

STANDARD CONTRACT TERMS AND CONDITIONS FOR A COLLABORATIVE SERVICE PURCHASE CONTRACT

The following terms and conditions shall apply to a Service Purchase Contract ("Contract") entered into between the Contractor and the Issuing Office (hereinafter referred to as the "University" or the "Commonwealth"), part of the Pennsylvania State System of Higher Education, an agency of the Commonwealth of Pennsylvania.

1. TERM OF CONTRACT

- a. The term of this Contract shall commence and become legally binding on the Effective Date (as defined below) and shall end on the Expiration Date identified in this Contract, subject to the other provisions of this Contract. The Effective Date shall be: a) the date this Contract has been fully executed by the Contractor and by the University and all approvals required by University contracting procedures have been obtained; or b) the date referenced in this Contract, whichever is later.
- b. The fully executed Contract may not contain "ink" signatures by the University. The Contractor understands and agrees that the receipt of an electronically printed Contract with the printed name of the University purchasing agent constitutes a valid, binding contract with the University. The printed name of the purchasing agent on this Contract represents the signature of that individual who is authorized to bind the University to the obligations contained in this Contract.
- c. The Contractor shall not start performance until one of the following has occurred: a) the Effective Date has arrived and the Contractor has received a copy of the fully-executed Contract or b) the Contractor has received a Notice to Proceed or Purchase Order (as defined below) directing the Contractor to start performance on a date that is on or after the Effective Date. The University shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred before the Effective Date or the date set forth in the Notice to Proceed or Purchase Order. No University employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract.
- d. The University reserves the right, upon notice to the Contractor, to extend the term of this Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary to enter into a new contract.

2. DEFINITIONS

- a. Contracting Officer: The person authorized to administer this Contract for the University and to make written determinations with respect to this Contract.
- b. Days: Unless specifically indicated otherwise, days mean calendar days.
- c. Services: All Contractor activity necessary to satisfy this Contract.

3. PURCHASE ORDERS

- a. In instances where this Contract contains a not to exceed value for goods or services at established prices or where this Contract states there is no guarantee of work being awarded under this Contract, the University may issue Purchase Orders against this Contract when it seeks to have the Contractor provide goods or perform services under this 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 this Contract are acceptable and must be performed in accordance with this Contract. Contractors are not permitted to accept Purchase Orders that require performance extended beyond those performance time periods specified in this Contract unless specifically authorized by the Contracting Officer, but in any event, no longer than ninety (90) days after the Expiration Date of this Contract period. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in this Contract.
- b. 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. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Purchase Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.
- c. The University and the Contractor specifically agree as follows:
 - (1) Upon receipt of a Purchase Order, the Contractor shall promptly and properly transmit an acknowledgement in return. Any Purchase Order that 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 University, unless and until the University transmitting the Purchase Order has properly received an acknowledgement.

- (2) The parties agree that no writing shall be required in order to make the Purchase Order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Purchase Order 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 Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial 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 Purchase Orders 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 was not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed genuine for all purposes if it is transmitted to the location designated for such documents.
- (3) Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

4. COST

- a. **ESTIMATED QUANTITIES:** It shall be understood and agreed that any quantities of goods or services listed in this Contract that include a price per unit are estimated only and the quantities may be increased or decreased in accordance with the actual requirements of the University and that the University in accepting any bid, proposal or contract offