENDMENTS**

No amendment to, or change, waiver, or discharge of, any provision of this Contract shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, change, waiver or discharge is sought to be enforced.

**70. GOVERNING LAW**

This Contract shall be interpreted in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without giving effect to its conflicts of law provisions. Except as set forth in Article 30 (CONTRACT CONTROVERSIES), Commonwealth and Contractor agree that the courts of the Commonwealth of Pennsylvania and the federal courts of the Middle District of Pennsylvania shall have exclusive jurisdiction over disputes under this Contract and the resolution thereof. Any legal action relating to this Contract must be brought in Dauphin County, Pennsylvania, and the parties agree that jurisdiction and venue in such courts is appropriate.

**71. THIRD PARTY BENEFICIARIES**

Each party intends that this Contract shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than Commonwealth and Contractor.

**72. ACKNOWLEDGEMENT**

Commonwealth and Contractor each acknowledge that the limitations and exclusions contained in this Contract have been the subject of active and complete negotiation between the parties and represent the parties' Contract based upon the level of risk to Commonwealth and Contractor associated with their respective obligations under this Contract and the payments to be made to Contractor and credits to be issued to, and Services to be provided to, Commonwealth pursuant to this Contract. The parties agree that the terms and conditions of this Contract shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Contract.

## APPENDIX A-A

### COMMONWEALTH OF PENNSYLVANIA BUSINESS ASSOCIATE APPENDIX LANGUAGE

#### Health Insurance Portability and Accountability Act (HIPAA) Compliance

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

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

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

1. **Definitions.**
  - a. “Business Associate” shall have the meaning given to such term under the HIPAA Regulations, including but not limited to, 45 CFR §160.103.
  - b. “Covered Entity” shall have the meaning given to such term under HIPAA and the HIPAA Privacy Regulations, including, but not limited to, 45 CFR §160.103.
  - c. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Privacy Regulations, including, but not limited to 45 CFR §164.501.
  - d. In accordance with 45 CFR Parts 160-164, [name of program and department] is the **Covered Entity** and \_\_\_\_\_ is the **Business Associate**.
  - e. Terms used, but not otherwise defined, in this Contract shall have the same meaning as those terms in 45 CFR Parts 160-164.



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

3. **Stated Purposes For Which Business Associate May Use Or Disclose PHI.** The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided or made available from Covered Entity for the following stated purposes:

*PROGRAM MUST Include a general statement describing the stated purposes that Business Associate may use or disclose the PHI. These uses and disclosures must be within the scope of the Appendix. 45 CFR §164.504(e)(2)(i).*

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

a) **Use Of Information For Management, Administration And Legal Responsibilities.** Business Associate is permitted to use PHI if necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of the Business Associate. 45 CFR §164.504(e)(4)(ii).

b) **Disclosure Of Information For Management, Administration And Legal Responsibilities.** Business Associate is permitted to disclose PHI received from Covered Entity for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, provided:

i) The disclosure is required by law: or

ii) The Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached. 45 CFR §164.504(e)(4)(ii).

c) **Data Aggregation Services.** Business Associate is also permitted to use or disclose PHI to provide data aggregation services, as that term is defined by 45 CFR §164.501, relating to the health care operations of Covered Entity. 45 CFR §164.504(e)(2)(i)(B).

5. **BUSINESS ASSOCIATE OBLIGATIONS:**

- a) **Limits On Use And Further Disclosure Established By Appendix And Law.** Business Associate hereby agrees that the PHI provided or made available by Covered Entity shall not be further used or disclosed other than as permitted or required by the Appendix or as required by law. 45 CFR §165.404(e)(2)(ii)(A).
- b) **Appropriate Safeguards.** Business Associate will establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Appendix. 45 CFR §164.504(e)(2)(ii)(B).
- c) **Reports Of Improper Use Or Disclosure.** Business Associate hereby agrees that it shall report to [name of Contract officer for program and Department] **within two (2) days of discovery** any use or disclosure of PHI not provided for or allowed by this Appendix. 45 CFR §164.504(e)(2)(ii)(C).
- d) **Subcontractors And Agents.** Business Associate hereby agrees that anytime PHI is provided or made available to any subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and must enter into a subcontract or contract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Appendix. 45 CFR §164.504(e)(2)(ii)(D).
- e) **Right Of Access To PHI.** Business Associate hereby agrees to make available to an individual who is the subject of the PHI the right to access and copy that individual's PHI, at the request of the individual or of the Covered Entity, in the time and manner designated by the Covered Entity. This right of access shall conform with and meet all of the requirements of 45 CFR §164.524 and 45 CFR §164.504(e)(2)(ii)(E).
- f) **Amendment And Incorporation Of Amendments.** Business Associate agrees to make any amendments to PHI that have been agreed to by the Covered Entity, at the request of Covered Entity or of the individual, in the time and manner designated by Covered Entity, in accordance with 45 CFR 164.526 and 45 CFR §164.504(e)(2)(ii)(F).
- g) **Provide Accounting.** Business Associate agrees to document and make available to Covered Entity or to the individual, any information necessary to provide an accounting of disclosures in accordance with 45 CFR §164.528 and 45 CFR §164.504 (e)(2)(ii)(G), within 30 days of receipt of a request for an accounting, in the manner designated by the Covered Entity.
- h) **Access To Books And Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary of Health and Human Services or

designee for purposes of determining compliance with the HIPAA Privacy Regulations. 45 CFR §164.504(e)(2)(ii)(H).

- i) Return Or Destruction Of PHI.** At termination of this Appendix, Business Associate hereby agrees to return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Appendix. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Appendix to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed. 45 CFR §164.504(e)(2)(ii)(I).
- j) Mitigation Procedures.** Business Associate agrees to establish and to provide to the Program and Department upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Appendix or the HIPAA Privacy Regulations. 45 CFR §164.530(f). Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Appendix.
- k) Sanction Procedures.** Business Associate agrees that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Appendix or the HIPAA Privacy Regulations. 45 CFR §164.530(e)(1).
- l) Property Rights.** The PHI shall be and remain the property of Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of its relationship with the program or department.
- m) Grounds For Breach.** Any non-compliance by Business Associate with this Appendix or the HIPAA Privacy Regulations will automatically be considered to be grounds for breach pursuant to the underlying agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.
- n) Termination by Commonwealth.** Business Associate authorizes termination of the underlying contract by the Commonwealth if the Commonwealth determines, in its sole discretion, that the Business Associate has violated a material term of this Appendix.
- o) Privacy Practices.** The Program or Department shall provide and Business Associate shall immediately begin using, any form, including but not limited to, any for used for Consent, Notice of Privacy Practices, Accounting for Disclosures, or Authorization, designated as effective by the Program or

Department at any given time. The Program and Department retain the right to change the applicable privacy practices and documents. The Business Associate must implement changes as soon as practicable, but not later than 45 days from the date of notice of the change.

**6) OBLIGATIONS OF COVERED ENTITY:**

- a) Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as changes to such notice.
- b) Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such change affect Business Associate's permitted or required uses and disclosures.
- c) Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522.

# REQUEST FOR PROPOSAL



## **Commonwealth of Pennsylvania Office of Administration / Information Technology**

### **Appendix B – Domestic Workforce Utilization Certificate**

#### RFP ISSUE DATE

November 12, 2008

#### PROPOSAL DUE DATE

January 20, 2009

## APPENDIX B

### Domestic Workforce Utilization Certificate

#### COMMONWEALTH OF PENNSYLVANIA

#### Department of General Services

RFP# 6100004339

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

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

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement:

Aruba  
Austria  
Belgium  
Bulgaria  
Cyprus  
Czech Republic  
Denmark  
Estonia  
Finland  
France  
Germany  
Greece  
Hong Kong , China  
Hungary  
Iceland  
Ireland  
Israel  
Italy  
Japan  
Korea

**Domestic Workforce Utilization Certificate**

- Latvia
- Liechtenstein
- Lithuania
- Luxemburg
- Malta
- the Netherlands
- Norway
- Poland
- Portugal
- Romania
- Singapore
- Slovak Republic
- Slovenia
- Spain
- Sweden
- Switzerland
- the United Kingdom

OR

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Use additional sheets if necessary]

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

Attest or Witness:

\_\_\_\_\_  
Corporate or Legal Entity's Name

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Printed Name/Title

# REQUEST FOR PROPOSAL



## **Commonwealth of Pennsylvania Office of Administration / Information Technology**

### **Appendix C – COSTARS Program Questionnaire**

RFP ISSUE DATE

November 12, 2008

PROPOSAL DUE DATE

January 20, 2009



**APPENDIX C**

**COSTARS PROGRAM QUESTIONNAIRE**

**COMMONWEALTH OF PENNSYLVANIA  
Department of General Services**

RFP# 6100004339

**If your firm is awarded a Contract, does it agree to sell/provide the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to registered COSTARS Purchasers who elect to participate in the contract?**

**Please Answer: YES \_\_\_\_\_ NO \_\_\_\_\_**

\_\_\_\_\_  
Corporate or Legal Entity Name

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name/Title

# REQUEST FOR PROPOSAL



## **Commonwealth of Pennsylvania Office of Administration / Information Technology**

### **Appendix D – Proposal Cover Sheet**

#### RFP ISSUE DATE

November 12, 2008

#### PROPOSAL DUE DATE

January 20, 2009

**APPENDIX D**

**PROPOSAL COVER SHEET**

**COMMONWEALTH OF PENNSYLVANIA  
Department of General Services**

RFP# 6100004339

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

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

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

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

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

**SCHEDULE A**  
**DEFINED TERMS**

## DEFINITIONS AND CONSTRUCTION

**Definitions.** The following defined terms shall have the meanings specified below:

**“Americans with Disabilities Act”** shall mean The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq

**“Acceptance Testing Plan”** means the plan set out in Schedule D (Transition and Transformation Methodology).

**“Additional Services”** shall mean any additional day-to-day processing services requested by Commonwealth of Contractor and related start-up activities resulting from the addition of a Commonwealth Agency by Commonwealth, to the extent such requested services are outside the scope of the Services.

**“Allocation of Pool Percentage”** means the portion of the Pool Percentage that is specified for any particular CPI in the event of a Service Level Default for such Service Level.

**“At Risk Amount”** means, for any month during the Term, fifteen percent (15%) of the monthly Base Charges for such month, which is the amount that the Contractor will have at risk for all Service Level Credits in such month.

**“Baseline Data”** means the actual data measured during a Measurement Period (or in the case of initial Type 1 Service Levels, applicable historical data of the Commonwealth).

**“Benchmarker”** shall mean an independent third-party that undertakes a Benchmarking.

**“Benchmarking”** shall mean the objective measurement and comparison process (utilizing resource baselines and industry standards) utilized by a Benchmarker to benchmark the quality of the Services and the Fees by Statement of Work or Statement of Works.

**“Benchmarking Report”** means the final benchmarking report described in Section 5(a) of Schedule O-1 (Benchmarking Procedures).

**“Best and Final Offer”** means [insert the details of Contractor’s final offer]

**“Business Continuity Plan”** shall mean the plan set out in Schedule J (Disaster Recovery and Business Continuity Plan).

**“Business Partner”** – shall mean any entity identified by statute, regulation, or contract as being an agent of the Commonwealth.

**“Change”** shall mean any change, action, or decision of the Contractor with respect to the provision of Services to Commonwealth that may involve risk to Commonwealth

business, have a material or adverse effect on the Services or Service Levels, require Commonwealth to change the way it conducts its operations, or increase charges or costs to Commonwealth (including post-expiration or termination of the Contract).

**“Change Control Procedures”** shall mean those procedures set out in Schedule G (Change Control Procedures).

**“Change Order”** has the meaning given in Section 2.2(a) of Schedule G (Change Control Procedures).

**“Change Proposal”** has the meaning given in Section 1.3(c) of Schedule G (Change Control Procedures).

**“Change Request”** has the meaning given in Section 1.3(a) of Schedule G (Change Control Procedures).

**“Change Request Form”** has the meaning given in Section 2.0 of Schedule G (Change Control Procedures).

**“Commencement Date”** for any Service Area, shall mean the date that the Contractor’s provision of Services commence pursuant to the terms and conditions of the Agreement, as such date is set forth in the [Transition Plan].

**“Commonwealth”** means the Commonwealth of Pennsylvania.

**“Commonwealth Agencies”** shall mean those agencies of Commonwealth set forth in Schedule P (Commonwealth Agencies), as may be updated by adding or eliminating such Commonwealth Agencies from time to time during the term of the Contract in accordance with the Change Control Procedures

**“Commonwealth Procurement VISA Card”** means the credit card against which the Commonwealth may pay for procured services ordered under Purchase Orders less than \$5,000 in value.

**“Commonwealth Software”** shall have the meaning set forth in Section 48(a).

**“Commonwealth Project Manager”** means the individual described in Section 23(a).

**“Commonwealth Services Locations”** means the services locations owned, leased or under the control of Commonwealth that are set forth in Schedule M (Commonwealth Services Locations).

**Confidential information** shall mean (except in relation to Article 59) (1) with respect to Commonwealth, all Commonwealth Data and other information of Commonwealth or any Commonwealth Agency or any private individual, organization or public agency, in each case to the extent such information and documentation is not permitted to be disclosed to third parties under local, Commonwealth or Federal laws and regulations or pursuant to any

policy adopted by Commonwealth or pursuant to the terms of any third-party agreement to which Commonwealth is a party and (2) with respect to Vendor, all Vendor Proprietary Software and all Vendor documentation and manuals not made available in the ordinary course of business (except those items developed by Vendor specifically to deliver Services to the Commonwealth pursuant to this Agreement), and any other information identified in writing by Vendor as confidential or proprietary to Vendor, its subcontractors or licensors.

**“Contract”** means the agreement for provision of Services executed on [ ] between Contractor and Commonwealth.

**“Contractor Personnel”** shall mean the personnel of Contractor and Subcontractors who provide or are involved in the provision of the Services.

**“Contractor Project Manager”** shall mean the individual described in Section 23(b).

**Contractor’s Proposal”** shall mean the proposal submitted by the Contractor to the Commonwealth in response to the RFP.

**“Contractor Proprietary Software”** shall mean the software, tools and related documentation owned by Contractor or any of the agents or subcontractors of Contractor which is used in connection with the Services.

**“Contractor Software”** shall have the meaning set forth in Section 48(g).

**“Contractor Tools”** shall have the meaning set for in Section 48(g).

**“Contracting Officer”** means the person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.

**“Contractor Services Locations”** shall mean the service locations owned, leased or under the control of Vendor or its subcontractors that are set forth in Schedule N (Contractor Services Locations).

**“Critical Milestone”** shall have the meaning set out in Schedule D (Transition and Transformation Methodology).

**“Critical Performance Indicators”** or **“CPIs”** means those Service Levels which are (i) described in Schedule F-1 as a CPI and (ii) for which a Service Level Credit may be payable. Each CPI has a Target Service Level and a Minimum Service Level associated with it, unless otherwise specified.

**“Critical Services”** shall mean those services designated as “Critical Services” in Schedule E (Critical Services).

**“Days”** shall mean calendar days, unless specifically indicated otherwise.

**“Deliverable”** means a Milestone or Service that is subject to acceptance testing in the Acceptance Testing Plan.

**“Developed Works or Developed Materials”** means all documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material authored or prepared by Contractor as the work product covered in the scope of work for the Services.

**“Disaster Recovery Plan”** shall mean the plan set out in Schedule J (Disaster Recovery and Business Continuity Plan).

**“Documentation”** shall mean all materials required to support and convey information regarding the Services including written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.

**“Earn Back”** means the Contractor’s opportunity to earn back Service Level Credits on Target Service Level Defaults, in accordance with Section 6(e) of Schedule F (Service Level Methodology).

**“Effective Date”** shall have the meaning set forth in Section 1(a).

**“Equipment”** shall mean all computing, networking, telecommunications and other equipment (hardware and firmware) procured, provided, operated, supported, or used by Contractor in connection with the Services, including (a) midrange, server and distributed computing equipment and associated attachments, features, accessories, peripheral devices and cabling, (b) personal computers, laptop computers, workstations and personal data devices and associated attachments, features, accessories, printers, multi-functional printers, peripheral or network devices and cabling, and (c) voice, data, video and wireless telecommunications and network and monitoring equipment and associated attachments, features, accessories, cell phones, peripheral devices and cabling.

**“Expiration Date”** means the date seven years from the Effective Date, or as extended by the Commonwealth.

**“Fees”** shall mean the fees, and any other amounts payable by Commonwealth to Contractor pursuant to Schedule C (Fee Methodology).

**“Final Acceptance Test”** shall have the meaning set out in Schedule D (Transition and Transformation Methodology).

**“General Performance Indicators”** or **“GPIs”** means those Service Levels which are described in Schedule F-1 as a GPI. Each General Performance Indicator has a Minimum Service Level associated with it unless otherwise specified. No Service Level Credits are available for GPIs.



**“Key Performance Indicators”** or **“KPIs”** means those Service Levels which are described in Schedule F-1 as a KPI. Each Key Performance Indicator has a Target Service Level and Minimum Service Level associated with it, unless otherwise specified. No Service Level Credits are available for KPIs.

**“Key Personnel”** shall have the meaning set forth in Schedule L (Key Positions).

**“Key Position”** shall have the meaning set forth in Section 23(c) of the Contract.

**“Management Committee”** shall have the meaning set forth in Schedule K (Governance).

**“Mandatory Change”** shall have the meaning set forth in Schedule G (Change Control Procedures).

**“Measurement Period”** means the nine (9) consecutive months of measurements during which Baseline Data will be measured, which may be used by the Commonwealth and the Contractor to determine Service Level Target and/or Minimum Service Levels.. The Contractor will measure, collect and report to the Commonwealth the relevant measurements during such period.

**“Measurement Window”** means the periodic evaluation and reporting frequency for each individual Service Level as specified in Schedule F-1 of Schedule F (Service Level Methodology) (*e.g.*, monthly, quarterly, semi-annually, annually).

**“Milestone”** means a Transition Milestone, Transformation Milestone or Critical Milestone.

**“Minimum Service Level”** means the minimum level of performance set forth in Appendix B-1 with respect to each CPI, KPI or GPI.

**“Minimum Service Level Default”** means a single failure of the Contractor to meet the applicable Minimum Service Level for a specific CPI or KPI in the applicable Measurement Window (*e.g.*, monthly).

**“Pool Percentage”** means two hundred fifty percentage points (250%) of the At Risk Amount. For avoidance of doubt, the 250 percentage points shall be apportioned by the Commonwealth across the CPIs such that the individual pool percentages shall total an amount not greater than 250%.

**“Purchase Order”** means the orders made in accordance with the ordering process set forth in Article 2

**“Request for Criminal Record Check”** means the form and procedure set forth at Article 29.

**“Regulatory Entity”** shall mean any supervisory or governmental agency, body or authority having regulatory or supervisory authority over the Commonwealth, its agencies or the Contractor or Subcontractor’s assets, resources or business or over the Services, including any organization reporting to such bodies.

**“RFP”** shall mean the Request for Proposal (RFP 6100004339) issued by the Commonwealth for Telecommunications Managed Services.

**“Services”** shall have the meaning set forth at Section 1(f).

**“Service Levels”** shall mean the service levels and standards for the performance of the Services set forth in Schedule F (Service Level Methodology).

**“Service Level Credit”** means the financial credits incurred by the Contractor in favor of the Commonwealth for Service Level Defaults for CPIs determined in accordance with the provisions of Schedule F (Service Level Methodology).

**“Service Level Default”** means a Minimum Service Level Default, Target Service Level Default or Compound Service Level Default.

**“Service Level Reporting Period”** means each rolling nine (9) month period beginning on each applicable Commencement Date and continuing (rolling) monthly throughout the Term.

**“Service Level Termination Event”** has the meaning provided in Section 2(c)(iv) of Schedule F (Service Level Methodology).

**“Services Locations”** shall mean the Commonwealth Services Locations and the Contractor Services Locations and such other locations agreed upon by the parties as listed in Schedule M (Commonwealth Services Locations) and Schedule N (Contractor Services Locations).

**“Software”** shall mean 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).

**“Statement of Work”** means shall mean the services, function and responsibilities described in the Agreement, including the services set forth in Schedule B (Services and Statements of Work).

**“Subcontractors”** shall mean shall mean a third party (including an affiliate of Contractor) to which Contractor subcontracts or otherwise delegates its obligations to perform the Services.

**“Termination Assistance Period”** has the meaning set forth in Article 28.

**“Termination Assistance Services”** shall mean (a) the Services (and any replacements thereof or substitutions therefore), to the extent the Commonwealth requests such Services during the Termination Assistance Period, (b) Contractor’s cooperation with Commonwealth or another contractor designated by Commonwealth in the transfer of the Services to Commonwealth or such other contractor in order to facilitate the transfer of the Services to Commonwealth or such other contractor, and (c) any services requested by Commonwealth in order to facilitate the transfer of the Services to Commonwealth or another contractor designated by Commonwealth.

**“Third Party Software”** shall mean all Software products (and all modifications, replacements, upgrades, enhancements, documentation, materials and media related thereto) that are provided under license or lease by a third party to Contractor or Commonwealth.

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

**“Transformation Milestone”** shall have the meaning set out in Schedule D (Transition and Transformation Methodology).

**“Transformation Plan”** means the plan set out in the Schedule [ ] (Transition and Transformation Methodology) agreed by the parties and setting out the activities and timescales and responsibilities for the Contractor to deliver cost reductions and service performance improvements to the Commonwealth, and shall include Milestones and Critical Milestones.

**“Milestone Credit”** means the credit to be paid by Contractor for missing a Transition Milestone, Transformation Milestone or Critical Milestone as set out in Schedule D (Transition and Transformation Methodology).

**“Target Service Level Default”** means a recurring failure of the Contractor to meet the Target Service Level for the same CPI or KPI three (3) times, and each subsequent failure thereafter, during a Service Level Reporting Period.

**“Target Service Level”** means the expected level of performance for a CPI or a KPI, as applicable, as set forth in Schedule F-1 of Schedule F (Service Level Methodology).

**“Type 1 Service Level”** has the meaning provided in Schedule F, Section 2(d) of Schedule F (Service Level Methodology).

**“Type 2 Service Level”** has the meaning provided in Schedule F, Section 2(d) of Schedule F (Service Level Methodology).

**“Transition Milestone”** shall have the meaning set out in Schedule D (Transition and Transformation Methodology).

**“Transition Plan”** means the plan set out in the Schedule D (Transition and Transformation Methodology) agreed by the parties and setting out the activities and timescales and responsibilities for transitioning the services from Commonwealth to Contractor, including Milestones and Critical Milestones.

**SCHEDULE F**

**SERVICE LEVEL METHODOLOGY**

## TABLE OF CONTENTS

1.	General Provisions.....	3
2.	Service Level Obligations.....	5
3.	Additions, Modifications, Deletions and Reclassifications of Service Levels. ....	9
4.	Continuous Improvement of Service Levels.....	10
5.	Measuring Tools. ....	10
6.	Service Level Credits and Earn Backs.....	11
7.	Annual Review.....	14
8.	Investigation and Correction.....	15

## Schedule F - Service Level Methodology

### 1. General Provisions.

The following terms shall have the following meanings:

(a) General.

(i) The Service Levels measure whether the Offeror is meeting certain agreed, measurable criteria for the Services that the Offeror is contractually committed to provide to the Commonwealth. The Offeror shall monitor, measure, collect, record and report to the Commonwealth its performance beginning on the Commencement Date and thereafter during the Term (and any Termination Assistance Period) against all Service Levels then in effect.

(ii) This Schedule F sets forth certain Service Levels against which the Offeror's performance of the Services shall be measured. The Offeror shall perform the Services at or above the levels of performance indicated for Critical Performance Indicators (CPIs), Key Performance Indicators (KPIs) and General Performance (GPIs) as set forth in this Schedule F and Schedule F-1 (*Service Level Matrix*), and if the Offeror fails to do so and is not otherwise excused from such failure, the Offeror shall take the corrective actions and may be subject to the other remedial measures specified in this Schedule F and the Agreement.

(iii) The Offeror shall be responsible for, and have in place as of the applicable Commencement Date, all of the measuring, monitoring and reporting capabilities necessary for measuring, monitoring and reporting the Offeror's performance against the Service Levels.

(iv) Except as otherwise stated, all Service Levels shall be measured by the Offeror on a seven twenty-four (24) hours-per-day, (7) days-a-week, three hundred sixty-five (365) days-per-year basis. The Offeror shall report to the Commonwealth its performance against Service Levels upon the Measurement Window frequency specified for each Service Level in Schedule F-1 (*Service Level Matrix*).

(v) The Offeror shall promptly investigate and remediate all failures associated with Service Levels in accordance with Section 8 below.

(vi) The Offeror shall provide the Commonwealth with the performance reporting for the Services as specified in this Schedule F.

(vii) The Offeror shall minimize recurrences of all performance-related failures for which it is responsible. The Offeror shall also be responsible for reporting to the Commonwealth any problems, such as outages, that appear likely to result in a failure to meet any Service Level, within 30 minutes of the Offeror becoming aware of any such problem.

(viii) The Commonwealth will have the right to receive Service Level Credits and ultimately to terminate the Services notwithstanding any of the aforesaid efforts of the Offeror, if and to the extent such rights accrue in accordance with the Agreement or this Schedule F.

(ix) The Commonwealth and the Offeror will each provide a single point of contact for the prompt resolution of all Service Level Defaults and all failures to provide Services to the Commonwealth in accordance with this Schedule F and the Agreement.

**(b) Reporting of Performance Measures.**

Commencing on the Commencement Date and continuing throughout the Term, including during any Termination Assistance Period:

(i) The Offeror shall assemble and create the reports described in this Schedule F on the performance of the Services, in order to assist in the effective management of the Services and support the improvement of the Service Levels as described herein.

(ii) The Offeror shall provide detailed supporting information for each report to the Commonwealth in electronic form suitable for use on a personal computer. In addition, the Offeror shall make such information available to the Commonwealth on-line using commonly available technology. The raw data and detailed supporting information shall be the Commonwealth Confidential Information, and the Commonwealth may access such information on-line at any time during the Term.

(iii) Commencing with the Commencement Date, within five (5) business days after the last day of each month during the Term, the Offeror will provide a monthly performance report for CPIs and KPIs that reports various metrics, including:

(A) The Offeror's performance against and calculations with respect to each Service Level during the preceding month;

(B) The Offeror's performance with respect to each Service Level as a trend analysis against the prior three (3) months and prior three (3) calendar quarters (the "Performance Trend/Improvement Report"); and

(C) Potential problems of which the Offeror is aware that could reasonably be expected to result in a failure to meet a Service Level and remedial actions including summaries of the reports submitted to the Commonwealth in accordance with the Offeror's obligation to periodically submit Service Level reports and Service Level Credits.

Notwithstanding the above, the Offeror shall only be required to report on GPIs upon the request of the Commonwealth and upon such request the Offeror shall produce the monthly performance report within five (5) business days. The Offeror shall only be



required to provide within ten (10) business days Performance Trend/Improvement Reports on GPIs upon the request of the Commonwealth.

(iv) If any monthly performance report provided by the Offeror to the Commonwealth does not have sufficient detail and accuracy for the Commonwealth to determine whether the Offeror achieved or failed to achieve the Target Service Level and/or Minimum Service Level for each Service Level in the immediately preceding Measurement Window, then the Commonwealth may provide written notice thereof to the Offeror, which notice must contain reasonable detail of the deficiencies in the subject monthly performance report. If within 10 calendar days after receiving such a notice the Offeror fails to deliver to the Commonwealth a revised or replacement monthly performance report containing sufficient detail and accuracy for the Commonwealth to determine whether the Offeror achieved or failed to achieve a Service Level in the applicable Measurement Window, such failure shall constitute a Service Level Default with respect to such Service Level for such immediately preceding Measurement Window.

## 2. Service Level Obligations.

### (a) Service Level Obligations.

The metrics, measurement standards, and other pertinent features for CPIs, KPIs and GPIs are described in Schedule F-1 (*Service Level Matrix*).

### (b) Commencement of Service Level Obligations.

The Offeror shall begin delivering the Services in accordance with the Service Levels as of each applicable Commencement Date by Service Area. Unless otherwise agreed in writing, the Offeror is not accountable for Service Level performance prior to each applicable Commencement Date by Service Area.

### (c) Service Level Defaults, Service Level Termination Event, and Excused Performance.

#### (i) CPIs, KPIs and GPIs Generally.

The Commonwealth believes that all Service Levels are important to the proper support and operation of the Commonwealth's business. However, certain of the Service Levels are of particular importance to the Commonwealth's business and are therefore designated as CPIs and KPIs. Certain of the Service Levels, while important to the Commonwealth's business operations, are less critical to the Commonwealth and are designated as GPIs.

(ii) CPI Service Level Defaults.

The Offeror performance that results in a Service Level Default with respect to a CPI shall:

- (A) Entitle the Commonwealth to receive a Service Level Credit,
- (B) Be escalated to the Operational Governance Board, and
- (C) Result in the Offeror promptly preparing a formal written recovery plan designed to prevent the reoccurrence of such Service Level Default and, once approved by the Commonwealth, promptly implemented by the Offeror at the Offeror's sole cost.

(iii) KPI Service Level Defaults.

The Offeror performance that results in a Service Level Default with respect to a KPI shall:

- (A) Be escalated to the Operational Governance Board, and
- (B) Result in the Offeror promptly preparing a formal written recovery plan designed to prevent the reoccurrence of such Service Level Default and, once approved by the Commonwealth, promptly implemented by the Offeror at the Offeror's sole cost.

(iv) Service Level Termination Events.

A "Service Level Termination Event" shall be deemed to exist if the Offeror fails to meet:

- (A) The Minimum Service Level for the same CPI three (3) times in any Service Level Reporting Period;
- (B) The Minimum Service Level for any combination of CPIs six (6) times in any Service Level Reporting Period;
- (C) The Minimum Service Level for the same KPI six (6) times in any Service Level Reporting Period; or
- (D) The Minimum Service Level for any combination of CPIs and KPIs twelve (12) times in any Service Level Reporting Period. The Commonwealth shall have available to it the remedies set forth in the Agreement for the occurrence of Service Level Termination Events.

(v) Excused Performance

- (A) Any occasional request by the Offeror for temporary SLA relief on a per incident basis shall be submitted in advance in writing to the

Commonwealth in accordance with Change Control Procedures. The Commonwealth shall in its sole discretion determine whether SLA relief should be granted and the period of time for such relief (if any), and its decision in this respect shall not be subject to the dispute resolution procedures set out at Article 30 (CONTRACT CONTROVERSIES).

The Offeror's failure to achieve any Minimum Service Level or Target Service Level will not constitute a Service Level Default or accrue toward a Service Level Termination Event to the extent such failure is excused in accordance with the terms of the Contract.

**(d) Service Level Types.**

**(i) Identification.**

For all Service Levels, Schedule F-1 (*Service Level Matrix*) contains a column labeled "Service Level Type". Service Levels labeled with a "1" in the Service Level Type column shall be "Type 1 Service Levels". Service Levels labeled with a "2" in the Service Level Type column shall be "Type 2 Service Levels."

**(ii) Type 1 Generally.**

Type 1 Service Levels are Service Levels that are supported with Baseline Data for periods prior to the Effective Date or are otherwise deemed reasonable by the Parties based on industry standards or the Offeror's capabilities applicable to the Services and will not be adjusted during the Term except pursuant to Sections 3(a), 3(c), 4 and 7 of this Schedule F or as otherwise agreed by the Parties.

**(iii) Type 2 Generally.**

Type 2 Service Levels are Service Levels that the Parties believe to be reasonable as of the Effective Date, but for which the Commonwealth does not have sufficient supporting historical data on its performance against such Service Levels for periods prior to the Effective Date. For Type 2 Service Levels, the Offeror, during the Measurement Period, shall collect and validate such performance data commencing on each applicable Commencement Date. Within sixty (60) days after completion of such Measurement Period for a Type 2 Service Level, either Party may propose an equitable adjustment to such Service Level based on the Measurement Period data. Upon mutual agreement of the Parties, neither to withhold assent unreasonably, the proposed adjustment will be accepted and such Service Level will be relabeled as a Type 1 Service Level in Schedule F-1 (*Service Level Matrix*) and follow all other protocols for a Type 1 Service Level.

**(iv) Dispute Resolution.**

If, after negotiating in good faith, the Parties are unable to agree on an equitable adjustment for Target and Minimum Service Levels for Type 2 Service Levels within ninety (90) days after completion of the applicable Measurement Period,

either Party may escalate the matter in accordance with the governance procedures set forth in Schedule K(*Governance*), and if the dispute is not resolved thereby, the matter shall be resolved through the dispute resolution procedures set forth in the Agreement. Until such adjustment is resolved pursuant to such procedures, such Type 2 Service Level shall remain as originally agreed by the Parties and such Service Level shall be relabeled as a Type 1 Service Level in Schedule F-1 (*Service Level Matrix*) and follow all other protocols for a Type 1 Service Level, each effective no later than ninety (90) days after completion of the applicable Measurement Period.

(v) Service Level Defaults During Dispute Resolution.

If the applicable Service Level referenced in Section 2(d)(iv) above is a CPI and during the continuation of such governance and dispute resolution procedures:

(A) One or more Service Level Defaults occurred for which the Commonwealth received Service Level Credits and pursuant to such governance or dispute resolution procedures the CPI is adjusted to such a level that such Service Level Default(s) would not have occurred and such Service Level Credits would not have been otherwise credited or paid to the Commonwealth at the adjusted level, then the adjusted Service Level shall be given retroactive effect and the Offeror and the Commonwealth shall promptly agree (not to be unreasonably withheld or delayed) upon an equitable method of reversing the effect of such Service Level Default(s) and Service Level Credits in favor of the Offeror; or

(B) There were no Service Level Defaults for which the Commonwealth received any Service Level Credits and if pursuant to such governance or dispute resolution procedures the CPI is adjusted to a level such that there would have been one or more Service Level Defaults for which the Commonwealth would have received Service Level Credits, then the adjusted Service Level shall be given retroactive effect and the Offeror and the Commonwealth shall promptly agree (not to be unreasonably withheld or delayed) upon an equitable method of giving effect to such Service Level Defaults and Service Level Credits in favor of the Commonwealth.

(vi) Reclassification to Type 1.

If, following collection of Baseline Data, neither Party proposes an adjustment to a Type 2 Service Level pursuant to this Section 2(d), then any such Type 2 Service Level will automatically be reclassified as a Type 1 Service Level as of ninety (90) days after completion of the applicable Measurement Period. In no event will a Type 2 Service Level remain a Type 2 Service Level beyond ninety (90) days after completion of the applicable Measurement Period.

**3. Additions, Modifications, Deletions and Reclassifications of Service Levels.**

**(a) Additions and Modifications of Service Levels.**

(i) The Commonwealth may require the Offeror to add CPIs, KPIs or GPIs, or modify the definition, metrics, data elements, measurement standards, or other pertinent features (as set forth in Schedule F-1 (*Service Level Matrix*) of any existing CPIs, KPIs or GPIs, by sending a written request to the Offeror at least ninety (90) days prior to the date that such modifications are to be effective; provided that the Commonwealth may send such a request (which request may contain multiple changes) not more than once each calendar quarter. The terms and conditions upon which such modifications of metrics are implemented shall be subject to the reasonable and mutual agreement of the Parties and shall be determined pursuant to the Change Control Procedures (in which measurement tools and design changes appropriate to each new Service Level or modified metric or measurement standard shall be negotiated in good faith and agreed). The Offeror may not withhold its consent to add new Service Levels or modify the definition, metrics, data elements, measurement standards, or other pertinent features of any existing CPI, KPI or GPI, but the Offeror is permitted to negotiate in good faith the implementation specifics for such requested additions and modifications, including equitable adjustments to the Charges.

(ii) For new Service Levels the Parties shall establish the applicable Minimum Service Levels and Target Service Levels in accordance with the following:

(A) Where at least six (6) months of service measurements exist for a proposed new Service Level or the Parties agree that such proposed new Service Level does not need Baseline Data based on industry standards for such Service Level, then the Parties agree that the Target Service Level and Minimum Service Level shall be defined as Type 1 Service Levels through the mutual agreement of the Parties and adopted in accordance with Section 2(d)(ii) above; and

(B) Where no or less than six (6) months of service measurements exist for a proposed new Service Level, the Parties shall agree on Type 2 Target and Minimum Service Levels and appropriate measurement tools in accordance with Section 5 below. The Offeror shall measure and report the actual service attainment and the Parties will make adjustments in accordance with Sections 2(d)(iii-vi) above. The Offeror shall begin providing monthly measurements within thirty (30) calendar days after the determination of the measurement tools.

**(b) Deletions of Service Levels.**

The Commonwealth may delete Service Levels by sending written notice to the Offeror at least thirty (30) days prior to the date that such deletions are to be effective. Any Service Level Credits that are still eligible for an Earn Back at the time of such deletion shall be deemed to have been earned back by the Offeror.

(c) Reclassifications and Change in Allocation of Pool Percentage.

In its sole discretion and upon written notice at least ninety (90) days prior to the date that such modifications are to be effective, the Commonwealth may (i) require a reclassification of any Service Level (e.g., from CPI, KPI or GPI to any of CPI, KPI or GPI), or (ii) as part of the reclassification request or separately, the Commonwealth may also require a redistribution of the existing Allocation of Pool Percentages for one or more CPIs. Changes made by the Commonwealth pursuant to this Section 3(c):

- (i) shall not result in any impact to the Charges, Service Level metrics set forth in Schedule F-1 (*Service Level Matrix*), or other terms and conditions of this Agreement, and
- (ii) are not required to be processed through the Change Control Procedures.

4. Continuous Improvement of Service Levels.

(a) Continuous Improvement Availability and Dates.

The Parties agree to the concept of continuous improvement with respect to the Target Service Levels (but not Minimum Service Levels) for certain CPI and KPI Service Levels available for continuous improvement. Those Service Levels available for continuous improvement pursuant to this Section 4 have a “Y” in the column entitled “Continuous Improvement” in Schedule F-1 (*Service Level Matrix*). Beginning twelve (12) months after each applicable Commencement Date (the “Service Level Improvement Date”) and on each annual anniversary of the Service Level Improvement Date (after all initial Commencement Dates have passed, the Parties shall agree to synchronize all Service Level Improvement Dates to a single date for future use), the Parties shall adjust the applicable CPI and KPI Target Service Levels using the methodology described below.

(b) Continuous Improvement Methodology.

For Service Levels available for continuous improvement, upon each Service Level Improvement Date each Target Service Level will be reset to the lowest of the eight (8) highest monthly actual results (e.g., 99.6% is higher than 99.4%) at or above the Target Service Levels achieved during the previous twelve (12) months; provided that, if fewer than eight (8) monthly actual results exceeded the Target Service Level, the Target Service Level will not be reset. Notwithstanding the foregoing, no single increase in a Target Service Level for any twelve-month period may exceed 10% of the difference between 100% and the then-current Target Service Level. For example, if the Target Service Level being adjusted were 99.6%, the maximum increase for that reset would be 0.04 (with an adjusted annual cap of 99.64%).

5. Measuring Tools.

(a) Commencing on each applicable Commencement Date, the Offeror shall provide, implement, maintain and utilize the necessary measurement and monitoring tools and procedures required to measure and report on the Offeror’s performance of the Services

against the applicable Service Levels. The Offeror's measurement and monitoring of Service Level performance shall permit reporting at a level of detail sufficient to permit the Commonwealth to verify compliance with the Service Levels, and shall be subject to audit by the Commonwealth pursuant to the Agreement. The Offeror shall provide the Commonwealth with information about and access to such procedures upon request for purposes of verification.

(b) Notwithstanding the foregoing, any new tools required for new Service Levels added after the Effective Date shall be identified in the Change Order or other documentation approving such new Service Level. In connection therewith, the Offeror shall be obligated to propose a commercially reasonable measuring tool or methodology for a Service Level, and if it fails to do so, such tool or methodology shall be determined using the dispute resolution procedure set forth in the Agreement.

(c) If, after the Effective Date or the implementation of tools for new Service Levels or the tools the Offeror is required to implement pursuant to Section 5(a) above for existing Service Levels, one Party desires to use a different measuring tool or methodology for a Service Level, such Party shall request such change through the Change Control Procedures. If the other Party approves the new measuring tool or methodology, the Parties will reasonably adjust the Service Level measurements to account for any increased or decreased sensitivity in the new measuring tools, provided that if the Parties cannot agree on the required adjustment, either Party may escalate the matter in accordance with the governance procedures set forth in Schedule F (*Governance*), and if the dispute is not resolved thereby, the matter shall be resolved under the dispute resolution process set forth in the Agreement. It is not anticipated that changes in the measuring tools or methodologies will drive changes in Service Levels; rather, the need to collect and accurately reflect the performance data should drive the development or change in measuring tools or methodologies.

**6. Service Level Credits and Earn Backs.**

**(a) Service Level Credit Calculation.**

Subject to Section 6(f) below, for each CPI Target Service Level Default or Minimum Service Level Default, the Offeror shall accrue to the Commonwealth a Service Level Credit that will be computed in accordance with the following formula:

$$\text{Performance Credit} = A \times B$$

Where A is the At Risk Amount;

Where B is the Allocation of Pool Percentage for the applicable CPI.

For example only, assume that the Offeror fails to meet the Minimum Service Level for a CPI, the At Risk Amount is 15% of the Monthly Charges, and the Monthly Charges for the month in which the Service Level Default occurred were \$1,000,000. Additionally, assume that the Allocation of Pool Percentage for such CPI is 10%. The Performance Credit due to the Commonwealth for such Service

Level Default would be computed as follows:

A (the At Risk Amount) is \$150,000 ( $\$1,000,000 * 15\%$ );

Multiplied by B (the Allocation of Pool Percentage for such CPI), which is 10 percentage points;

Yields a Performance Credit = \$15,000

**(b) Multiple Defaults.**

If more than one CPI Service Level Default has occurred in a single month, each of the Service Level Credits shall be accrued and potentially credited to the Commonwealth, unless such Service Level Defaults are due to the same root cause as documented by the Offeror and agreed by the Commonwealth. If in any month there is both a Minimum Service Level Default and a Target Service Level Default with respect to any Service Level, Service Level Credits shall only accrue for one of such Service Level Defaults. In no event shall the amount of CPI Service Level Credits accrued to be potentially credited to the Commonwealth with respect to all CPI Service Level Defaults occurring in a single month exceed, in total, the At Risk Amount for that month.

**(c) Notice of Service Level Credits.**

The Offeror shall notify the Commonwealth in writing if the Commonwealth becomes entitled to a Service Level Credit, which notice shall be provided monthly and shall describe the Service Level Default for the month that is the subject of the monthly CPI report.

**(d) Type 2 Service Level Exemption.**

Subject to Sections 2(d)(v-vi) above, the Offeror shall not be obligated to accrue, credit, or pay the Commonwealth Service Level Credits resulting from Service Level Defaults attributable to Type 2 CPI Service Levels until such Type 2 CPI Service Levels are relabeled as Type 1 CPI Service Levels. Notwithstanding anything to the contrary herein, during the Measurement Period, the accuracy, quality, completeness, timeliness, responsiveness, and efficiency of the Offeror's provision of the Services that are subject to Type 2 Service Levels is an important element of Service delivery. The Offeror shall use commercially reasonable efforts to deliver the Services in a manner designed to ensure that the Type 2 Service Level Target Service Level metric is met or exceeded.

**(e) Earn Backs.**

(i) For any given Service Level Credit generated from a Target Service Level Default for a CPI with a monthly Measurement Window, the Offeror will have the ability to earn an Earn Back associated with such failure if during the nine (9) month period immediately following the Measurement Window of the failure that generated the Service Level Credit, either:



(A) The Offeror meets the required Target Service Level metric for each of the nine (9) monthly Measurement Windows; or

(B) (1) the Offeror does not generate a Service Level Default, and

(B) (2) the average monthly performance for the Service Level metric during the total eighteen (18) month period meets or exceeds the Target Service Level.

If the Offeror fails to satisfy the above requirement, then the Offeror shall not be capable of generating an Earn Back for that Service Level Credit and such Service Level Credit shall be credited or paid to the Commonwealth as set forth in Section 7(f) below.

(ii) For any given Service Level Credit generated from a Target Service Level Default for a CPI with a quarterly Measurement Window, the Offeror will have the ability to earn an Earn Back associated with such failure if the Offeror meets the required Target Service Level metric for the Service Level that generated the Service Level Credit for each of the three (3) quarterly Measurement Windows immediately following the Measurement Window of the failure that generated the Service Level Credit.

If the Offeror fails to satisfy the above requirement, then the Offeror shall not be capable of generating an Earn Back for that Service Level Credit and such Service Level Credit shall be credited or paid to the Commonwealth as set forth in Section 7(f) below.

(iii) Notwithstanding anything to the contrary herein, the Offeror shall not have any opportunity to generate an Earn Back for (A) Service Level Credits associated with any Service Level with a semi-annual or annual Measurement Window or (B) Service Level Credits accrued from a Minimum Service Level Default.

(iv) Upon the expiration of the Term, the Earn Back processes set forth in Section 7(e)(i) and Section 7(e)(ii) above shall be undertaken with respect to the portion of the Service Level Reporting Period that fell within the term, so that if the period available for earn back is less than the required period of time (*e.g.*, 9 months for monthly Measurement Windows and 3 quarters for quarterly Measurement Windows), the Offeror can earn back the straight-line, pro-rata value of the Service Level Credit for each consecutive month or quarter, as applicable, following the month or quarter, as applicable, in which the Service Level Default occurred and in which the Offeror achieves the required Target Service Level for such CPI, up to the expiration of the Term.

**(f) Reconciliation of Service Level Credits and Earn Backs.**

Upon occurrence of the events giving rise to a Service Level Credit, the Offeror shall owe a debt to the Commonwealth for the applicable Service Level Credit amount. Each Service Level Credit will be accrued and held in account by the Offeror until the earlier

of achievement by the Offeror of a corresponding Earn Back or foreclosure of the Earn Back opportunity pursuant to the terms of this Schedule F. The Offeror shall credit to the Commonwealth against the next monthly invoice:

(A) All accrued Service Level Credits that are not subject to an Earn Back opportunity (*e.g.*, Minimum Service Level Defaults and semi-annual and annual Measurement Windows), and

(B) All accrued Service Level Credits that are no longer eligible for an Earn Back (through failure to achieve required Earn Back performance).

If there will be no further invoices, the Offeror will pay the amount of such Service Level Credits to the Commonwealth within thirty (30) calendar days. At no time shall the Commonwealth be obligated to pay an Earn Back directly to the Offeror. Earn Backs are capped at the amount of any accrued Service Level Credits and can only result in a net reduction of Service Level Credits.

**(g) Cumulative Remedies and Waivers.**

The exercise by the Commonwealth of its rights under this Schedule F, including the right to receive Service Level Credits and to grant Earn Backs, shall be without prejudice to its other rights or remedies under the Agreement or at law or equity, including the Commonwealth's right to claim and collect damages and the Commonwealth's right to terminate the Agreement in whole or in part in accordance with the Agreement. If the Commonwealth elects to waive in writing a Service Level Credit, such waiver will not be considered a waiver of the application of the Service Level Default toward a Service Level Termination Event or other termination rights set forth in the Agreement, unless otherwise expressly stated in such writing. Any waived Service Level Credit shall not be eligible for an Earn Back.

**(h) Liquidated Damages.**

Service Level Credits shall not constitute liquidated damages for the corresponding failure to perform, and the Commonwealth shall be free to pursue any and all remedies available under the Agreement with respect thereto, provided that any such credits actually paid by the Offeror to the Commonwealth shall be offset against any damages awarded to the Commonwealth for claims arising from the corresponding failure to perform.

## **7. Annual Review.**

Within 12 months after each applicable Commencement Date, and at least annually thereafter (after all initial Commencement Dates have passed, the Parties shall agree to synchronize to a single date for future use), or at either Party's request, the Offeror and the Commonwealth will review the Service Levels and any proposed adjustments to them as appropriate pursuant to the Change Control Procedures to reflect any improved performance capabilities associated with advances in the technology and methods used to perform the Services or material changes in volumes and metrics used to determine the

Service Levels. The Parties will also review any other considerations relating to the Service Levels raised by either Party. As part of this review process, the Parties may: (a) jointly determine and agree on the addition and/or removal of Service Levels, (b) revise the categorization of Service Levels, (c) revise the results of the automatic continuous improvement adjustment developed for a particular Service Level pursuant to Section 4 above or improve a particular Service Level not subject to the automatic continuous improvement adjustments of Section 4 above.

**8. Investigation and Correction.**

The Offeror shall promptly investigate and correct each failure to meet the Service Levels (whether or not such failure constitutes a Service Level Default) by:

- (a) Promptly initiating problem investigations;
- (b) Promptly reporting problems and findings to the Commonwealth;
- (c) Correcting problems and meeting or restoring Service Levels as soon as practicable;
- (d) Advising the Commonwealth of the root cause of problems and the status of remedial efforts being undertaken with respect to such problems;
- (e) Providing reasonable evidence to the Commonwealth that the causes of such problems have been or will be corrected; and
- (f) Making written recommendations to the Commonwealth for improvement in procedures.

**SCHEDULE F-1**

**SERVICE LEVEL MATRIX**

## Schedule F-1 Service Level Matrix

SLA Ref#	Service Stream	Service Level Type	Baseline Data	Service Level Description	Service Measurement	Definition	Measurement Metric	Measurement Window	Service Level Reporting Window	Minimum Service Level	Target Service Level
1	CTMS			Billing Consolidation	Quality	The Commonwealth requires a single monthly consolidated electronic invoice of all services.  Consolidated electronic invoice should be received by the 7th business day of each month.		Monthly	Monthly	100%	100%
2	CTMS			Billing Accuracy	Quality	The sum of the individual billings on the electronic invoice shall have the same arithmetical value as the total of the electronic invoice or the Commonwealth may withhold payment until corrected.		Monthly	Monthly	100%	100%
3	CTMS			Availability	Availability	The availability and access to all functions of the Commonwealth's Telecommunication Management System on 24/7/365 basis.  Emergency or scheduled downtime is excluded.		Monthly	Monthly	100%	100%
4	CTMS			Service Order Completion	Timeliness	95% of the established Standard Interval Dates or the Customer Request Dates (if greater than Standard Interval Date) each month must be met.		Monthly	Monthly	95%	98%
5	Disaster Recovery			DR/Business Continuity & Service Restoration	Timeliness	Recovery of service due to a disaster causing catastrophic loss of service to geographic area or state wide		Monthly	Monthly	96 hours	96 hours

SLA Ref#	Service Stream	Service Level Type	Baseline Data	Service Level Description	Service Measurement	Definition	Measurement Metric	Measurement Window	Service Level Reporting Window	Minimum Service Level	Target Service Level
6	Change Management			Change Management Notifications	Timeliness	Thirty day notification shall be made through the Commonwealth's Change Management Process for any change or service interruption affecting all or multiple agencies.  Immediate or emergency maintenance is excluded (ITB NET015).		Monthly	Monthly	100%	100%
7	Help Desk			Abandoned Calls	Quality	The percentage of calls in queue abandoned without connecting to a help desk agent must be less than or equal to two percent (2%).		Monthly	Monthly	Less than 2% of total call volume	Less than 1% of total call volume
8	Help Desk			Time Required to Answer	Timeliness	The percentage of calls responded to within 30 seconds by a help desk agent must be equal to or greater than 95%.		Monthly	Monthly	95%	98%
9	Help Desk			Trouble Ticket Response	Timeliness	The percentage of trouble tickets responded to within 30 minutes by the help desk agents must be equal to or greater than 95%.		Monthly	Monthly	95% within 30 minutes	100% within 30 minutes
10	Help Desk			Time to Restore GOLD	Timeliness	The length of time to resolve a problem or restore GOLD services.  The total elapsed time from trouble ticket creation to resolution less hold/pending times (tbd) not to exceed 4 hours.		Monthly	Monthly	4 hours	2 hours
11	Help Desk			Time to Restore SILVER	Timeliness	The length of time to resolve a problem or restore SILVER services.  The total elapsed time from trouble ticket creation to resolution less hold/pending times (tbd) not to exceed 8 hours.		Monthly	Monthly	8 hours	4 hours

SLA Ref#	Service Stream	Service Level Type	Baseline Data	Service Level Description	Service Measurement	Definition	Measurement Metric	Measurement Window	Service Level Reporting Window	Minimum Service Level	Target Service Level
12	Help Desk			Time to Restore BRONZE	Timeliness	The length of time to resolve a problem or restore BRONZE services.  The total elapsed time from trouble ticket creation to resolution less hold/pending times (tbd) not to exceed 12 hours.		Monthly	Monthly	12 hours	8 hours
13	Help Desk			Chronic Problem	Quality	More than 2 issues on the same affected telecommunication service within a calendar month must be identified and treated as a chronic problem.		Monthly	Monthly	100%	100%
14	Help Desk			Chronic Problem	Timeliness	95% of chronic problems to be resolved within 3 business days.		Monthly	Monthly	95%	98%
15	Enterprise Services			Service availability ENTERPRISE	Availability	The percentage of available uptime for all ENTERPRISE services must be equal to or greater than 99.999%.		Monthly	Monthly	99.999%	100%
16	Enterprise Services			Service availability ENTERPRISE	Availability	The percentage of available uptime for each ENTERPRISE service must be equal to or greater than 99.999%.		Monthly	Monthly	99.999%	100%
17	Enterprise Services			Service restoration ENTERPRISE	Timeliness	The amount of time to restore a total loss (outage) or degradation of any enterprise wide service not to exceed 30 minutes.		Per Incident	Monthly	30 min	15 min
18	Enterprise Services			Service restoration ENTERPRISE	Timeliness	The amount of time to restore a partial loss (outage) or degradation of any enterprise wide service not to exceed 30 minutes.		Per Incident	Monthly	30 min	15 min
19	Enterprise Services			Internet Latency	Quality	Average monthly roundtrip latency less than or equal (tbd)ms from point A (tbd) to point B (tbd).		Monthly	Monthly	(tbd)ms	(tbd)ms
20	Enterprise Services			Backbone Roundtrip Delay	Quality	Average monthly roundtrip delay for each backbone link must be less than or equal to 100 ms.		Monthly	Monthly	100ms	80ms

SLA Ref#	Service Stream	Service Level Type	Baseline Data	Service Level Description	Service Measurement	Definition	Measurement Metric	Measurement Window	Service Level Reporting Window	Minimum Service Level	Target Service Level
21	Enterprise Services			Backbone Packet Loss	Quality	Monthly percentage of lost cells per backbone link must be less than or equal to 1%.		Monthly	Monthly	Less than 1%	Less than .5%
22	Data Services			Service Availability GOLD	Availability	The percentage of available uptime for all GOLD services must be equal to or greater than 99.99%.		Monthly	Monthly	99.99%	99.995%
23	Data Services			Service Availability SILVER	Availability	The percentage of available uptime for all SILVER service must be equal to or greater than 99.90%.		Monthly	Monthly	99.90%	99.95%
24	Data Services			Service Availability BRONZE	Availability	The percentage of available uptime for all BRONZE service must be equal to or greater than 99.00%.		Monthly	Monthly	99.00%	99.50%
25	Voice Services			Service Availability GOLD	Availability	The percentage of available uptime for all GOLD services must be equal to or greater than 99.99%.		Monthly	Monthly	99.99%	99.995%
26	Voice Services			Service Availability SILVER	Availability	The percentage of available uptime for all SILVER service must be equal to or greater than 99.90%.		Monthly	Monthly	99.90%	99.95%
27	Voice Services			Service Availability BRONZE	Availability	The percentage of available uptime for all BRONZE service must be equal to or greater than 99.00%.		Monthly	Monthly	99.00%	99.50%
28	Voice Services			Grade of Service	Quality	All facilities connecting to public switched network for enterprise voice will be engineered to provide an hourly grade of service equal to or greater than P.01.		Monthly	Monthly	100%	100%
29	All Services			Network or Security Compromise	Quality	All managed hardware and software must be secured 100% of the time to mitigate any risk to the Commonwealth.		Monthly	Monthly	100%	100%



SLA Ref#	Service Stream	Service Level Type	Baseline Data	Service Level Description	Service Measurement	Definition	Measurement Metric	Measurement Window	Service Level Reporting Window	Minimum Service Level	Target Service Level
30	Security Services			Managed Firewall Service	Availability	The percentage of available uptime for all Managed Firewall services must be equal to or greater than 99.99%.		Monthly	Monthly	99.99%	99.995%
31	Security Services			Managed Firewall Service	Timeliness	Firewall services include access control list updates, network diagnostics, equipment service, software and configuration updates, and data archival (backups, off-site storage).		Monthly	Monthly	5 days of requested change	3 days of requested change
32	Security Services			Managed Intrusion Detection and Prevention	Availability	Intrusion detection and prevention service availability shall be defined as the availability of IDS/IPS components		Monthly	Monthly	99.99%	99.995%
33	Security Services			Managed Intrusion Detection and Prevention	Timeliness	The Commonwealth shall be notified within 15 minutes of any security incident that impacts or may impact the Commonwealth's network.		Monthly	Monthly	100%	100%
34	Security Services			Managed Intrusion Detection and Prevention	Timeliness	Intrusion detection and prevention services include signature/profile updates, network diagnostics, equipment service, software and configuration updates, and data archival (backups, off-site storage).		Monthly	Monthly	5 days of requested change	3 days of requested change
35	Security Services			Managed Virtual Private Network	Availability	Virtual Private Network availability shall be defined as the availability of site-to-site and remote access VPN services.		Monthly	Monthly	99.99%	99.995%
36	Security Services			Managed Virtual Private Network	Timeliness	Virtual Private Network routine and emergency user additions, adding new and deleting old VPN tunnels and policy modifications.		Monthly	Monthly	5 days of requested change	3 days of requested change
37	Security Services			Security Services Time to Restore	Timeliness	Time to Restore - defined as the time from the report of an incident until the incident has been resolved.		Monthly	Monthly	4 hours	2 hours

**SCHEDULE K**  
**GOVERNANCE**

1. **Management Meetings.** There shall be weekly meetings of the Management Committee during the Transition and Transformation Period and monthly meetings thereafter. The purpose of such meetings shall be to (1) track the progress of the Transition and Transformation Plan, (2) review Contractor's performance of the Services Levels, (3) resolve disputes, (4) track the progress of the Additional Services and other projects, (5) coordinate and plan for any new hardware or software acquisitions and service deployments, and (6) address any other matters properly brought before the Management Committee.

2. **Management Committee.** "*Management Committee*" shall be a committee comprised of ten members, five of whom shall be appointed by Commonwealth and five of whom shall be appointed by Contractor from Contractor's executive management staff. Commonwealth and Contractor shall each have one (1) vote with respect to matters that are brought before the Management Committee for resolution. Commonwealth shall designate one of its members on the Management Committee to act as the chairperson of the Management Committee. Both Commonwealth and Contractor can change the individuals on the Management Committee on an as-needed basis. The Management Committee shall be authorized and responsible for (1) generally overseeing the performance of this Contract, (2) providing input and advise to the Governor's Office of Administration regarding Commonwealth's strategic and tactical decisions in respect of the Services, the Systems and any other aspect of the business relationship between Commonwealth and Contractor under this Contract, and (3) monitoring and attempting to resolve disputes regarding the provision of the Services and the Services Levels.

3. **Management Procedures Manual.** For each Commonwealth Agency and as part of the Services, Contractor shall establish procedures pursuant to which Contractor proposes that policies of Commonwealth and Contractor will be adhered to during the Outsource Term for that Commonwealth Agency, and shall deliver to Commonwealth, not later than thirty (30) days prior to the commencement of the activities contemplated under the Transformation Plan for that Commonwealth Agency, for Commonwealth's approval or comment, a draft Management Procedures Manual for that Commonwealth Agency generally summarizing (1) the Services, (2) the computer hardware and software environments in which, and the various Services Locations at which, the Services will be performed, (3) the documentation, if any, which provides further details regarding the Services, (4) the procedures Contractor intends to use, and the activities Contractor proposes to undertake, in order to manage the Services, and (5) the procedures of a management reporting system that Contractor will use to manage this Contract and communicate to and with Commonwealth. Commonwealth may, at its request, participate to whatever degree it desires in the preparation of the draft Management Procedures Manual. Contractor may periodically propose and, at the request of Commonwealth, shall promptly propose updates of the Management Procedures Manual to reflect any changes in the operations or procedures described therein, all of which proposed changes shall be subject to Commonwealth's approval or comment.

**SCHEDULE L**  
**KEY POSITIONS**

## **1.0 Introduction**

This Schedule L lists the Key Personnel. For the purposes of this Schedule and the Contract, the following Contractor roles/titles have the following responsibilities:

### **Contractor Project Manager**

In addition to the roles, responsibilities and duties specified in Schedule K (Governance) and the Contract, this individual retains ultimate responsibility for the Services provided by Contractor. The responsibilities include, without limitation, Commonwealth relationship management, operations management, contract management, and financial accountability.

### **Service Delivery Manager**

This individual is the primary operations contact point for the delivery of the Services to Commonwealth. The responsibilities include coordination of the service group leadership and personnel in the delivery of Services, managing and reporting on the Service Levels, preparing root cause analysis, and providing guidance to the operations groups related to Commonwealth's objectives.

### **Transition and Transformation Manager**

This individual is responsible for managing the Transition and Transformation activities related to the Services as specified in Schedule D (Transition and Transformation Methodology). The responsibilities include project planning, project tracking, change control, and communications with Commonwealth.

### **Agency Account Managers**

These individuals are responsible for understanding all of the services provided by the contractor and providing guidance to the agencies and/or contract participants in meeting their telecommunications business needs. Act as liaison between the contractor and the agency.

<b>Name as of the Effective Date</b>	<b>Title / Account Role</b>	<b>Narrative Description of Role</b>	<b>Primary Work Location as of Effective Date</b>	<b>Full Time or Part Time Service to Commonwealth</b>	<b>Minimum Period of Time Dedicated to Commonwealth Account</b>
[TBD]	Contractor Project Manager	[Description]	[Location]	Full Time	[24] months from Effective Date
[TBD]	Service Delivery Manager	[Description]	[Location]	Full Time	[24] months from Effective Date
[TBD]	Transition Manager	[Description]	[Location]	Full Time	[TBD]
[TBD]	Change Management	[Description]	[Location]	Full-Time	[TBD]
[TBD]	Agency Account Managers	[Description]	[Location]	Full Time	[TBD]
[TBD]	[Service Area 2]Service Area Lead	[Description]	[Location]	Full Time	[TBD]
[TBD]	[Service Area 3]Service Area Lead	[Description]	[Location]	Full Time	[TBD]

**SCHEDULE M**  
**COMMONWEALTH SERVICE LOCATIONS**

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
12897	Lantz Corner	PA	1
15001	Aliquippa	PA	6
15003	Ambridge	PA	5
15005	Baden	PA	1
15005	Harmony	PA	1
15009	Beaver	PA	5
15010	Beaver Falls	PA	10
15012	Belle Vernon	PA	7
15012	Rostaver	PA	1
15012	Rostraver	PA	1
15017	Bridgeville	PA	6
15017	Scott	PA	1
15017	South Fayette	PA	1
15019	Bulger	PA	1
15021	Burgettstown	PA	1
15021	Hanover	PA	1
15022	Charleroi	PA	2
15024	Cheswick	PA	2
15025	Clairton	PA	1
15025	Jefferson Hills	PA	1
15026	Clinton	PA	1
15026	Hookstown	PA	3
15033	Donora	PA	2
15037	Elizabeth	PA	2
15042	New Sewickley	PA	1
15043	Hookstown	PA	1
15044	Gibsonia	PA	3
15045	Glassport	PA	1
15050	Hookstown	PA	2
15051	Indianola	PA	1
15052	Industry	PA	2
15056	Leetsdale	PA	2
15057	McDonald	PA	1
15059	Midland	PA	1
15061	Monaca	PA	1
15062	Monessen	PA	3
15063	Monongahela	PA	3
15065	Harrison	PA	1
15065	Natrona Heights	PA	3
15066	New Brighton	PA	2



<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
15068	Lower Burrell	PA	2
15068	New Kensington	PA	8
15071	Oakdale	PA	3
15074	Chippewa	PA	1
15074	Darlington	PA	1
15074	East Rochester	PA	2
15074	New Sewickley	PA	1
15074	Rochester	PA	3
15076	Russellton	PA	1
15084	Tarentum	PA	1
15086	Warrendale	PA	1
15090	Wexford	PA	2
15101	Allison Park	PA	3
15101	McCandless	PA	1
15102	Bethel Park	PA	4
15106	Carnegie	PA	2
15108	Coraopolis	PA	4
15108	Moon Twp	PA	1
15108	Pittsburgh	PA	1
151084229	Coraopolis	PA	1
15110	Duquesne	PA	1
15116	Glenshaw	PA	1
15120	Homestead	PA	1
15120	Munhall	PA	1
15122	West Mifflin	PA	2
15123	West Mifflin	PA	1
15126	Imperial	PA	2
15129	Library	PA	1
15129	South Park	PA	2
15131	White Oak	PA	1
15132	McKeesport	PA	9
15136	McKees Rock	PA	1
15136	McKees Rocks	PA	4
15137	North Versailles	PA	2
15137	Wilkins	PA	1
15139	Oakmont	PA	1
15143	Sewickley	PA	2
15144	Springdale	PA	2
15145	Turtle Creek	PA	2
15146	Monroeville	PA	12

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
15147	Verona	PA	2
15189	North Sewickley	PA	1
15201	Pittsburgh	PA	3
15202	Pittsburgh	PA	1
15203	Pittsburgh	PA	5
15205	Pittsburgh	PA	5
15205	Robinson	PA	2
15206	Pittsburgh	PA	9
15208	Pittsburgh	PA	1
15209	Millvale	PA	1
15209	Pittsburgh	PA	1
15210	Pittsburgh	PA	5
15211	Pittsburgh	PA	3
15212	Pittsburgh	PA	10
15213	Pittsburgh	PA	4
15214	Pittsburgh	PA	1
15216	Pittsburgh	PA	2
15217	Pittsburgh	PA	2
15218	Pittsburgh	PA	2
15219	Pittsburgh	PA	11
15220	Pittsburgh	PA	5
15221	Pittsburgh	PA	3
15222	Pittsburgh	PA	26
15223	Pittsburgh	PA	1
15224	Pittsburgh	PA	1
15225	Pittsburgh	PA	1
15226	Pittsburgh	PA	1
15227	Pittsburgh	PA	2
15228	Pittsburgh	PA	1
15229	Pittsburgh	PA	1
15229	Ross	PA	1
15232	Pittsburgh	PA	1
15233	"Pittsburgh "	PA	1
15233	Pittsburgh	PA	4
15234	Pittsburgh	PA	2
15235	Pittsburgh	PA	6
15236	Pittsburgh	PA	5
15237	Pittsburgh	PA	9
15238	Blawnox	PA	1
15238	Glenford	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
15238	Pittsburgh	PA	5
15239	Pittsburgh	PA	2
15240	Pittsburgh	PA	1
15241	Pittsburgh	PA	1
15241	Upper St Clair	PA	1
15243	Pittsburgh	PA	1
15260	Pittsburgh	PA	1
15275	Pittsburgh	PA	1
15301	Amwell	PA	1
15301	Atlasburg	PA	1
15301	Brownsville	PA	1
15301	South Strabane	PA	3
15301	Uniontown	PA	1
15301	Washington	PA	15
15314	Clover Hill	PA	1
15317	Canonsburg	PA	6
15317	McMurray	PA	4
15317	North Strabane	PA	1
15320	Carmichaels	PA	3
15322	Clarksville	PA	1
15323	Claysville	PA	2
15323	Donegal	PA	1
15328	Pittsburgh	PA	1
15331	Boswell	PA	1
15332	Finleyville	PA	2
15333	Fredericktown	PA	2
15337	Graysville	PA	1
15340	Hickory	PA	1
15341	Holbrook	PA	1
15342	Houston	PA	1
15347	Meadowlands	PA	1
15349	Mt Morris	PA	1
15359	Rogersville	PA	1
15364	Tionesta	PA	1
15367	Venetia	PA	1
15368	Vestaburg	PA	1
15370	Waynesburg	PA	15
15380	Wind Ridge	PA	2
15401	Uniontown	PA	16
15411	Addison	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
15415	Brier Hill	PA	1
15417	Brownsville	PA	2
15419	California	PA	2
15421	Wharton	PA	1
15423	Coal Center	PA	1
15425	Connellsville	PA	4
15431	Dunbar	PA	1
15436	Georges	PA	2
15437	Farmington	PA	1
15440	Wharton	PA	1
15445	North Union	PA	1
15445	Uniontown	PA	1
15449	Smock	PA	1
15450	Labelle	PA	1
15451	Springhill	PA	1
15456	Lemont Furnace	PA	1
15461	Masontown	PA	2
15464	Mill Run	PA	2
15470	Ohiopyle	PA	5
15470	Stewart	PA	1
15473	Perryopolis	PA	1
15474	Point Marion	PA	1
15478	Georges	PA	1
15478	Smithfield	PA	2
15482	Perry	PA	1
15486	Franklin	PA	1
15501	Glencoe	PA	1
15501	Hollsopple	PA	1
15501	New Centerville	PA	1
15501	Somerset	PA	30
15510	Somerset	PA	1
15522	Bedford	PA	14
15522	Hyndman	PA	1
15522	Loysburg	PA	1
15530	Berlin	PA	1
15530	Roxbury	PA	1
15531	Jenners	PA	1
15533	Breezewood	PA	4
15534	Buffalo Mills	PA	1
15535	Clearville	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
15536	Crystal Spring	PA	2
15536	Crystal Springs	PA	1
15537	Clearville	PA	1
15537	Everett	PA	6
15538	Fairhope	PA	1
15541	Friedens	PA	2
15542	Garrett	PA	1
15545	Hyndman	PA	1
15547	Jennerstown	PA	1
15550	Manns Choice	PA	1
15552	Meyersdale	PA	3
15554	New Paris	PA	1
15557	Rockwood	PA	2
15557	Somerset	PA	1
15558	Salisbury	PA	3
15559	Schellsburg	PA	7
15561	Masontown	PA	1
15563	Stoystown	PA	1
15601	Donegal	PA	1
15601	Greensburg	PA	30
15601	Hempfield	PA	1
15601	Youngwood	PA	1
15613	Apollo	PA	3
15618	Avonmore	PA	2
15622	Somerset	PA	1
15626	Delmont	PA	1
15627	Derry	PA	2
15642	Irwin	PA	6
15642	North Huntingdon	PA	4
15644	Jeannette	PA	3
15650	Latrobe	PA	6
15655	Laughlintown	PA	2
15656	Leechburg	PA	1
15656	Markle	PA	1
15658	Ligonier	PA	5
15666	Mount Pleasant	PA	1
15666	Mt Pleasant	PA	5
15668	Murrysville	PA	3
15668	Pittsburgh	PA	1
15670	Derry	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
15670	New Alexandria	PA	2
15672	New Stanton	PA	3
15677	Rector	PA	3
15690	Vandergrift	PA	1
15697	Youngwood	PA	1
15701	Indiana	PA	21
15705	Indiana	PA	2
15710	Clyde	PA	1
15710	Homer City	PA	1
15710	Smithport	PA	1
15714	Barnesboro	PA	1
15714	Northern Cambria	PA	3
15717	Blairsville	PA	3
15717	Burrell	PA	1
15724	Cherry Tree	PA	1
15728	Clymer	PA	1
15742	Patchinville	PA	1
15748	Homer City	PA	2
15757	Mahaffey	PA	1
15757	Punxsutawney	PA	1
15759	East Mahoning	PA	1
15759	Marion Center	PA	1
15765	Brush Valley	PA	1
15765	Cherry Hill	PA	2
15765	Penn Run	PA	3
15767	Perry	PA	1
15767	Punxsutawney	PA	13
15767	Ringgold	PA	1
15773	St Benedict	PA	1
15774	Indiana	PA	1
15774	Shelocta	PA	1
15779	Torrance	PA	2
15801	DuBois	PA	11
15823	Brockport	PA	1
15824	Brockway	PA	2
15825	Brookville	PA	11
15831	Dagus Mines	PA	1
15832	Driftwood	PA	2
15834	Emporium	PA	14
15834	Sizerville	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
15840	Falls Creek	PA	1
15845	Glen Hazel	PA	1
15845	Johnsonburg	PA	2
15849	Penfield	PA	5
15851	Reynoldsville	PA	5
15853	Portland Mills	PA	1
15853	Ridgway	PA	13
15856	Rockton	PA	1
15857	Ridgeway	PA	1
15857	Saint Marys	PA	1
15857	St Marys	PA	5
15860	Sigel	PA	6
15861	Austin	PA	1
15861	Sinnemahoning	PA	1
15868	Caledonia	PA	1
15868	Weedville	PA	1
15901	Johnstown	PA	10
15902	Johnstown	PA	3
15904	Johnstown	PA	16
15905	Johnstown	PA	6
15906	Johnstown	PA	1
15907	Johnstown	PA	1
15907	Morrellville	PA	1
15909	East Conemaugh	PA	1
15909	Johnstown	PA	4
15923	Bolivar	PA	1
15931	Ebensburg	PA	16
15931	Nicktown	PA	1
15931	Wilmore	PA	1
15937	Jerome	PA	1
15943	Nanty Glo	PA	2
15944	New Florence	PA	1
15944	Saint Clair	PA	1
15946	Portage	PA	4
15949	Robinson	PA	2
15951	St Michael	PA	1
15956	South Fork	PA	1
15957	Strongstown	PA	1
15958	Summerhill	PA	1
15961	Vintondale	PA	2

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
15963	Windber	PA	5
16001	Butler	PA	21
16018	Boyers	PA	1
16029	Butler	PA	1
16033	Evans City	PA	2
16037	Harmony	PA	1
16041	Karns City	PA	1
16046	Seven Fields	PA	1
16050	Petrolia	PA	2
16051	Portersville	PA	11
16052	Prospect	PA	1
16055	Sarver	PA	1
16056	Saxonburg	PA	1
16057	Slippery Rock	PA	5
16059	Valencia	PA	2
16061	West Sunbury	PA	1
16063	Zelienople	PA	2
16066	Cranberry	PA	3
16066	Cranberry Township	PA	4
16101	New Castle	PA	23
16102	New Castle	PA	1
16103	New Castle	PA	1
16105	Neshannock	PA	1
16105	New Castle	PA	1
16107	New Castle	PA	1
16114	Clarks Mills	PA	1
16117	Ellwood City	PA	3
16117	New Castle	PA	1
16121	Farrell	PA	3
16121	Oil City	PA	1
16125	Greenville	PA	4
16125	Shenango	PA	1
16125	Transfer	PA	1
16127	Grove City	PA	3
16131	Hartstown	PA	2
16133	Jackson Center	PA	2
16134	Jamestown	PA	5
16134	Westford	PA	1
16137	Grove City	PA	3
16137	Mercer	PA	15



<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
16138	Grove City	PA	1
16142	New Wilmington	PA	1
16143	Pulaski	PA	1
16146	Sharon	PA	5
16148	Farrell	PA	1
16148	Hermitage	PA	5
16153	Stoneboro	PA	1
16159	West Middlesex	PA	1
16161	Hermitage	PA	1
16161	Wheatland	PA	1
16195	Coudersport	PA	1
16201	Kittanning	PA	19
16213	Callensburg	PA	1
16214	Clarion	PA	15
16217	Cooksburg	PA	4
16218	Cowansville	PA	1
16222	Dayton	PA	1
16223	Distant	PA	1
16226	Ford City	PA	2
16229	Freeport	PA	1
16230	Hawthorn	PA	1
16232	Knox	PA	6
16235	Lucinda	PA	1
16238	Manorville	PA	1
16239	Marienville	PA	5
16242	New Bethlehem	PA	3
16254	Shippenville	PA	4
16259	Templeton	PA	1
16262	Worthington	PA	2
16301	Oil City	PA	12
16313	Clarendon	PA	3
16313	Warren	PA	1
16314	Cochranton	PA	2
16316	Conneaut Lake	PA	2
16319	Cranberry	PA	3
16321	Hickory	PA	1
16322	Endeavor	PA	1
16323	Franklin	PA	14
16325	Warren	PA	1
16327	Guys Mills	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
16332	Charleroi	PA	1
16335	Meadville	PA	20
16340	Pittsfield	PA	4
16341	Pleasantville	PA	4
16342	Polk	PA	2
16342	Wesley	PA	2
16345	Russel	PA	1
16345	Russell	PA	1
16346	Seneca	PA	4
16347	Sheffield	PA	1
16351	Enterprise	PA	1
16351	Tidioute	PA	4
16353	Pleasantville	PA	1
16353	Tionesta	PA	11
16354	Titusville	PA	3
16360	Townville	PA	3
16361	Tylersburg	PA	1
16364	Venus	PA	1
16365	North Warren	PA	2
16365	Warren	PA	14
16371	Youngsville	PA	3
16372	Clintonville	PA	2
16401	Albion	PA	2
16403	Cambridge Springs	PA	8
16404	Centerville	PA	2
16407	Corry	PA	6
16412	Edinboro	PA	8
16415	Fairview	PA	4
16417	Girard	PA	4
16421	Harborcreek	PA	1
16424	Espyville	PA	1
16424	Linesville	PA	7
16424	Linesvilles	PA	1
16426	McKean	PA	1
16428	North East	PA	3
16428	Northeast	PA	2
16433	Saegertown	PA	2
16438	Union City	PA	6
16441	Waterford	PA	4
16443	West Springfield	PA	5

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
16444	Edinboro	PA	2
16475	Albion	PA	1
16501	Erie	PA	14
16503	Erie	PA	5
16504	Erie	PA	3
16505	Erie	PA	12
16506	Erie	PA	3
16507	Erie	PA	7
16508	Erie	PA	3
16509	Erie	PA	13
16510	Erie	PA	4
16511	Erie	PA	1
16512	Erie	PA	1
16514	Erie	PA	2
16515	Erie	PA	1
16558	Erie	PA	1
16563	Erie	PA	1
16601	Altoona	PA	9
16601	Logan	PA	1
16602	Altoona	PA	12
166025451	Altoona	PA	1
16603	Altoona	PA	1
16611	Alexandria	PA	2
16611	Hollidaysburg	PA	1
16613	Ashville	PA	1
16617	Bellwood	PA	1
16619	Patton	PA	1
16621	Broad Top	PA	1
16625	Claysburg	PA	2
16630	Cresson	PA	4
16635	Duncansville	PA	2
16641	Gallitzin	PA	1
16645	Sinking Spring	PA	1
16646	Hastings	PA	2
16647	Hesston	PA	1
16647	James Creek	PA	2
16648	Alexandria	PA	1
16648	Freedom	PA	1
16648	Hollidaysburg	PA	15
16648	Rodman	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
16648	Williamsburg	PA	1
16651	Houtzdale	PA	3
16651	James Creek	PA	1
16652	Cassville	PA	1
16652	Huntingdon	PA	26
16652	Jackson	PA	1
16652	McAlevys Fort	PA	1
16652	Smithfield	PA	1
16655	Imler	PA	2
16656	Irvona	PA	1
16657	James Creek	PA	3
166579302	James Creek	PA	1
16662	Martinsburg	PA	3
16664	New Enterprise	PA	3
16666	Osceola Mills	PA	1
16667	Imler	PA	2
16668	Patton	PA	12
16669	Huntingdon	PA	1
16669	Petersburg	PA	2
16672	Riddlesburg	PA	1
16677	Sandy Ridge	PA	1
16678	Saxton	PA	2
16681	Philipsburg	PA	1
16684	Hollidaysburg	PA	1
16686	Snyder	PA	1
16686	Tyrone	PA	8
16689	Waterfall	PA	1
16698	Houtzdale	PA	1
16699	Cresson	PA	2
16701	Bradford	PA	12
16720	Austin	PA	9
16720	Emporium	PA	1
16724	Crosby	PA	1
16725	Bradford	PA	1
16725	Eldred	PA	1
16726	Cyclone	PA	1
16726	St Marys	PA	1
16731	Eldred	PA	2
16733	Hazel Hurst	PA	1
16735	Johnsonburg	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
16735	Kane	PA	6
16738	Lafayette	PA	1
16738	Lewis Run	PA	3
16740	Mt Jewett	PA	2
16743	Port Allegany	PA	2
16743	Port Allegheny	PA	3
16746	Roulette	PA	1
16748	Shinglehouse	PA	1
16749	Smethport	PA	8
16801	College	PA	4
16801	State College	PA	24
16802	State College	PA	2
16802	University Park	PA	1
16803	Clearfield	PA	1
16803	Patton	PA	1
16803	State College	PA	6
16820	Aaronsburg	PA	1
16823	Bellefonte	PA	13
16823	Pleasant Gap	PA	2
16823	Spring	PA	2
16826	Blanchard	PA	1
16827	Boalsburg	PA	3
16828	Centre Hall	PA	1
16830	Clearfield	PA	17
16830	Pennfield	PA	3
16832	Coburn	PA	2
16832	Milroy	PA	2
16832	Penn	PA	1
16833	Curwensville	PA	2
16836	Frenchville	PA	1
16838	Grampian	PA	2
16841	Curtain	PA	1
16841	Howard	PA	4
168414119	Howard	PA	1
16843	DuBois	PA	1
16843	Hyde	PA	2
16843	Patchinville	PA	1
16844	Union	PA	1
16845	Karthaus	PA	5
16847	Kylertown	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
16849	Cooper	PA	1
16853	Boggs	PA	1
16853	Milesburg	PA	3
16858	Morrisdale	PA	1
16865	Ferguson	PA	1
16865	Pennsylvania Furnace	PA	1
16866	Philipsburg	PA	11
16866	Rush	PA	1
168661649	Phillipsburg	PA	1
16870	Patton	PA	1
16870	Port Matilda	PA	4
16874	Snow Shoe	PA	5
16875	Potter	PA	1
16875	Snow Shoe	PA	1
16875	Spring Mills	PA	6
16881	Woodland	PA	3
16891	State College	PA	1
16901	Liberty	PA	1
16901	Morris	PA	1
16901	Wellsboro	PA	24
16901	Westfield	PA	1
16915	Coudersport	PA	19
16915	Galeton	PA	1
16915	Genesee	PA	1
16917	Covington	PA	2
16921	Gaines	PA	1
16922	Cross Fork	PA	1
16922	Galeton	PA	7
16922	Germania	PA	1
16922	Pike	PA	1
16923	Genesee	PA	1
16927	Harrison Valley	PA	2
16929	Lawrenceville	PA	4
16930	Tioga	PA	1
16933	Mansfield	PA	6
16935	Middlebury Center	PA	2
16936	Millerton	PA	1
16938	Morris	PA	4
16940	Nelson	PA	2
16943	Sabinsville	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
16946	Tioga	PA	3
16947	Troy	PA	4
16948	Ulysses	PA	2
16950	Westfield	PA	4
17001	Camp Hill	PA	2
17003	Annville	PA	5
17006	Blain	PA	5
17011	Camp Hill	PA	18
17013	Carlisle	PA	23
17013	Middlesex	PA	1
17013	Newville	PA	1
17014	Middletown	PA	1
17015	Carlisle	PA	1
17016	Cornwall	PA	1
17018	Dauphin	PA	3
17019	Dillsburg	PA	1
17020	Amity Hall	PA	1
17020	Duncannon	PA	5
17022	Elizabethtown	PA	5
17023	Elizabethville	PA	3
17025	East Pennsboro	PA	2
17025	Enola	PA	4
17026	Fredericksburg	PA	1
17028	Grantville	PA	8
17032	Halifax	PA	7
17033	Hershey	PA	8
17035	Honey Grove	PA	1
17036	Hummelstown	PA	3
17038	Jonestown	PA	6
17042	Cleona	PA	1
17042	Lebanon	PA	11
17043	Lemoyne	PA	7
17043	Wormleysburg	PA	2
17044	Lewistown	PA	16
17044	Mill Hall	PA	1
17044	Milroy	PA	1
17045	Lebanon	PA	1
17045	Liverpool	PA	2
17046	Lebanon	PA	4
17047	Loysville	PA	3

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
17048	Lykens	PA	1
17050	Mechanicsburg	PA	11
17051	McVeytown	PA	1
17052	Mapleton Depot	PA	1
17053	East Pennsboro	PA	2
17055	Mechanicsburg	PA	14
17057	Londonderry	PA	1
17057	Middletown	PA	16
17058	Mifflin	PA	1
17059	East Waterford	PA	1
17059	Mifflintown	PA	9
17060	Mill Creek	PA	1
17062	Millerstown	PA	1
17063	Milroy	PA	3
17064	Mt Gretna	PA	1
17066	Mount Union	PA	1
17066	Mt Union	PA	1
17067	Myerstown	PA	6
17068	Liverpool	PA	1
17068	New Bloomfield	PA	4
17070	Fairview	PA	2
17070	New Cumberland	PA	13
17073	Newmanstown	PA	1
17074	Newport	PA	11
17078	Grantville	PA	1
17078	Palmyra	PA	1
17082	Port Royal	PA	1
17084	Bethlehem	PA	1
17084	Milroy	PA	1
17084	Reedsville	PA	1
17090	Shermans Dale	PA	1
17093	Summerdale	PA	2
17094	Thompsontown	PA	1
17098	Williamstown	PA	2
17099	Yeagertown	PA	1
17101	Harrisburg	PA	16
17102	Harrisburg	PA	9
17103	Harrisburg	PA	11
17104	Harrisburg	PA	15
17104	Pennbrook	PA	1



<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
171043209	Harrisburg	PA	1
17105	Harrisburg	PA	8
17108	Harrisburg	PA	3
17109	Harrisburg	PA	6
17110	Harrisburg	PA	37
17111	Harrisburg	PA	16
17112	Harrisburg	PA	18
17112	West Hanover	PA	1
17113	Steelton	PA	1
17120	Elizabethtown	PA	1
17120	Harrisburg	PA	17
17121	Harrisburg	PA	1
17124	Harrisburg	PA	1
17125	Harrisburg	PA	3
171280393	Harrisburg	PA	1
17201	Chambersburg	PA	21
17201	Roxbury	PA	1
17202	Chambersburg	PA	2
17212	Big Cove Tannery	PA	1
17222	Fayetteville	PA	5
17223	Fort Littleton	PA	1
17224	Fort Loudon	PA	1
17225	Greencastle	PA	5
17228	Harrisonville	PA	3
17233	McConnellsburg	PA	10
17233	McConnellsburg	PA	1
17235	Greencastle	PA	2
17235	Marion	PA	2
17236	Mercersburg	PA	2
17241	Newville	PA	7
17243	Orbisonia	PA	1
17254	Scotland	PA	1
17257	Shippensburg	PA	10
17261	South Mountain	PA	3
17262	Spring Run	PA	1
17265	Upper Strawsburg	PA	1
17267	Warfordsburg	PA	3
17268	Way	PA	1
17268	Waynesboro	PA	5
172681890	Waynesboro	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
17302	Airville	PA	1
17303	Biglerville	PA	1
17307	Biglerville	PA	1
17309	Brouge	PA	1
17315	Dover	PA	3
17315	Lewisberry	PA	3
17316	East Berlin	PA	1
17319	Etters	PA	2
17320	Fairfield	PA	2
17324	Gardners	PA	8
17325	Bendersville	PA	1
17325	Cashtown	PA	1
17325	Fairfield	PA	1
17325	Gettysburg	PA	16
17325	Heidlersburg	PA	1
17325	Littlestown	PA	1
173257565	Gettysburg	PA	1
17331	Hanover	PA	8
173318531	Hanover	PA	1
17337	Hanover	PA	1
17339	Lewisberry	PA	4
17345	Manchester	PA	1
17350	New Oxford	PA	2
17356	Red Lion	PA	4
17361	Shrewsbury	PA	2
17363	Stewartstown	PA	1
17364	Thomasville	PA	2
17372	York Springs	PA	1
17401	York	PA	7
17402	York	PA	9
17403	York	PA	7
17404	York	PA	8
17405	Brodbeck	PA	1
17405	Dillsburg	PA	1
17405	Dover	PA	1
17405	Red Lion	PA	1
17405	Shrewsbury	PA	1
17405	York	PA	7
17406	York	PA	3
17512	Columbia	PA	4

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
17517	Denver	PA	4
17518	Drumore	PA	1
17518	St Marys	PA	1
17520	East Petersburg	PA	1
17522	Ephrata	PA	6
17527	Gap	PA	1
17528	Goodville	PA	1
17534	Intercourse	PA	1
17536	Kirkwood	PA	1
17540	Leola	PA	1
17543	Lititz	PA	2
17545	Lancaster	PA	1
17545	Manheim	PA	4
17551	Millersville	PA	2
17552	Mount Joy	PA	3
17552	Mt Joy	PA	1
17557	New Holland	PA	2
17566	Buck	PA	1
17566	Quarryville	PA	1
17579	Strasburg	PA	1
17581	East Earl	PA	1
17584	Willow Street	PA	1
17601	Lancaster	PA	9
17601	Manheim	PA	1
17602	Lancaster	PA	11
17602	Pancaster	PA	1
17603	Lancaster	PA	10
17604	Columbia	PA	1
17604	Gap	PA	1
17604	Lancaster	PA	2
17604	Leola	PA	1
17604	Murrell	PA	1
17604	Quarryville	PA	1
17604	Rheems	PA	1
17670	Lancaster	PA	1
17701	South Williamsport	PA	1
17701	Williamsport	PA	28
17702	South Williamsport	PA	1
17702	Williamsport	PA	2
17703	Williamsport	PA	2

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
17724	Canton	PA	2
17729	Cross Fork	PA	3
17737	Hughesville	PA	1
17738	Chapman	PA	1
17738	Hyner	PA	1
17739	Jersey Mills	PA	3
17740	Jersey Shore	PA	12
17740	Rauchtown	PA	1
17744	Linden	PA	1
17745	Lock Haven	PA	15
17745	Woodward	PA	1
17747	Loganton	PA	7
17747	Logantown	PA	1
17748	McElhattan	PA	1
17751	Mill Creek	PA	1
17751	Mill Hall	PA	3
17752	Montgomery	PA	2
17754	Highspire	PA	1
17754	Lock Haven	PA	1
17754	Montoursville	PA	13
17754	Muncy	PA	1
17754	Trout Run	PA	1
17756	Muncy	PA	3
17760	North Bend	PA	1
17764	Hyner	PA	1
17764	Renovo	PA	11
17765	Roaring Branch	PA	3
17769	Slate Run	PA	1
17774	Unityville	PA	1
17776	Brookside	PA	1
17776	English Center	PA	1
17776	Waterville	PA	7
17779	Woolrich	PA	1
17782	Shamokin	PA	1
17801	Paxinos	PA	1
17801	Sunbury	PA	19
17813	Beavertown	PA	1
17814	Benton	PA	4
17814	Sweet Valley	PA	2
17815	Berwick	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
17815	Bloomsburg	PA	20
17815	Milton	PA	1
17815	Numidia	PA	1
17815	South Centre	PA	1
17821	Danville	PA	9
17821	Mausedale	PA	2
17823	Dornsife	PA	2
17824	Elysburg	PA	2
17831	Hummels Wharf	PA	1
17835	Laurelton	PA	2
17837	Lewisburg	PA	10
17838	Hegins	PA	1
17841	Decatur	PA	1
17841	McClure	PA	1
17842	Middleburg	PA	3
17844	Mifflinburg	PA	8
17846	Millville	PA	3
17847	Milton	PA	6
17851	Mount Carmel	PA	1
17851	Mt Carmel	PA	2
17853	Mt Pleasant Mills	PA	1
17857	Northumberland	PA	1
17860	Paxinos	PA	1
17866	Coal Township	PA	1
178664170	Coal Township	PA	1
17870	Beavertown	PA	1
17870	Selinsgrove	PA	12
17872	Shamokin	PA	2
17882	Troxelville	PA	1
17901	Pottsville	PA	18
17921	Ashland	PA	1
17922	Landingville	PA	1
17927	Centralia	PA	3
17929	Cressona	PA	1
17931	Frackville	PA	4
17931	Shenandoah	PA	1
17932	Frackville	PA	1
17932	Stroudsburg	PA	1
17938	Hegins	PA	1
17948	Mahanoy City	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
17954	Minersville	PA	2
17954	Pottsville	PA	1
17961	Orwigsburg	PA	2
17963	Pine Grove	PA	5
17967	Ringtown	PA	2
17972	Schuylkill Haven	PA	4
17976	Shenandoah	PA	2
17981	Tremont	PA	2
17983	Valley View	PA	1
18014	Allentown	PA	1
18014	Bath	PA	3
18015	Bethlehem	PA	5
18017	Bethlehem	PA	13
18017	East Allen	PA	1
18017	Freemansburg	PA	1
18018	Bethlehem	PA	5
18020	Bethlehem	PA	2
18031	Breinigsville	PA	2
18034	Center Valley	PA	1
18034	Upper Saucon	PA	2
180349551	Center Valley	PA	1
18036	Coopersburg	PA	2
18038	Danielsville	PA	1
18040	Easton	PA	2
18041	East Greenville	PA	1
18042	Easton	PA	11
18042	Palmer	PA	1
18042	Williams	PA	1
18043	Palmer	PA	1
18044	Easton	PA	1
18045	Easton	PA	5
18047	Carbondale	PA	1
18049	Emmaus	PA	1
18052	Upper Macungie	PA	1
18052	Whitehall	PA	8
18053	Germansville	PA	1
18055	Hellertown	PA	3
18060	Nazareth	PA	1
18062	Macungie	PA	1
180629687	Macungie	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
18064	Nazareth	PA	3
180648624	Nazareth	PA	1
18066	New Smithville	PA	1
18066	New Tripoli	PA	1
18067	Northampton	PA	3
18069	Orefield	PA	1
18071	Palmerton	PA	1
18072	Pen Argyl	PA	2
18072	Philadelphia	PA	1
18073	Pennsburg	PA	3
18078	Schnecksville	PA	2
18087	Trexlerstown	PA	1
18088	Walnutport	PA	1
18091	Wind Gap	PA	3
18092	Zionville	PA	1
18101	Allentown	PA	6
18102	Allentown	PA	7
18103	Allentown	PA	17
18103	Emerald	PA	1
18104	Allentown	PA	10
18104	Cedar Crest	PA	1
18105	Allentown	PA	2
18106	Allentown	PA	4
18106	Wescosville	PA	1
18109	Allentown	PA	5
18181	Allentown	PA	1
18201	Butler Twp	PA	2
18201	Dennison Twp	PA	1
18201	Hazleton	PA	13
18201	West Hazleton	PA	1
18202	Hazelton	PA	1
18202	Hazleton	PA	1
18214	Barnesville	PA	3
18219	Conyngham	PA	2
18220	Delano	PA	1
18222	Drums	PA	4
18224	Freeland	PA	2
18229	Jim Thorpe	PA	6
18232	Lansford	PA	1
18235	Franklin	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
18235	Lehighton	PA	14
18240	Nesquehoning	PA	1
18251	Sybertsville	PA	1
18252	Tamaqua	PA	8
18255	Weatherly	PA	3
18255	White Haven	PA	1
18301	East Stroudsburg	PA	6
18320	Analomink	PA	1
18322	Brodheads ville	PA	1
18324	Bushkill	PA	2
18324	Middle Smithfield	PA	1
18326	Cresco	PA	2
18327	Delaware Water Gap	PA	1
18328	Dingmans Ferry	PA	2
18331	Gilbert	PA	1
18334	Long Pond	PA	1
18335	Marshalls Creek	PA	1
18336	Matamoras	PA	4
18337	Hawley	PA	2
18337	Milford	PA	8
18344	Mount Pocono	PA	1
18344	Mt Pocono	PA	3
18346	Pocono Summit	PA	1
18352	Reeders	PA	1
18353	Saylorsburg	PA	1
18360	Lords Valley	PA	1
18360	Snydersville	PA	1
18360	Stroudsburg	PA	9
18370	Swiftwater	PA	2
18372	Tannersville	PA	3
18403	Archbald	PA	2
18405	Beach Lake	PA	2
18407	Carbondale	PA	6
18411	Clarks Green	PA	1
18411	Clarks Summit	PA	8
18411	Scranton	PA	1
18411	Waverly	PA	1
18414	Dalton	PA	5
18415	Damascus	PA	5
18415	Tyler Hill	PA	1



<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
18417	Equinunk	PA	2
18421	Forest City	PA	1
18424	Gouldsboro	PA	1
18424	Thornhurst	PA	1
18424	Tobyhanna	PA	1
18425	Blooming Grove	PA	1
18426	Greentown	PA	7
18427	Hamlin	PA	3
18428	Hawley	PA	6
184289004	Hawley	PA	1
18431	Equinunk	PA	1
18431	Honesdale	PA	16
18431	Rileyville	PA	1
18433	Mayfield	PA	1
18435	Lackawaxen	PA	4
18436	Jefferson	PA	1
18436	Moscow	PA	1
18436	Mt Cobb	PA	1
18444	Covington	PA	1
18444	Moscow	PA	2
18446	Nicholson	PA	1
18447	Olyphant	PA	1
18452	Blakely	PA	1
18452	Peckville	PA	1
18453	Pleasant Mount	PA	1
18457	Rowland	PA	1
18458	Shohola	PA	1
18464	Tafton	PA	1
18466	Tobyhanna	PA	5
18469	Tyler Hill	PA	1
18472	Waymart	PA	1
18501	Scranton	PA	1
18503	Carbondale	PA	1
18503	Scranton	PA	15
18504	Scranton	PA	5
18505	Scranton	PA	7
18507	Moosic	PA	2
18508	Scranton	PA	2
18509	Scranton	PA	4
18510	Scranton	PA	2

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
18512	Dunmore	PA	8
18512	Throop	PA	2
18517	Taylor	PA	4
18518	Old Forge	PA	3
18519	Dickson City	PA	2
18603	Berwick	PA	4
18603	Briar Creek	PA	1
18610	Blakeslee	PA	3
18612	Dallas	PA	6
18614	Dushore	PA	7
18616	Forksville	PA	6
18619	Hillsgrove	PA	4
18621	Hunlock Creek	PA	1
18626	Laporte	PA	7
18627	Lehman	PA	1
18629	Mehoopany	PA	3
18630	Meshoppen	PA	1
18634	Nanticoke	PA	5
18636	Noxen	PA	1
18640	Hughestown	PA	1
18640	Pittston	PA	7
18641	Avoca	PA	1
18641	DuPont	PA	1
18643	Pittston	PA	1
18643	West Pittston	PA	3
18644	West Wyoming	PA	1
18644	Wyoming	PA	8
18651	Plymouth	PA	1
18655	Shickshinny	PA	1
18656	Sweet Valley	PA	1
18657	Lemon	PA	1
18657	Meshoppen	PA	1
18657	Nicholson	PA	1
18657	Tunkhannock	PA	16
18661	Drums	PA	1
18661	White Haven	PA	10
18701	Wilkes Barre	PA	7
18702	Wilkes Barre	PA	17
18703	Courtdale	PA	1
18703	Kyttle	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
18703	Sugar Notch	PA	1
18703	Wilkes Barre	PA	1
18704	Edwardsville	PA	1
18704	Forty Fort	PA	1
18704	Kingston	PA	2
18704	Wilkes Barre	PA	1
18705	Wilkes Barre	PA	3
18706	Hanover Township	PA	1
18706	Laurel Run	PA	1
18706	Sugar Notch	PA	1
18706	Wilkes Barre	PA	5
18707	Mountain Top	PA	2
18707	Nuangola	PA	2
18709	Larksville	PA	1
18709	Luzerne	PA	1
18711	Wilkes Barre	PA	4
18801	Auburn	PA	1
18801	Montrose	PA	10
18814	Burlington	PA	1
18817	East Smithfield	PA	1
18821	Great Bend	PA	3
18822	Hallstead	PA	1
18826	Kingsley	PA	3
18833	New Albany	PA	1
18834	New Milford	PA	5
18840	Sayre	PA	2
18840	South Waverly	PA	1
18847	Susquehanna	PA	3
18848	Allis Hollow	PA	1
18848	Canton	PA	1
18848	Milan	PA	1
18848	Towanda	PA	13
18848	Wyalusing	PA	1
18853	Wyalusing	PA	2
18854	Wysox	PA	1
18901	Doylestown	PA	7
18901	New Britain	PA	1
18910	Bedminster	PA	1
18914	Chalfont	PA	1
18916	Danboro	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
18917	Dublin	PA	1
18928	Buckingham	PA	1
18929	Jamison	PA	1
18936	Montgomeryville	PA	1
18938	New Hope	PA	1
18940	Newtown	PA	5
18942	Ottsville	PA	1
18944	Bedminister	PA	1
18944	Bedminster	PA	2
18944	Perkasie	PA	5
18947	Pipersville	PA	2
18947	Plumstead	PA	1
18947	Upper Black Eddy	PA	1
18949	Pipersville	PA	1
18951	Quakertown	PA	8
18953	Bucksville	PA	1
18953	Revere	PA	1
18954	Richboro	PA	1
18960	Sellersville	PA	2
18964	Souderton	PA	2
18966	Holland	PA	1
18966	Newtown	PA	1
18966	Southampton	PA	1
18972	Upper Black Eddy	PA	1
18974	Warminster	PA	5
18976	Doylestown	PA	1
18976	Warrington	PA	2
18977	Washington Crossing	PA	3
19001	Abington	PA	2
19001	Roslyn	PA	1
19002	Ambler	PA	2
19002	Maple Glen	PA	1
19003	Ardmore	PA	3
19004	Bala Cynwyd	PA	2
19006	Huntingdon Valley	PA	4
19007	Bristol	PA	11
19008	Broomall	PA	4
19010	Bryn Mawr	PA	2
19010	Rosemont	PA	2
19012	Cheltenham	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
19013	Chester	PA	11
19014	Aston	PA	2
19015	Brookhaven	PA	2
19018	Aldan	PA	1
19020	Bensalem	PA	17
19020	Cornwells	PA	2
19022	Eddystone	PA	1
19023	Darby	PA	2
19025	Dresher	PA	2
19026	Drexel Hill	PA	1
19027	Elkins Park	PA	2
19029	Essington	PA	1
19030	Fairless	PA	1
19030	Fairless Hills	PA	3
19031	Flourtown	PA	1
19033	Folsom	PA	1
19034	Fort Washington	PA	6
19038	Glenside	PA	1
19038	Wyndmoor	PA	2
19040	Hatboro	PA	3
19041	Haverford	PA	1
19043	Holmes	PA	1
19044	Horsham	PA	5
19046	Cheltenham	PA	1
19046	Jenkintown	PA	1
19047	Bensalem	PA	1
19047	Langhorne	PA	2
19047	Middletown	PA	3
19047	Penndel	PA	2
19050	Lansdowne	PA	1
19053	Bensalem	PA	1
19053	Feasterville Trevose	PA	2
19055	Levittown	PA	1
19056	Levittown	PA	1
19061	Bethel	PA	1
19061	Boothwyn	PA	1
19061	Garnet Valley	PA	1
19061	Linwood	PA	1
19061	Lower Chichester	PA	2
19061	Marcus Hook	PA	4

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
19063	Bortondale	PA	2
19063	Media	PA	10
19064	Springfield	PA	9
19066	Merion Station	PA	1
19067	Lower Makefield	PA	1
19067	Morrisville	PA	3
19067	Yardley	PA	4
19072	Lower Marion	PA	1
19072	Narberth	PA	1
19073	Newtown Square	PA	5
19075	Oreland	PA	1
19076	Prospect Park	PA	2
19078	Ridley Park	PA	1
19082	Upper Darby	PA	6
19083	Havertown	PA	2
19085	Villanova	PA	2
19086	Wallingford	PA	3
19087	St Davids	PA	1
19087	Wayne	PA	4
19090	Willow Grove	PA	2
19094	Ridley	PA	1
19094	Woodlyn	PA	2
19095	Wyncote	PA	2
19102	Cheltenham	PA	1
19102	Philadelphia	PA	4
19103	Philadelphia	PA	6
19104	Philadelphia	PA	9
19106	Philadelphia	PA	15
19107	Bridgeville	PA	1
19107	Philadelphia	PA	13
19108	Philadelphia	PA	1
19111	Philadelphia	PA	4
19113	Philadelphia	PA	3
19113	Tinicum	PA	2
19114	Philadelphia	PA	7
19115	Philadelphia	PA	2
19116	Philadelphia	PA	3
19118	Philadelphia	PA	1
19119	Philadelphia	PA	2
19120	Philadelphia	PA	2

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
19121	Philadelphia	PA	3
19122	Philadelphia	PA	1
19123	Philadelphia	PA	6
19124	Philadelphia	PA	8
19125	Philadelphia	PA	5
19127	Philadelphia	PA	1
19128	Philadelphia	PA	5
19129	Philadelphia	PA	1
19130	Philadelphia	PA	7
19131	Philadelphia	PA	4
19132	Philadelphia	PA	6
19133	Philadelphia	PA	3
19134	Philadelphia	PA	7
19135	Philadelphia	PA	8
19136	Philadelphia	PA	7
19137	Philadelphia	PA	1
19138	Philadelphia	PA	3
19139	Philadelphia	PA	5
19140	Philadelphia	PA	3
19141	Philadelphia	PA	3
19142	Philadelphia	PA	5
19143	Philadelphia	PA	3
19144	Philadelphia	PA	10
19145	Philadelphia	PA	2
19146	Philadelphia	PA	4
19147	Philadelphia	PA	8
19148	Philadelphia	PA	10
19149	Philadelphia	PA	3
19151	Philadelphia	PA	3
19152	Philadelphia	PA	4
19153	Philadelphia	PA	8
19154	Philadelphia	PA	6
19301	Paoli	PA	2
19311	Avondale	PA	1
19312	Berwyn	PA	3
19317	Chadds Ford	PA	1
19319	Cheyney	PA	2
19319	Thornbury	PA	1
19320	Coatesville	PA	13
19320	Newlin	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
19320	West Caln	PA	1
19335	Downingtown	PA	8
19340	Exton	PA	1
19341	Exton	PA	7
19342	Thornton	PA	1
19343	Glenmoore	PA	1
19344	Honey Brook	PA	1
19344	Warwick	PA	1
19348	Kennett Square	PA	5
19350	Landenberg	PA	2
19350	Landenburg	PA	1
19352	Lincoln University	PA	1
19355	East Whiteland	PA	1
19355	Malvern	PA	7
19358	Lionville	PA	1
19363	Oxford	PA	4
19365	Parkesburg	PA	3
19372	Huntingdon	PA	1
19372	Thorndale	PA	2
19374	Toughkenamon	PA	2
19380	Little Jackson	PA	1
19380	West Chester	PA	12
19382	Chadds Ford	PA	1
19382	Pocopson	PA	1
19382	West Chester	PA	4
19383	West Chester	PA	4
19390	West Grove	PA	1
19401	Norristown	PA	19
19403	Audubon	PA	1
19403	Autubon	PA	1
19403	Eagleville	PA	2
19403	East Norriton	PA	1
19403	Norristown	PA	4
19403	West Norriton	PA	1
19404	Gladwyn	PA	1
19404	Norristown	PA	4
19405	Bridgeport	PA	2
19406	King of Prussia	PA	8
19408	Eagleville	PA	1
19422	Blue Bell	PA	3



<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
19426	Collegeville	PA	9
19426	Graterford	PA	1
19426	Trappe	PA	1
19428	Conshohocken	PA	5
19430	Creamery	PA	1
19438	Harleysville	PA	3
19440	Hatfield	PA	2
19443	Kulpsville	PA	2
19444	Lafayette Hill	PA	1
19446	Landsdale	PA	1
19446	Lansdale	PA	4
19454	North Wales	PA	2
19456	Oaks	PA	1
19460	Phoenixville	PA	4
19462	Crumlyn	PA	1
19462	Plymouth	PA	1
19462	Plymouth Meeting	PA	4
19464	Pottstown	PA	9
194645104	Pottstown	PA	1
19465	Pottstown	PA	1
19468	Limerick	PA	1
19468	Royersford	PA	2
19473	Schwenksville	PA	5
19473	Skippack	PA	1
19475	Spring City	PA	3
19477	Spring House	PA	1
19482	Valley Forge	PA	1
19483	Harleysville	PA	1
19506	Bernville	PA	2
19508	Birdsboro	PA	3
19510	Blandon	PA	2
19512	Boyertown	PA	1
19518	Dougllassville	PA	2
19520	Elverson	PA	3
19522	Fleetwood	PA	2
19525	Gilbertsville	PA	1
19526	Hamburg	PA	8
19530	Kutztown	PA	5
19534	Lenhartsville	PA	1
19540	Mohnton	PA	1

<b>Zip</b>	<b>PO City</b>	<b>ST</b>	<b>Count of Sites</b>
19543	Morgantown	PA	1
19549	Port Clinton	PA	1
19560	Temple	PA	2
19565	Wernersville	PA	2
19567	Womelsdorf	PA	2
19601	Reading	PA	5
19602	Reading	PA	2
19604	Reading	PA	1
19605	Reading	PA	13
19606	Reading	PA	2
19606	Saint Lawrence	PA	1
19606	Shillington	PA	1
19607	Cumru	PA	1
19607	Reading	PA	1
19607	Shillington	PA	2
196073645	Kenhorst	PA	1
19608	Sinking Spring	PA	3
19609	West Lawn	PA	1
19610	Wyomissing	PA	1
19611	Reading	PA	2
19611	West Reading	PA	1
19612	Reading	PA	2
19648	Royersford	PA	1
37214	Nashville	TN	1
6340	Groton	CT	1
97201	Portland	OR	1
9827	Rockledge	PA	1

**SCHEDULE O**

**BENCHMARKING PROCEDURES**

## **1. Annual Price Reviews**

(a) The Parties intend that, throughout the Term, the Fees will be within the lowest quartile of market prices for services of a similar nature, volume and scope to the Services offered by top tier service providers generally (the “Target Market”). Accordingly, commencing within thirty (30) days of each anniversary of the Effective Date, Contractor shall conduct a formal review of the Fees to gain a market comparison (for this purpose, Contractor’s portfolio of other telecommunication outsourcing Customers as well as the processing services outsourcing portfolios of other top tier service providers of the quality and price of the Services as compared to the quality and price of comparable services within the Target Market. In accordance with procedures to be agreed upon by the Commonwealth Project Manager and the Contractor Project Manager, within one hundred twenty (120) days of each anniversary of the Effective Date (the “Pricing Review Date”), Contractor shall meet with Commonwealth to review Contractor’s findings (including underlying data and methodologies for producing the findings) with respect to such comparison and, to the extent appropriate and at Contractor’s option, offer to adjust the Fees such that the Fees are within the lowest quartile of market prices for comparable services within the Target Market. If the Parties are in agreement with respect to the proposed adjustment, Contractor shall adjust the Fees effective as of the Pricing Review Date on a prospective basis. For the avoidance of doubt, such adjusted Fees shall not be applied retroactively to past invoices or Services. In no event will Contractor increase the Fees as a result of any annual review pursuant to this Section 1.

(b) In the event that the Parties do not agree with respect to a proposed adjustment of the Fees and Commonwealth has not previously delivered a Benchmarking Retirement Election (as defined below) to Contractor, Commonwealth may elect to invoke the Benchmarking Process set forth below. In the event that the Parties do not agree with respect to a proposed adjustment of the Fees and Commonwealth has previously delivered a Benchmarking Retirement Election to Contractor, Commonwealth may seek to resolve the dispute in accordance with the dispute resolution procedures described in Article 30 (Contract Controversies) of the Contract. In the event that such dispute is resolved in Commonwealth’s favor, Contractor shall adjust the Fees with retroactive application to the relevant Pricing Review Date. In the event that Contractor refuses to make such an adjustment to the Fees, Commonwealth may elect to terminate without any Termination Fees the relevant Service under a work order, the entire relevant work order, or the entire Contract (and all associated work orders) as of the date specified by Commonwealth in its notice of termination.

## **2. Annual Technology Reviews**

Within thirty (30) days of each anniversary of the Effective Date, Contractor shall, in accordance with procedures agreed upon by the Commonwealth Project Manager and the Contractor Project Manager, identify for Commonwealth any technologies that have emerged (within Contractor’s organization or, to the knowledge of Contractor, within the processing services market generally), that, if implemented by Commonwealth (or by Contractor on Commonwealth’s behalf) would materially benefit Commonwealth in terms of price reductions or performance improvement. If requested by Commonwealth, within sixty (60) days Contractor shall provide Commonwealth with proposals for the implementation of such technology or technologies. If approved by Commonwealth,

Contractor shall implement such technology or technologies on behalf of Commonwealth as expeditiously as possible, subject to Change Control Procedures.

### **3. Annual Best Practices Reviews**

Within thirty (30) days of each anniversary of the Effective Date, Contractor shall, in accordance with procedures agreed upon by the Commonwealth Project Manager and the Contractor Project Manager, identify for Commonwealth any best practices that have emerged (within Contractor's organization or, to the knowledge of Contractor, within the processing services outsourcing market generally), that, if implemented by Commonwealth (or by Contractor on Commonwealth's behalf) would materially benefit Commonwealth in terms of price reductions or performance improvement. If requested by Commonwealth, within sixty (60) days Contractor shall provide Commonwealth with proposals for the implementation of such best practices in a manner consistent with the Change Control Procedures of the Contract. If approved by Commonwealth, Contractor shall implement such best practices on behalf of Commonwealth as expeditiously as possible.

### **4. Benchmarking Process**

(a) The benchmarking process shall be an objective measurement and comparison process agreed by the Parties that will measure the quality and price of the benchmarked Services as compared to the quality and price of services of a similar nature, volume, and scope provided by other top tier outsourcing vendors (collectively, the "Benchmarking Process"). The Benchmarking Process shall include reasonable normalization factors agreed by the Parties, including elements to account for amounts associated with the management and integration of Services across numerous Service Areas, if applicable. The Parties, in conjunction with the Benchmarking Process, shall determine the Benchmarking Process within 30 days after Commonwealth's request to initiate a Benchmarking Process. If the Parties fail to agree to the Benchmarking Process within such 30-day period, the Parties shall immediately escalate any unresolved issues regarding the Benchmarking Process via the dispute resolution process set forth in Article 30 (Contract Controversies) of the Contract.

(b) The Benchmarking Process shall be conducted by an independent third-party benchmarker ("Benchmarking Process") chosen by Commonwealth from the list of approved Benchmarkers specified on Schedule O-2 (*Approved Benchmarkers*) at a time and with regard to the portion of the Services specified by Commonwealth in its sole discretion, provided that (i) Commonwealth shall not initiate the Benchmarking Process until at least 24 months after the Effective Date, and (ii) the portion of the Services subject to the Benchmarking Process shall include at least one of, or any combination of, the following categories of Services: (A) [SOW reference], (B) [SOW reference], or (C) [SOW reference] [consider logical groupings of SOWs/Service Areas], or such other Service Areas or Services as may be agreed by the Parties. Contractor shall provide Commonwealth on or about each anniversary of the Effective Date with Contractor's then current list of preferred benchmarkers for the relevant Services. Upon Commonwealth's approval, such approved benchmarkers shall be added to the list of approved Benchmarkers set forth on Schedule O-2 (*Approved Benchmarkers*).

(c) The Benchmarking Process's data used for the Benchmarking Process shall be no more than

eighteen (18) months old (as measured against the date that Commonwealth provided notice initiating a Benchmarking Process) unless the Parties agree that older data may be used.

(d) The Benchmarking Process shall be a comparison between the prices of the Target Market and the Fees agreed in the Contract in order to ascertain whether such Fees are in the lowest quartile of the Target Market at the date of Commonwealth's notice of commencement of the Benchmarking Process. The Benchmarker shall use its expert judgment, together with a range of prices and tolerances to decide whether such objective has been met.

(e) The Parties shall be equally responsible for the charges charged by the Benchmarker to conduct the Benchmark Process. If the Benchmarkers are no longer providing the services required to conduct the Benchmarking Process at the time Commonwealth elects to conduct the Benchmarking Process, or if Commonwealth and Contractor agree that an alternative Benchmarker should be used, the Parties shall promptly designate a replacement Benchmarker. If the Parties do not agree within 15 days on a replacement Benchmarker, Commonwealth shall designate the Benchmarker in its sole discretion, provided that such Benchmarker shall not be a competitor of Contractor in the Services.

(f) Contractor shall at its expense cooperate with and assist the Benchmarker and any other third parties involved in the Benchmarking Process, including meeting with Commonwealth and the Benchmarker before and throughout the Benchmarking Process and providing data relating to the provision of the Services (excluding internal cost data or data of other Contractor customers), as requested by Commonwealth or the Benchmarker.

(g) The Benchmarker shall sign a confidentiality agreement in favor of both Contractor and Commonwealth in which the Benchmarker agrees: (i) that the information and data obtained or produced by the Benchmarker in connection with the Benchmarking Process (including the results of the Benchmarking Process and any related reports) constitutes the Confidential Information of Commonwealth and Contractor, (ii) that it will not use or disclose such confidential information and data except in anonymized form in relation to aggregated service performance data used by the Benchmarker for the purposes of conducting benchmarking services, and further except for the benefit of Contractor and Commonwealth in connection with this Contract, and (iii) the Benchmarker will conduct the Benchmarking Process in a manner that does not unreasonably interfere with Contractor's ongoing service operations or impair Contractor's ability to achieve the Service Levels under the Contract.

## **5. Benchmarking Review and Adjustments**

(a) Commonwealth and Contractor shall review the results of the Benchmarking Process during the 30-day period (the "Benchmark Review Period") following receipt by Commonwealth and Contractor of such results. The Parties shall confirm during the Benchmark Review Period that the Benchmarking Process was followed. If either Party has reason to believe that the Benchmarker's report contains material errors (each, a

“Claim”), such Party shall notify the Benchmarking Review Period of such errors and shall provide any documentation and information necessary to support the Claim and shall copy the other Party on all such correspondence. The Benchmarking Review Period will review any Claims and meet with both Parties for a time period reasonably determined by the Benchmarking Review Period to resolve the Claims and make corresponding adjustments to the Benchmarking Review Period’s findings, if any, prior to issuing the final benchmarking report (“Benchmarking Report”). If either Party determines that a Claim is not reasonably likely to be resolved through additional consultation with the Benchmarking Review Period, at such Party’s request, the Claim will be resolved through the dispute resolution process described in Article 30 (Contract Controversies) and the resolution of the Claim as set forth in the final report of CPR shall be incorporated into the Benchmarking Report and shall be binding on the Parties.

(b) Contractor shall adjust the Fees on a prospective basis, effective as of the end of the Benchmarking Review Period, such that they are no greater than the Benchmark Target Price (as defined below). For the avoidance of doubt, such adjusted Fees shall not be applied retroactively to past invoices or Services. For purposes of this Contract, the “Benchmark Target Price” shall mean the lowest quartile of comparison prices contained in the Benchmarking Report. In no event will Contractor increase the Fees as a result of any Benchmarking Process.

(c) If at any point during the Term the Parties agree that the annual review mechanisms described in this Contract have operated effectively to assure Commonwealth that the Fees are, on a consistent basis, within [the lowest quartile] of market prices for comparable services within the Target Market, Commonwealth may, in its sole discretion, agree to retire, on a prospective basis, the benchmarking rights contained in Sections 4. In such event, in order to give effect to such retirement, Commonwealth shall deliver a notice to Contractor stating that, effective as of the date specified in the notice, such benchmarking rights will no longer remain in effect (a “Benchmarking Retirement Election”).

**SCHEDULE Q**

**EXIT RIGHTS**



As of the end of a Termination Assistance Period:

(a) The rights granted to Contractor by Commonwealth in Article 48 of the Contract, as applicable to the terminated Services, shall immediately terminate and Contractor shall:

(i) Deliver to Commonwealth, at no cost to Commonwealth, a current copy of the relevant Commonwealth Software; and

(ii) Destroy or erase all other copies of the relevant Commonwealth Software and Commonwealth owned materials in Contractor's possession. Upon Commonwealth's request, Contractor shall certify to Commonwealth that all such copies have been destroyed or erased;

(b) Unless previously delivered to Commonwealth, Contractor shall deliver to Commonwealth a copy of Contractor Proprietary Software used to provide the terminated Services;

(c) Upon Commonwealth's request, with respect to Contractor Third Party Software used to provide the terminated Services, Contractor shall transfer, assign or sublicense the agreements related to the applicable Contractor Third Party Software to Commonwealth or Commonwealth's designee, at no cost to the Commonwealth and on terms and condition acceptable to Commonwealth. In the event that the agreements related to any applicable Contractor Third Party Software do not permit such transfer, assignment or sublicense, Contractor shall use commercially reasonable efforts to assist Commonwealth in obtaining licenses to such Contractor Third Party Software. However, if Commonwealth is unable to obtain licenses to such Contractor Third Party Software and if requested by Commonwealth, Contractor shall assist Commonwealth in evaluating and obtaining licenses to functionally equivalent Software at Contractor's expense on terms and condition acceptable to Commonwealth;

(d) To the extent not otherwise addressed in this Section, Contractor shall provide to Commonwealth with respect to Contractor's proprietary patents, copyrights and other intellectual property used to provide the terminated Services as of the commencement of the applicable Termination Assistance Period, a fully paid-up, global, irrevocable, license to use, make and have made, and to sublicense to a third party to use, make and have made, in each case solely for Commonwealth's internal purposes related to the Services, Contractor's and such other proprietary patents, copyrights and other intellectual property used to provide the terminated Services;

(e) Upon Commonwealth's request, with respect to those agreements for maintenance, disaster recovery services or other necessary third party services used by Contractor to provide the terminated Services and, Contractor shall transfer or assign such agreements to Commonwealth or Commonwealth's designee on terms and conditions acceptable to the Commonwealth at no charge; provided, however,

that in no event shall this subsection be construed as requiring Contractor to transfer or assign any Contractor corporate master agreement;

(f) Upon Commonwealth's request, Contractor shall sell to Commonwealth or Commonwealth's designee Equipment used by Contractor primarily to provide the terminated Services at Contractor's net book value; provided, however, that, in the event Contractor is unable to transfer ownership of such Equipment due to time limitations imposed by an agreement between Contractor and a third party, Contractor shall allow Commonwealth or Commonwealth's designee to use such Equipment without charge until such time as Contractor is able to transfer ownership of such Equipment to Commonwealth or Commonwealth's designee and, at such time, Contractor shall sell to Commonwealth or Commonwealth's designee such Equipment at Contractor's net book value on the date of Commonwealth's initial request for such sale; and

(g) Commonwealth or its designee may undertake, without interference (including competitive employment offers or compensation designed to thwart Commonwealth or its designee's ability to hire) from Contractor, to recruit and hire any Contractor Personnel primarily engaged in performance of the Services being terminated upon a reasonable schedule mutually agreed by the Parties that permits Contractor to meet its obligations to provide Termination Assistance Services without degraded performance. Contractor will waive and cause its subcontractors to waive their rights, if any, under contracts with such personnel restricting the ability of such personnel to be recruited or hired by Commonwealth or its designee. Commonwealth or its designee will have reasonable access to such personnel for interviews and recruitment.

**SCHEDULE R**  
**SOFTWARE LICENSCE AGREEMENTS**

SOFTWARE LICENSE AGREEMENT

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

TERMS AND CONDITIONS

A. Definitions.

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

B. Grant and Scope of License

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

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

3. Authorized Use. In consideration of the License Fees payable hereunder, Licensee may \_\_\_\_\_.

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

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

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

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

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

C. Fees

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

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

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

D. Confidentiality

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

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

E. Term and Termination

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

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

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

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

satisfactory services rendered under the Agreement up to the effective date of termination

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

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

#### **F. Warranties and Disclaimer; Limitation of Liability; Indemnification**

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

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

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

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

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

The obligation to indemnify Licensee, under the terms of this Section F(3), shall be Licensor's sole and exclusive obligation and Licensee's exclusive remedy for the infringement or misappropriation of intellectual property. The obligations of Licensor under this Section continue without time limit and survive the termination of this Agreement.

4. Licensor shall have no liability or obligation under Section F(3) above, arising from or related to: (i) modification of the Licensed Product by Licensee; any material provided by Licensee to Licensor and incorporated into, or used to prepare, the Licensed Product; (ii) use of the Licensed Product in other than its specified operating environment; (iii) the combination, operation, or use of the Licensed Product with other products, services, or deliverables not provided by Licensor as a system or the combination, operation, or use of the Licensed Product with any products, data, or apparatus that Licensor did not provide; (iv) infringement of a non-Licensor product alone; (v) Licensee's distribution, marketing or use beyond the scope contemplated by this Agreement; (vi) Licensee's failure to use corrections or enhancements made available to Licensee by Licensor; (vii) the Running of the Licensed Product after Licensor has notified Licensee to discontinue Running due to an infringement claim (existing or prospective); or (viii) the use of a version of the Licensed Product that has been superseded by a newer version, if the infringement would have been avoided by use of a current version which Licensor has provided or made available to Licensee.

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

#### **G. Maintenance and Support**

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

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

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

4. Licensee acknowledges and agrees that the Support Services, Updates, and all other results of Support Services hereunder, and all work product and deliverables thereof (collectively, the "**Licensor Materials**"), are the sole and exclusive

property of Licensor, including all worldwide Intellectual Property Rights embodied in, related to, or represented by, the Licensor Materials.

#### H. Virus, Malicious, Mischievous or Destructive Programming

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

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

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

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

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

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

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

#### I. Background Checks

Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Licensee's IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psplib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.

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

#### J. Incorporation of Exhibits and Appendices

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

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

#### K. Purchase Orders

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

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

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

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

5. The Licensee and Licensor specifically agree as follows:

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

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

iii. The parties agree that no writing shall be required in order to make the order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Document or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Document or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of genuine Documents or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement were not in writing or signed by the parties. A Document or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

#### L. General

The failure of either party to require performance of any part of this Agreement shall not be deemed a waiver of any present or future right. Modifications of this Agreement shall be binding only if in writing and signed by authorized representatives of both

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

**M. Glossary**

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

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

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

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

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

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

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

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

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

Appendix A

A. Licensed Product:

The Licensed Product includes \_\_\_\_\_.

B. Installation Fees:

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

Project Management/Technical Implementation Hours	[Fill in hours]
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C. License and Other Fees:

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

D. Support Fees and Services:

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

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

Standard Maintenance and Support Services

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

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

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

Enhanced Maintenance and Support Services

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

E. Renewal of Support Services

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

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

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

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



## Appendix B

### Enhanced Maintenance and Support Services

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

#### SECTION 1: Statement of Work

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

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

Primary Technical Contact:

Primary Number:

Secondary Number:

Primary email:

Secondary Technical Contact:

Primary Number:

Secondary Number:

Primary email:

Lead Account Contact:

Primary Number:

Secondary Number:

Primary email:

Secondary Account Contact:

Primary Number:

Secondary Number (pager):

Primary email:

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

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

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

The target maximum times for response for each level are:

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

Level 2: 24 hours

Level 3: 3 days

#### SECTION 2. Summary of Enhanced Maintenance and Support:

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

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

Appendix C  
Hardware Specifications (if any)

Appendix D

Service Level Agreement

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

**Service Levels**

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

Priority 1  
Urgent

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

Priority 2  
Minor – system remains operative

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

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

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

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

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

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

Appendix E  
Pricing Tables

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

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

Appendix F  
Electronic Purchase Orders

Exhibit A

**NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

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

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract an account of gender, race, creed, or color.
- c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

Exhibit B

CONTRACTOR INTEGRITY PROVISIONS

- a. For purposes of this clause only, the words "confidential information," "consent", "contractor," "financial interest," and "gratuity" shall have the following definitions.
- 1) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - 2) **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - 3) **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
  - 4) **Financial interest** means:
    - a) Ownership of more than a five percent interest in any business; or
    - b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - 5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- b. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
- d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth,
- e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
- f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
- g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
- h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
- j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.
- k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.



Exhibit C

CONTRACTOR RESPONSIBILITY PROVISIONS

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

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

**Exhibit D  
Tax Offset Clause**

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

Exhibit E

AMERICANS WITH DISABILITIES ACT

a. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that, in performing its services under this Contract, it shall not cause any individual with a disability to be excluded from performance of the Contractor's services in this Contract on the basis of the disability. As a condition of accepting this Contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title I of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors. For purposes of clarity, the foregoing shall not be understood to the utility or functionality of any software to be provided by the Contractor under this Contract.

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

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

LICESNOR

THE COMMONWEALTH OF PENNSYLVANIA, ACTING BY AND THROUGH THE GOVERNOR'S OFFICE OF ADMINISTRATION

By: \_\_\_\_\_

By: \_\_\_\_\_

CERTIFICATION AS TO AVAILABILITY OF FUNDS

Name:

\_\_\_\_\_  
COMPTROLLER  
APPROVED AS TO FORM AND LEGALITY

Title:

\_\_\_\_\_  
OFFICE OF CHIEF COUNSEL

Date:

\_\_\_\_\_  
OFFICE OF GENERAL COUNSEL

\_\_\_\_\_  
OFFICE OF ATTORNEY GENERAL

# REQUEST FOR PROPOSAL



## **Commonwealth of Pennsylvania Office of Administration / Information Technology**

### **Exhibit A – Background and Objectives**

#### RFP ISSUE DATE

November 12, 2008

#### PROPOSAL DUE DATE

January 20, 2009

**Table of Contents**

**1.0 Introduction..... 3**

    1.1 *Commonwealth of Pennsylvania OA/OIT Background..... 3*

    1.2 *Mission ..... 4*

    1.3 *Guiding Principles ..... 4*

    1.4 *Telecommunications Managed Services Project Charter..... 5*

## **1.0 INTRODUCTION**

With more than \$1 billion in information technology (IT) investments annually, the Commonwealth of Pennsylvania (Commonwealth) is the equivalent of a Fortune 20 organization providing a diverse portfolio of IT services and solutions to its 12.3 million citizens and business customers worldwide. Prior to 2006, these services and solutions were offered by more than 45 individual agencies, boards and commissions; each operating under its own mission and business objectives.

Executive Order 2004-8, as amended May 9, 2007, addresses the need for coordinated IT planning and resource utilization by directing the consolidation of agency information technology organizations under the Office for Information Technology.

As a result of this directive, the Commonwealth's approach to IT was published. The Keystone Plan, as it is known, defines the strategic roadmap for upgrading and improving systems, services and support to Commonwealth agencies, employees and citizens through specific technology goals and objectives chartered for implementation under the Office of Administration / Office for Information Technology (OA/OIT).

### **1.1 Commonwealth of Pennsylvania OA/OIT Background**

OA/OIT continues to face fast-paced growth in all aspects of its IT. In the past, much of the growth had taken place within individual agencies in an uncoordinated manner leading to unnecessary redundancy, varying levels of customer support, increased costs and disparate systems across the enterprise. With the Keystone Plan as its guide, OA/OIT has introduced many strategic initiatives which benefit the Commonwealth as a whole. Technology investments have targeted business and operational improvements that increase the capacity for delivering results cost effectively. As a result, under the Keystone Goal of Enterprise IT Management, the consolidation and improvement of telecommunication services to Commonwealth agencies was targeted as a primary objective for 2008.

Today, telecommunications services at the Commonwealth are delivered via a combination of external and internal service providers. The Commonwealth maintains several agreements with various telecommunications service providers while several agencies maintain network support teams used to supplement and augment those service providers.

Since 2000, the Commonwealth has partnered with TelCove to provide voice, data and fixed wireless telecommunications services to the Commonwealth and its' agencies. This agreement is scheduled to expire in February, 2011 and meets a majority of the Commonwealth's telecommunications needs. Several other service provider agreements are in place to provide a variety of other telecommunications services such as managed routers, mobile phones, mobile internet, calling card and toll-free services. These individual agreements are also scheduled to expire by 2011 (see Table 1 for details).

Voice services are primarily Centrex-based. Where Centrex service is unavailable, some agencies and offices have deployed a mix of PBX or key system technologies.

In Scope Contract	Effective Date	Termination Date
TelCove ME981464	5/6/2005	2/18/2011
Router Management SP8101470024	12/31/2005	2/28/2011
Toll Free 800 Inbound ME381368	9/1/2008	9/1/2009
Statewide Telephone - PBX /KEY/MAC 5805-55	1/1/2007	12/31/2009
Payphones 97-15-2580-011	11/7/2006	12/7/2011
Misc Telephone 5805-03	6/30/2008	6/30/2009

**Table 1**

## 1.2 Mission

The core mission of the OA/OIT is to ensure that IT services are delivered in the most efficient and effective manner possible, and that end users and customers are satisfied with the provided services. The OA/OIT Mission Statement is summarized as follows:

*“To serve the Commonwealth of Pennsylvania and its citizens by providing enterprise-wide technology, policy, standards, architecture, information, and solutions to enhance system interoperability, security, and cost effectiveness”*

## 1.3 Guiding Principles

With the introduction of the Keystone Plan in 2007, OA/OIT emphasized and has pursued a shared service-based approach to managing infrastructure, services, data, applications, and customer support on behalf of the agencies and citizens of the Commonwealth. OA/OIT’s desire to deliver improved telecommunication services cost effectively, and to maximize its return on investment (ROI) are in direct alignment with the Keystone Plans guiding principles, which include:

- » Subscribe to current industry “Best Practices” of customer centric service delivery.

- » Promote the standardization and reuse of technology infrastructure and services; and the reallocation of recovered resources to support business objectives.
- » Align technology with business needs.
- » Address the increasing expectations of agencies and citizens for seamless and unobstructed access to government information and services.
- » Identify an enterprise technology initiative roadmap to facilitate Agency planning and budgeting for enterprise initiatives.

## **1.4 Telecommunications Managed Services Project Charter**

### **1.4.1 Purpose:**

The Telecommunications Managed Services project team has been chartered to develop and manage a Request for Proposal process to consolidate existing telecommunications contracts into a single service provider agreement to support the transition of services by February, 2011.

### **1.4.2 Goals:**

Consolidate and transform the 12 existing agreements that represent the suite of telecommunication services to enable specific management and technology goals that include:

- » Obtain cost-effective Telecommunications services solutions that will provide opportunities for interagency collaboration and will support agency efforts to achieve enhanced business value.
- » Meet current and future Commonwealth business requirements.
- » Improve inter-agency communication and process integration.
- » Improve incident response times and minimize business impact.
- » Improve security incident response and recovery, collaboration and information sharing capabilities across the Commonwealth.
- » Facilitate the vision of citizen centric services
- » Provide a flexible service delivery model that combines both Commonwealth and provider capabilities.
- » Improve the quality and delivery of telecommunications services.
- » Improve Network traffic prioritization by employing “quality of service” capabilities.
- » Develop a statewide infrastructure that supports convergence of voice, video, and data to realize the benefits of convergence.
- » Enhance the Commonwealth’s network security through known best practices and/or Commonwealth policy.



- » Deploy network premise equipment to leverage MPLS and converged network service capabilities.
- » Update and enforce Commonwealth architecture policies and domain standards.

#### **1.4.3 Measurements:**

- » Improved service level execution;
- » Improved management and control of the Services through utilization of best practices and standard processes;
- » Increased agency satisfaction;
- » Reduced operational cost;
- » Increased opportunities for Commonwealth employees to focus on strategic and customer-focused activities.

# REQUEST FOR PROPOSAL



## Commonwealth of Pennsylvania Office of Administration / Information Technology

### Exhibit B – Current Environment

#### RFP ISSUE DATE

November 12, 2008

#### PROPOSAL DUE DATE

January 20, 2009

## **Table of Contents**

<b>1.0</b>	<b>Summary</b> .....	<b>3</b>
<b>2.0</b>	<b>Enterprise Security</b> .....	<b>3</b>
2.1	<i>Additional Enterprise Security Information</i> .....	4
<b>3.0</b>	<b>Core Distribution Network</b> .....	<b>5</b>
<b>4.0</b>	<b>Wide Area Network (WAN)</b> .....	<b>6</b>
<b>5.0</b>	<b>COPANET Project</b> .....	<b>7</b>
<b>6.0</b>	<b>Voice Services</b> .....	<b>8</b>
<b>7.0</b>	<b>Help Desk</b> .....	<b>10</b>
<b>8.0</b>	<b>Systems</b> .....	<b>11</b>
8.1	<i>Commonwealth Telecommunications Management System (CTMS)</i> .....	11
8.2	<i>CTAR Integration –</i> .....	12
<b>9.0</b>	<b>Enterprise Computing Facilities</b> .....	<b>13</b>
9.1	<i>Enterprise Server Farm (ESF)</i> .....	13
9.2	<i>Data PowerHouse (DPH)</i> .....	13
9.3	<i>Integrated Enterprise System (IES)</i> .....	14
<b>10.0</b>	<b>Sampling of Current Agency Network Profiles</b> .....	<b>15</b>
10.1	<i>Department of Health (DOH)</i> .....	15
10.2	<i>Department of Public Welfare (DPW)</i> .....	16
10.3	<i>Pennsylvania Public Television Network (PPTN)</i> .....	17
10.4	<i>Pennsylvania State Police</i> .....	18
10.5	<i>Pennsylvania Statewide Radio Network</i> .....	19
<b>11.0</b>	<b>Information Technology Bulletins (ITB)</b> .....	<b>20</b>

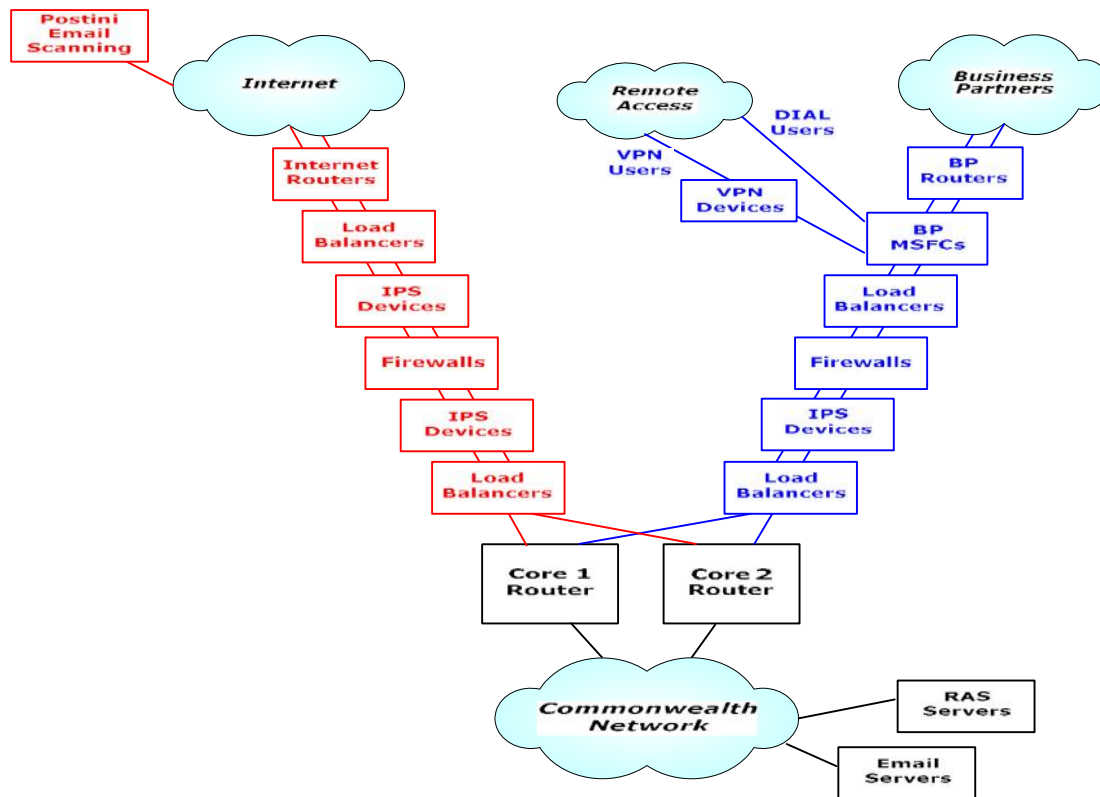
## 1.0 SUMMARY

The information presented below is documented to provide Offerors with a high level hierarchal view of the Commonwealth’s current network and security architecture.

## 2.0 ENTERPRISE SECURITY

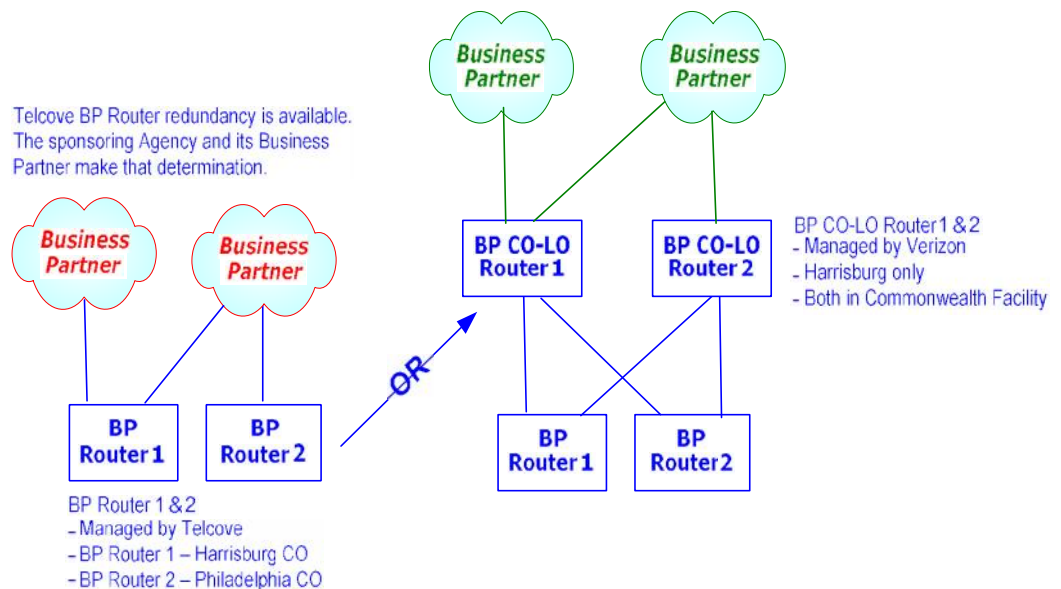
The current telecommunications contract with TelCove provides the Commonwealth with a redundant, geographically diverse, and highly available network and security infrastructure for Internet, Business Partner, and remote access to the Commonwealth’s network.

The enterprise security infrastructure shown below consists of load balancers, intrusion prevention system (IPS) devices, firewalls, and remote access devices. All devices, except the core routers, are currently implemented in a paired configuration and physically located in Central Offices (CO) in Harrisburg and Philadelphia. The Core Routers are physically located in the same CO in Harrisburg. Firewall pairs are configured in an active/active arrangement with state synchronization.



## 2.1 Additional Enterprise Security Information

- » Enterprise firewall and IPS policies are managed and monitored by the Commonwealth.
- » Remote access is provided through Commonwealth RAS servers and TelCove VPN concentrators. Authentication for remote access is directed to Commonwealth RAS servers on the trusted network. Remote access is currently limited to Commonwealth users and contractors only, not to Business Partners.
- » Enterprise-class email scanning is provided by TelCove through a contract with Postini, Inc. All Commonwealth email is routed to Postini email scanning services before delivery to Commonwealth email servers. Administration is co-managed between the contractor and the Commonwealth. The Commonwealth is currently billed per mailbox with a 70,000 minimum mailbox commitment.
- » TelCove follows the Commonwealth's change management process and enterprise maintenance scheduling ITB NET015 as this environment impacts the entire Commonwealth network. All maintenance activity occurs with little or no disruption of services.
- » Business Partners connect to the Commonwealth's network using dedicated circuits purchased from TelCove under the current telecommunications contract or through one or both of the Commonwealth's Business Partner co-location facilities. Redundancy options are available with either method of connectivity. ITB NET008 describes the Commonwealth's Business Partner Policy. Business Partners may not access the Internet through the Commonwealth's network.



- » Commonwealth Enterprise Internet services are provided to the Commonwealth as part of the current TelCove Telecommunications contract. As part of the load balanced, redundant, secure Internet service offering TelCove has delivered the Philadelphia Internet access connection (primary path) via a GigE circuit that is not capped and the full bandwidth is available for bursting. TelCove has delivered the Harrisburg Internet access connection (secondary path) via 2 Packet

over SONET OC3 Circuits. The Commonwealth is billed via a tiered billing mechanism based on peak utilization. Utilization reports are reviewed monthly with billing adjusted as it becomes necessary. As part of the monthly review it has become evident that the Commonwealth’s secondary path is not sufficient to meet the demands of the Commonwealth and that Internet slowness would be experienced in the event of a primary path failure. The Commonwealth is continuing to work with TelCove to provision the secondary path via a GigE circuit. As of July 2008, the Commonwealth’s Internet statistics are as follows:

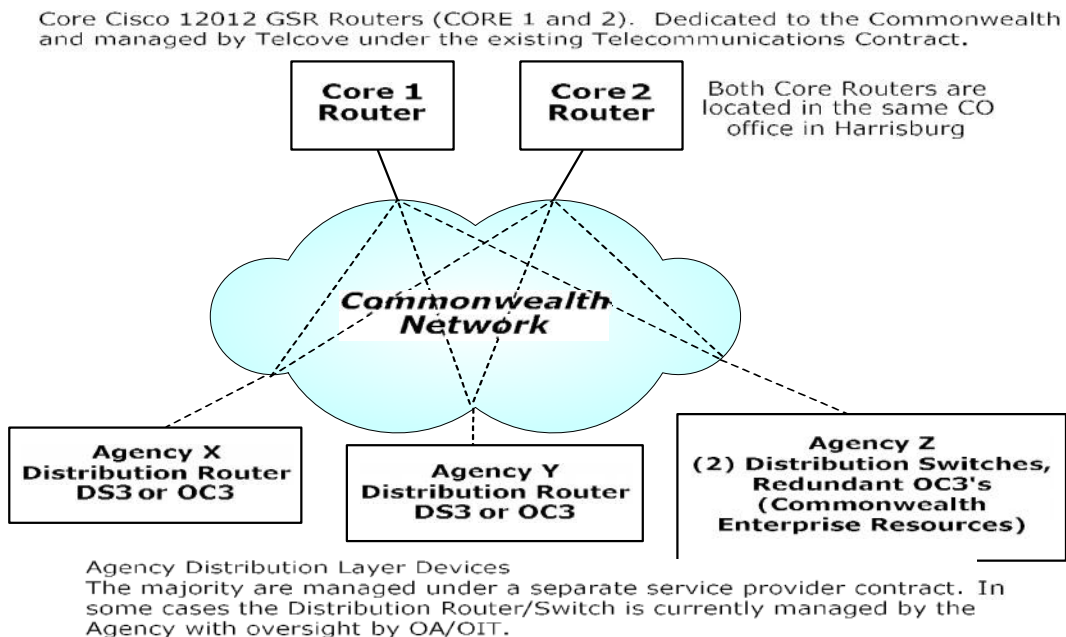
- » Monthly Inbound Average – 78.8 Mb/s
- » Monthly Peak Inbound – 386.7 Mb/s
- » Monthly Outbound Average – 54.8 Mb/s
- » Monthly Peak Outbound – 214.2 Mb/s

### 3.0 CORE DISTRIBUTION NETWORK

Asynchronous Transfer Mode (ATM) is the core transport used today to connect Agency networks to TelCove’s Cisco GSR 12012 (redundant) Core Routers. This topology is a hub-spoke partially meshed backbone network with each Commonwealth Agency Distribution Router connected to the two Core Routers with two ATM VBR-NRT PVC’s or a single ATM VBR-NRT PVC and a UBR PVC. This topology requires all agency to agency and/or agency to centralized Commonwealth Enterprise resources to traverse the Core Routers.

Some Commonwealth agencies have small remote WAN offices where bandwidth requirements have exceeded a single Frame Relay T1 capacity. As there is a significant price difference between a Frame Relay T1 and an ATM DS3 they felt it was necessary to purchase ATM IMA port adapters (4-port and 8-port) to accommodate the provisioning of ATM IMA from the current service provider TelCove. Exhibit D – Service Provider Pricing Forms, details the Commonwealth’s existing ATM circuits and identifies the specific locations using the ATM IMA configuration.

Note: ATM connectivity to the core routers is currently limited to DS3 or OC3.



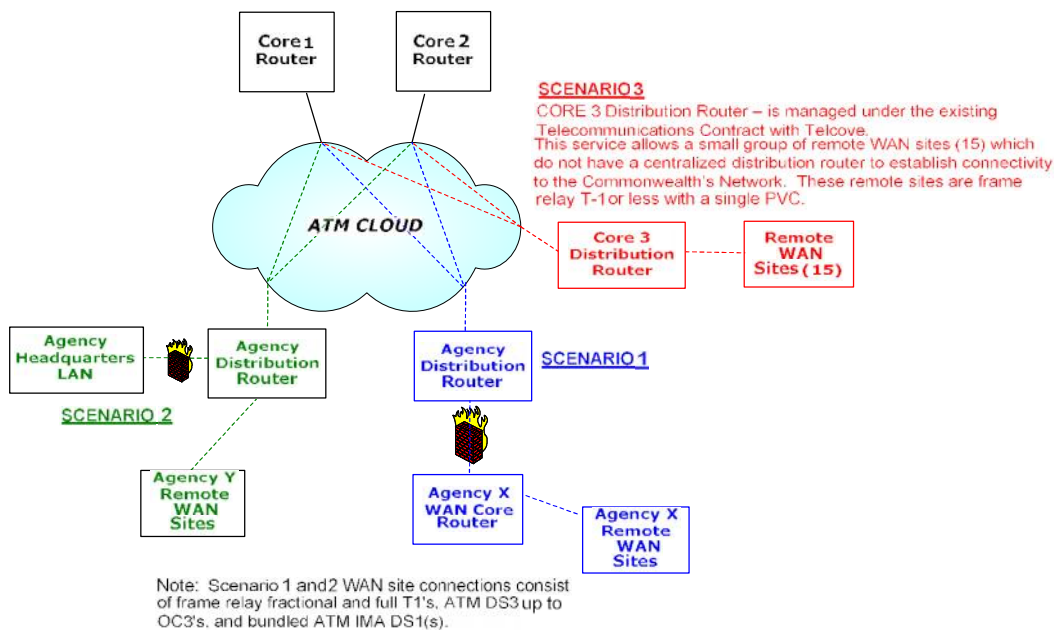
## 4.0 WIDE AREA NETWORK (WAN)

There are basically three current types of WAN topologies implemented within the Commonwealth’s Network.

The first topology (**Scenario 1**) connects Agency remote WAN sites to the Core Distribution Network through an agency firewall and agency WAN core router located at it’s headquarters locations.

The second topology (**Scenario 2**) connects agency remote WAN sites directly to the agency distribution layer device. Agencies are required to provide their own security for their WAN locations.

The third topology (**Scenario 3**), connects multiple agency remote WAN sites (approx. 15) directly to Core 3 (a multi-Agency Distribution Router provided by the current service provider under this telecommunications contract).



Note: Some agencies have deployed ISDN back up from a secondary carrier. This provides an additional level of redundancy for remote WAN sites.

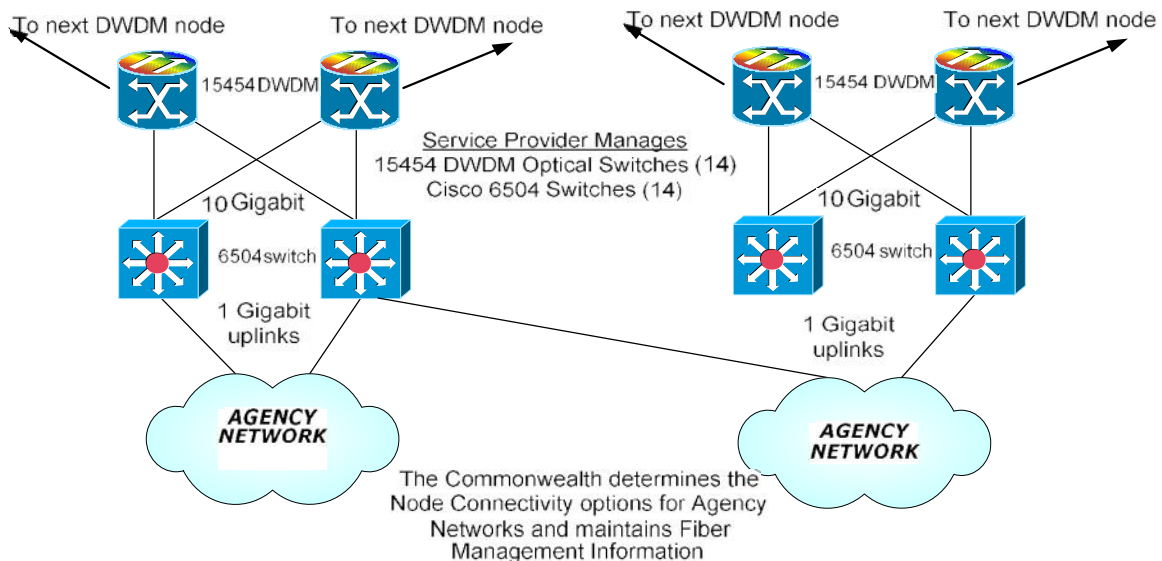
### 5.0 COPANET PROJECT

The Commonwealth has begun a project which will convert its Harrisburg Metropolitan Area Distribution Network to a high speed Dense Wave Division Multiplex (DWDM) backbone with redundant Commonwealth owned equipment located at seven key node locations within Harrisburg. This new campus backbone is referred to as COPANET.

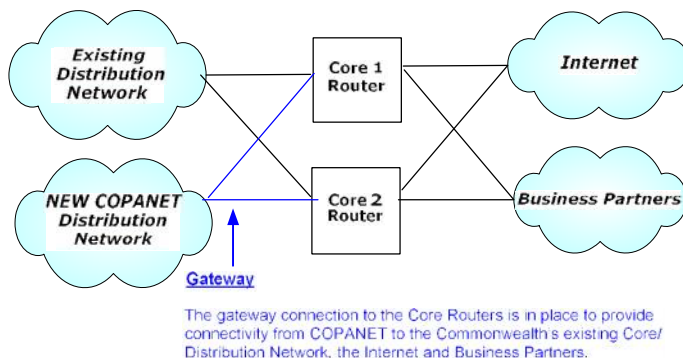
Each of the seven node locations consist of two carrier class optical DWDM switches (Cisco ONS 15454) connected with Commonwealth owned fiber. Each DWDM node location consists of two physically diverse paths providing redundancy in the event of a fiber cut or single node failure.

Each of the DWDM switches contains a 32 channel Wavelength Selectable Switch (WSS) and a layer 2 crossponder card. Two of the 10 Gigabit channels have already been utilized as part of initial deployment. The crossponder card allows point-to-point VLANs resulting in one hop layer 3 connectivity between all DWDM nodes. The Commonwealth’s implementation will fully mesh all DWDM nodes.

Each of the seven node locations also consist of two distribution switches (Cisco 6504) that provide layer 2 and 3 connectivity via Gigabit Ethernet for all Agencies. Agency connections are supported via multi-mode fiber, single-mode fiber or twisted pair copper.



A gateway to the current Commonwealth Telecommunications Offeror Core Routers was established as part of this project conversion. This connection currently consists of two (2) OC3’s originating from two DWDM nodes (1 Technology Park and 400 North Street).





## 6.0 VOICE SERVICES

The Commonwealth's current voice services environment varies from agency to agency and location to location. These services include, but may not be limited to:

- » Local Service (dial tone)
- » Long Distance (switched and dedicated)
- » Voice messaging and Auto Attendant services
- » Inbound toll free service (switched and dedicated)
- » Audio and video conferencing
- » Payphones
- » Miscellaneous Telephone Equipment (Exhibit F-2)

The majority of voice services are provided and managed by TelCove and primarily consist of Centrex, ISDN (PRI) and business lines through a combination of TelCove provided service and LEC connections. About 7% of the locations have premise based systems such as private branch exchanges (PBX) and small key telephone systems (KEY). This statewide voice communications network is currently comprised of approximately 77,363 phone lines (Centrex – 72,872, Analog and ISDN – 4,491), 30,342 voice mail boxes and about 301 PBX trunks supporting PBX and Key Systems.

Centrex lines encompass the Commonwealth's largest number of voice lines. Most of these lines are served by one of 5 Central Offices (Harrisburg, Philadelphia, Pittsburgh, Scranton, and State College) supported by a 5E switch. Each line is capable of handling a variety of voice features detailed in Exhibit F-3 - Centrex and Voice Features.

The Commonwealth's inbound and outbound long distance service is provided by TelCove with P.01 grade of service for interlata, intralata, interstate and international calls.

Voice messaging is supported by an Octel CO-based Voice Mail-Messaging system. There is a voice mail platform in each of the node areas. The Harrisburg platform consists of 264 ports; Philadelphia, 274 ports; Pittsburgh, 193 ports; 72 ports for Scranton are located in Philadelphia and 72 ports for State College are located in Harrisburg.

The current voice mail feature packages are summarized in the following table:

Voice Mail Features	Basic Voice Mail	Enhanced Voice Mail
Call forwarding fee (necessary for voice mail to work)	Included	Included
Greeting length (sec.)	45	90
Message length (min.)	2	5
Maximum new messages	Unlimited	Unlimited
New message storage time	Unlimited	Unlimited
Maximum saved messages	15	Unlimited
Saved message storage time	30 days	Unlimited
Message waiting indication	Yes	Yes
Remote mailbox access	Yes	Yes
Deleted message bin	Yes	Yes
Speed call	Yes	Yes

Voice Mail Features	Basic Voice Mail	Enhanced Voice Mail
Message sending	Yes	Yes
Group messaging	No	Yes
Future delivery (reminder messages)	No	Included
Voice call notification of messages	No	Included
Pager notification of messages	Optional	Optional

Automated Call Distribution (ACD) is an enterprise wide system provided by TelCove. This system consists of Interactive Voice Response (IVR) capabilities, work force management, call recording, Agent and Supervisor packages, computer and phone based applications. Currently there are about 93 ACD call centers of which 79 are located in the Harrisburg area and 3 ACDs with 43 ACD tenants hosted on the Genesis platform located in Lancaster, PA. The Department of Public Welfare utilizes Verizon lines and the Verizon CO based ACD system for its 6 call centers.

Inbound toll free services are currently provided by AT&T. These services consist of switched and dedicated circuits with an average of 10.8 million minutes of usage each month. AT&T provides the Office of Administration (OA) with monthly reports on the dedicated circuits for utilization review. Based on the review, AT&T and OA allocate toll-free numbers to each of the dedicated circuits for more efficient and cost effective use of the dedicated lines. Through combined efforts, AT&T and the Commonwealth consolidate the agency 800 numbers to the various circuits for more efficient and cost effect use of the dedicated lines. Current toll free features are listed in Exhibit F3 – Centrex and Voice Features.

The Commonwealth provides both ISDN and IP video conference bridging services to all agencies. The video bridge accommodates 4 PRIs (92 lines) capable of 15 ISDN video connections at 384 kbps, 36 IP MAN/WAN ports for 36 video connections at 384 kbps and 4 T1 trunks capable of 96 voice connections at 64 kbps. Support for the video service is available 24x7x365. The current transcoding standards are H.320 for video conferencing over ISDN and H.323 over IP.

The Commonwealth also has dedicated analog point-to-point and two/four wire circuits across the state supplied by Verizon or local exchange carriers (LECs) in support of the Commonwealth's public safety radio services, Pennsylvania State Police radio towers and alarm systems. In addition, Broadband services are also provided in various flavors. DSL and Cable have been utilized across the state with a count in excess of 120 obtained from the local LECs.

Commonwealth Directory Listings (3365 Caption listings, 180 Straight Line listings) are provided to TelCove via Telecommunications Management System which is then coordinated with the LECs for printing.

The Coin/Card Public Telephone (Payphones) services are provided to the Commonwealth through a separate contract with Global Tel Link (GTL). In most cases, Commonwealth cabling and conduit is available. The Commonwealth also has collection and commission agreements with GTL as part of the payphone maintenance.

Locations vary across the state for payphone placement as does the requirements for types of enclosures and how the phone is actually attached to a structure. These varied requirements are based on the locale of the device. There are health and safety issues involved with the type of phone station in the Correctional Community Centers and special anti theft requirements for those located at roadside rests or state parks. Others located within agency lobbies or other structures, may not have as stringent requirements.

The current inventory of payphones is in excess of 175 across the state. Some of these have text telephones (TTYs) that may be agency owned or Contractor owned.

Miscellaneous telephone equipment is provided by a variety of contractors and includes accessory/peripheral type devices. The items considered as miscellaneous telephone equipment can be found in Exhibit F-2.

## **7.0 HELP DESK**

TelCove provides help desk services located at its Network Operations Center (NOC) in Mechanicsburg, Pa. The help desk is available 24x7x365 days to support the Commonwealth as a single point of contact for trouble reporting, billing and customer service questions, and any other problems or issues relating to all contractor provided services. Help Desk operations personnel access the Commonwealth's Telecommunications Management System as users call in to confirm asset identification and location.

The principle hours of operation are 7:00a.m. – 6:00 p.m. EST, Monday through Friday. About eighty percent of the total calls into the Help Desk occur during the principle hours of operation.

The Help Desk application provides automated tracking of end user calls. This begins with a front end menu system to direct calls to the appropriate areas such as voice operations or billing questions.

Estimated call volume statistics are referenced in Exhibit E – Volumetrics. Vendor calls, contractor technician calls and any other calls that are not Commonwealth telecommunication services end user calls are not included in the Commonwealth call volume counts.

All call activity is logged and archived. Once a call has been responded to by the Help Desk, it is logged and a trouble ticket is generated. Trouble tickets remain open until the user who originated the ticket has been notified that the issue is resolved and the ticket is ready for closure.

Commonwealth end users have full real-time web access to all trouble tickets and detailed work log information. While trouble tickets are open, the Help Desk is expected to post accurate and timely trouble ticket information and subsequent updates.

The Commonwealth standard for Enterprise IT help desk management is BMC's Remedy Action Request System. The Commonwealth's IT Help Desk is an enterprise solution that provides agencies with a tool for IT support issues, both internal to the agencies and issues related to enterprise services. The Enterprise IT Help Desk system is comprised of two primary entities referred to as Tier 1 support and Tier 2 support. The Tier 1 support role is performed at the agency level and can be considered an agency's local Help Desk. The Office of Administration, Office for Information Technology (OA/OIT) has established an Enterprise IT Help Desk system that can support all agency Tier 1 IT Help Desk systems.

## 8.0 SYSTEMS

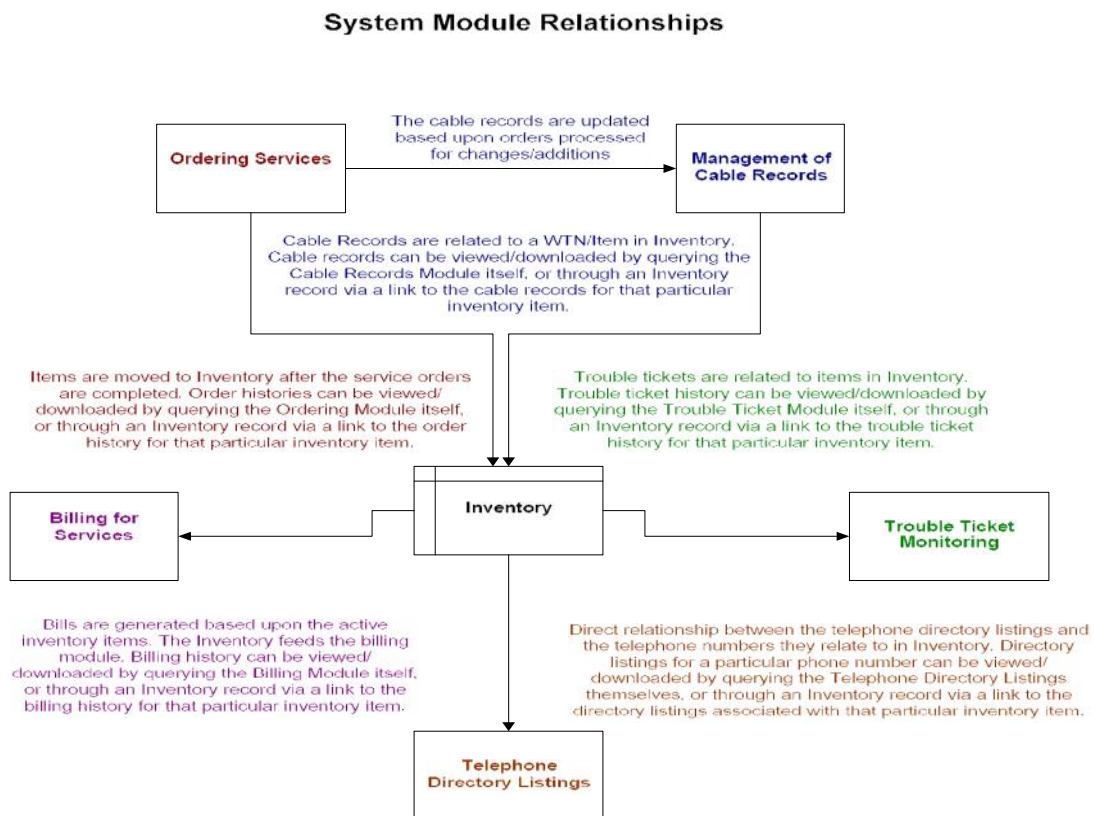
### 8.1 Commonwealth Telecommunications Management System (CTMS)

The Commonwealth Telecommunications Management System (CTMS) is a web-based system to support ordering, billing, asset inventory, and other functions related to telecommunications. (CTMS is also referred to as Integrated Support System (ISS).) The current system is managed and supported by EDS. EDS has written all modules, except the Trouble Ticket module and therefore, maintains all related licenses, source code, documentation, integrated software and all hardware until the end of the TelCove telecommunications contract.

System access is available to all agencies, boards, and commissions under the Governor’s jurisdiction and to all entities electing to participate in the existing telecommunications contracts. Many business areas also collaborate with Business Partners whose orders are processed and billed through the system.

The electronic interchange flow begins with the service order process. The flow continues on when the asset is stored in the inventory and used for billing purposes. Any intervening activities that affect the asset are processed and archived in the inventory. The flow ends when and if an asset is decommissioned, at which point the asset is deactivated. Upon deactivation, the asset will remain in inventory.

The system provides functionality in the following main areas: service ordering, billing, inventory, administration, network management, help desk / trouble tickets, cable records management, telephone directory listings, and report generation spanning all areas. The following diagram illustrates the relationships between the current system modules:



The current EDI billing transactions comply with standards developed by the American National Standards Institute Accredited Committee X12 (ANSI ASC X12) and the National Automated Clearing House Association (NACHA). Invoices are in the format of ANSI ASC X12, Version 4010 (minimum) 811 transaction set.

This system currently integrates with the Commonwealth's PC and network environment and accommodates a large number of simultaneous users. Currently, there over six hundred (600) contract participants authorized to use the system. It is anticipated that this number will continue to grow.

The Commonwealth uses SAP as its enterprise wide accounting system. The current telecommunications management system complies with the established SAP account code structure and the rules for validation of account code information.

A table of the current environment (as of October, 2008) that is required to run the CTMS application is included in Exhibit F-1 – CTMS Inventory.

## **8.2 CTAR Integration**

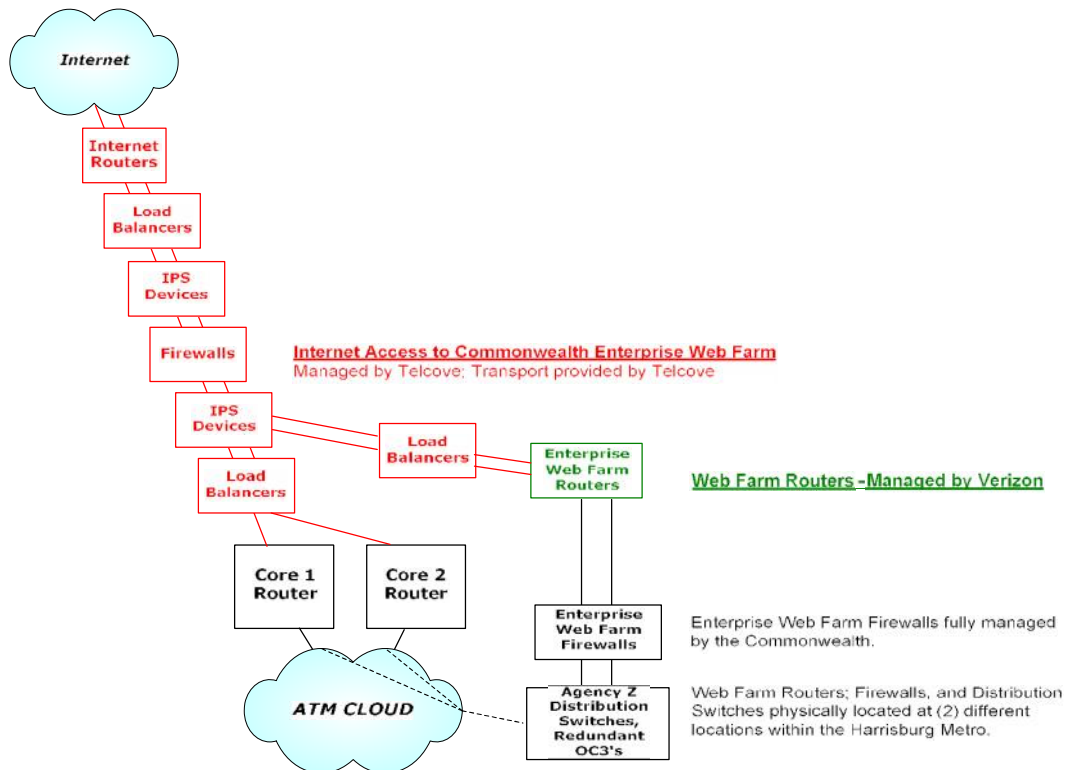
The Commonwealth Telecommunications Asset Repository (CTAR) application is used to order telecommunication services not provided by TelCove from various other vendors. Orders are entered into the system by the agencies and then sent to the appropriate vendor. The completed orders are used to build the inventory of services. A second portion of CTAR is the Telecommunication Management Information System (TMIS). This processes the billing for services provided by Verizon. The CTAR/TMIS system is currently being incorporated into CTMS to provide a single application for ordering, billing and inventory of all telecommunications services.

## 9.0 ENTERPRISE COMPUTING FACILITIES

### 9.1 Enterprise Server Farm (ESF)

The Enterprise Server Farm (ESF) environment, managed by several Commonwealth OA/OIT teams, is designed to leverage shared infrastructure and to reduce overall hosting costs for external access to Commonwealth Enterprise resources. The infrastructure to support this environment is physically located in two redundant distribution sites in Harrisburg, PA.

Secure Access and management of the ESF environment is provided in part by TelCove and Verizon as shown below in red and green:



### 9.2 Data PowerHouse (DPH)

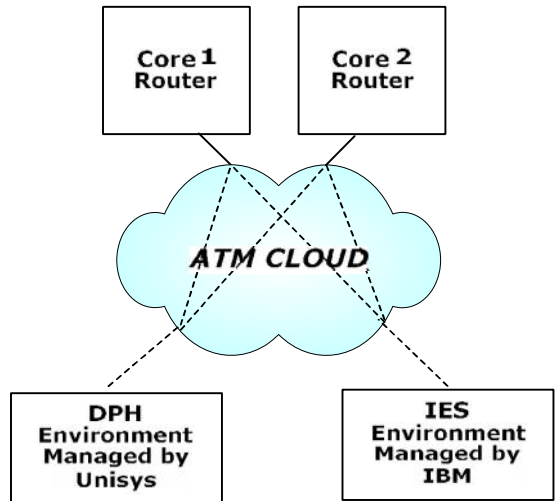
The Commonwealth’s Data PowerHouse (DPH) environment, as currently provided and managed by Unisys, satisfies the complete data processing needs of 17 state agencies and is centrally located at a facility within Harrisburg. As this environment must be accessible by these agencies and external users it is logically connected to the Core Routers in the same fashion as a Commonwealth owned distribution router connects.

Unisys has independently purchased the ATM transport (OC3’s) from TelCove and those costs are absorbed in the Unisys DPH managed services contract with the Commonwealth. ATM PVC’s have been purchased and are billed directly to the Commonwealth under the current telecommunications contract with TelCove.

### 9.3 Integrated Enterprise System (IES)

The Commonwealth's IES Enterprise Resource Planning (ERP) system, as currently managed by IBM, supports the Commonwealth's budgeting, financials, procurement, supplier relationship management, payroll, human resources, travel, and reporting processes. As this environment must be accessible by all Commonwealth employees it is logically connected to the Core Routers in the same fashion as a Commonwealth owned distribution router connects.

The ATM Transport (DS3's) and ATM PVC's have been purchased and are billed directly to the Commonwealth under the current Telecommunications contract with TelCove and are not incorporated in the IBM managed services contract with the Commonwealth.



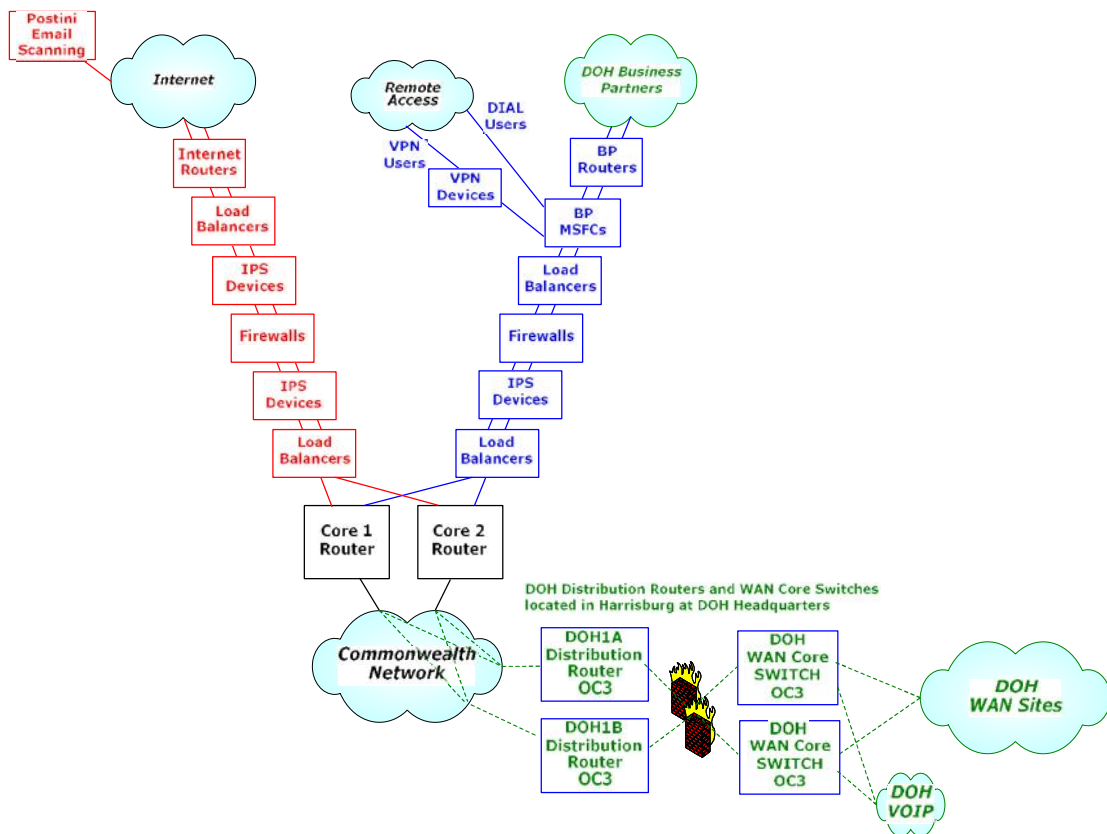
## 10.0 SAMPLING OF CURRENT AGENCY NETWORK PROFILES

### 10.1 Department of Health (DOH)

Department of Health (DOH), Bureau of Information Technology is located in Harrisburg, PA. This location currently uses two Cisco 3845 distribution routers (managed by Verizon) to connect to TelCove’s Core Routers.

The DOH WAN core switches (Cisco 6500 series) support 4 ATM WAN sites and 86 Frame Relay WAN sites. All WAN sites have redundant PVC’s that connect back to both WAN Core Switches. DOH owns and manages all network and security devices within its WAN environment. The 154 remaining remote offices consist of Women, Infants and Children (WIC) and other business partners that connect through the TelCove managed Business Partner DMZ.

DOH, following a complete network readiness assessment, participated in a TelCove Hosted IP Telephony pilot which ran from September 2005 to April 2006. This pilot exposed significant major issues that required a number of resources to resolve. Sometime in January 2006 the VOIP pilot deployment of approximately 180 phones, limited to its headquarters location only, stabilized and remains in service and supported by TelCove. The current contract does not allow for other agencies or contract participants to invest in this technology.



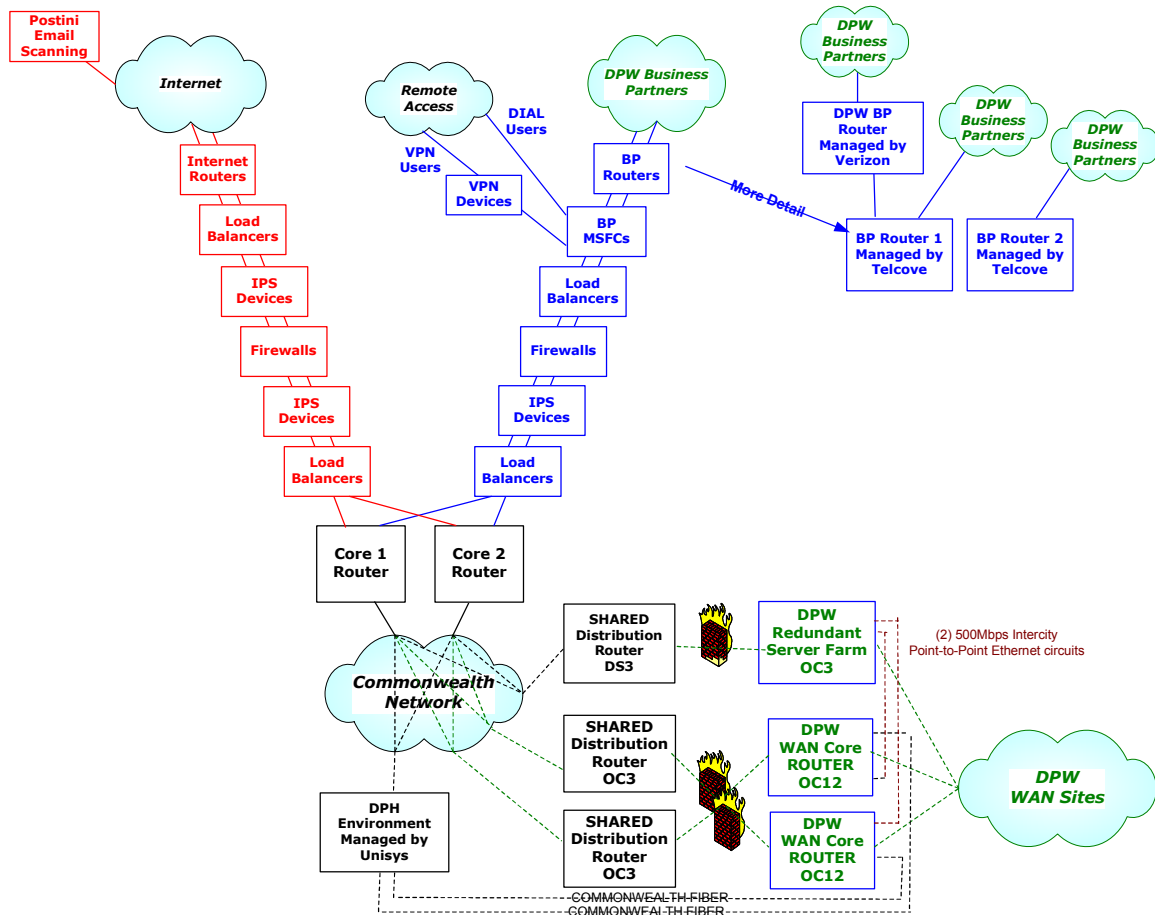


## 10.2 Department of Public Welfare (DPW)

The Department of Public Welfare (DPW) core network is located in Harrisburg, PA and connects to the Commonwealth’s Distribution layer via a fiber connection to a shared distribution site within the same campus environment.

The DPW WAN Core Switches (Cisco 6509 series) support 9 ATM WAN circuits and 262 Frame Relay WAN circuits. DPW’s remote WAN locations have redundant T1 circuits with dual PVC’s that terminate on their WAN core Switches, as well as their redundant server farm site which is located in Selinsgrove, PA. DPW’s Server network site connects to their redundant server farm site via (2) 500Mbps Intercity Point to Point Ethernet connections. DPW connects directly to the Unisys managed DPH environment via Commonwealth owned fiber.

DPW has a large number of business partners across the Commonwealth that are logically routed through the Commonwealth’s Business Partner DMZ managed by TelCove. A unique extension of their business partner infrastructure includes a Verizon managed business partner router that connects to TelCove’s BP Router 1. DPW Business Partners connecting directly to the TelCove BP routers utilize the current TelCove contract for circuit provisioning; however, DPW Business Partners connecting to the Verizon managed BP router do not. DPW allows its Business Partners to choose their connectivity carrier and method.



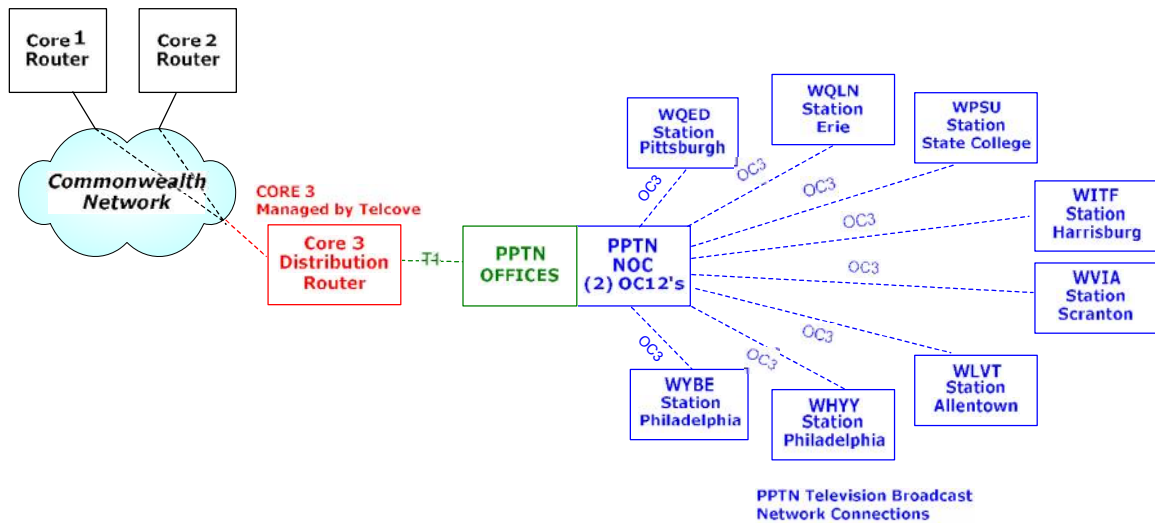
### 10.3 Pennsylvania Public Television Network (PPTN)

Pennsylvania Public Television Network (PPTN) is an independent agency of the Commonwealth. PPTN serves the millions of Pennsylvanians who watch public television by linking Pennsylvania's (8) eight public television stations in a statewide program delivery system. PPTN also serves as backup to the Pennsylvania Emergency Management Agency (PEMA) for emergency alert system (EAS) and Amber alerts.

PPTN owns and manages a very large and complex network and computing infrastructure from its Network Operations Center (NOC) in Hershey, PA. The PPTN NOC is currently served by digital transport (OC12's) on TelCove's SONET Ring ATM backbone. The 8 Stations are connected to PPTN Network Operations via individual OC3 SONET ThruPaths. All ATM circuits were provisioned by TelCove on TelCove's own fiber network with no investment needed by PPTN. PPTN controls the provisioning of the permanent virtual circuits (PVCs) and the allocation of bandwidth within these OC3 SONET / ATM circuits.

PPTN will likely grow significantly in its need for high-speed connectivity between the PPTN NOC and its affiliate stations. It is also likely that PPTN will need to grow its web presence to become the equivalent of an Internet Service Provider (ISP) with large bandwidth connectivity to the Internet to facilitate program streaming and file delivery in high, standard, and reduced definition formats.

PPTN connects to the Commonwealth's network via a single frame relay Full T1 to Core 3. This T1 is used for connectivity to email, IES, other Commonwealth services and systems, as well as providing access to the Internet for PPTN office staff and tech operations.



## 10.4 Pennsylvania State Police

The Pennsylvania State Police (PSP) department headquarters (DHQ) is located in Harrisburg and is a firewall protected node connected to the TelCove core routers. The PSP data network is a TCP/IP based network using standard frame relay, ATM and Ethernet technologies. The current PSP network provides access for 160 PSP sites and over 250 non-PSP locations. The PSP WAN is comprised of T1 circuits with dual PVCs back to dual DHQ WAN core routers. ISDN is utilized to provide dial backup capability during circuit outages. The Consolidated Dispatch Centers (CDC) are designed with OC3 circuits utilizing 5/10 Mbps PVCs to DHQ. Non-PSP sites have 64K to T1 frame relay circuits passing through a firewall at DHQ. All criminal justice traffic is encrypted per the Criminal Justice Information Services Security policy using router to router encryption. The current point-to-point bandwidth between the PSP DHQ and the Data Powerhouse (DPH) Enterprise computing facility, which houses the PSP mainframe, is 6 Mbps.

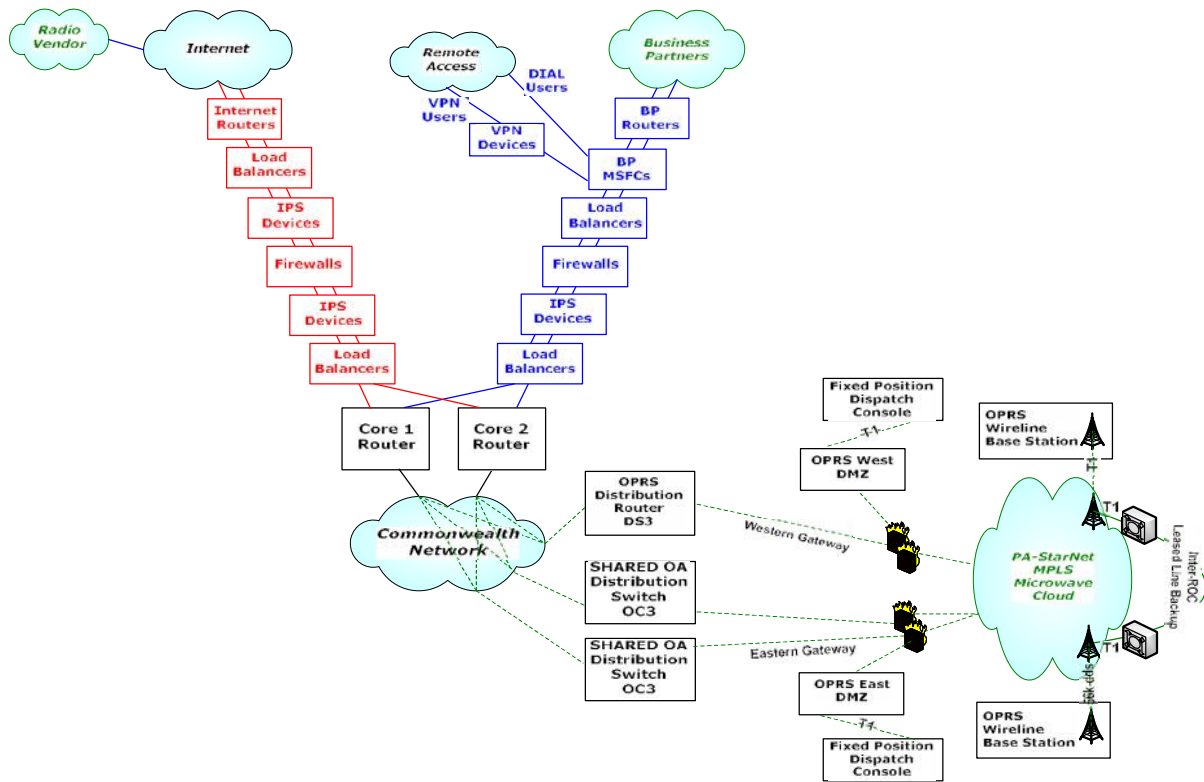
PSP provides response for emergency services to the public from seventy-two public safety-answering points and two consolidated dispatch centers - CDC (presently dispatching nine stations.) CDC's are equipped with redundant and diverse entry facilities. Utilizing AT&T advanced call routing features, calls are forwarded from local stations using the ANI of the originating caller. Disaster recovery includes the ability to fail-over communications in less than five minutes to any other dispatch center within the state from any location with web access or local phone line.

### 10.5 Pennsylvania Statewide Radio Network

The Pennsylvania Statewide Radio Network (PA-STARNET) is managed by the Office of Public Safety Radio Services (OPRS). OPRS maintains and operates a combination of leased lines and multiple rings of Alcatel / Lucent MPLS IP microwave. This network provides a Commonwealth owned backbone for the PA-STARNET. The design of this system includes two IP data gateways for enhanced interoperability and availability. The primary gateway is in Harrisburg, PA (Eastern) and the secondary gateway is in Johnsonburg, PA (Western). The firewall gateways provide Commonwealth agencies and System partners a point of presence (PoP) to connect voice and or data to the PA-OpenSky system.

Gateways and DMZs: The Eastern gateway connects the state wide radio system to the Commonwealth’s Core 1 and Core 2 MAN routers via two clustered Nokia IP710 firewalls. The Western gateway’s connection to the Commonwealth is via two clustered Nokia IP710 firewalls and a Cisco 3745 via land line ATM DS-3. The combination of two diverse sets of clustered Nokia firewalls at different locations will act as area ‘0’ within the OPRS provider edge network. These firewalls will instruct routing on both the OPRS data backhaul network (E-3/ T-3) and the PA-MAN based on route availability. Participating agencies and system partners are able to deploy facility diverse points for fixed position voice consoles. Additionally, the OPRS DMZs provide OpenSky application layer interoperability and total network availability via Checkpoint VPN services to the PA-MAN / Internet.

Cell Site Connectivity: Sites that are not able to be connected via microwave are connected via leased circuits. These circuits are ordered based on remote facility availability. (56k / T-1 / DS-3) When possible, every effort is made to terminate the circuit within the originating LEC’s territory. Certain sites within the PA-StarNet topology are designated telecommunication provider hubs. These sites are provisioned with extended OPRS microwave bandwidth and telecommunication provider facilities.



## **11.0 INFORMATION TECHNOLOGY BULLETINS (ITB)**

IT standards and policies are issued as ITBs by the OA/OIT. The ITBs are published on the OA/OIT website (See [www.oit.state.pa.us](http://www.oit.state.pa.us)).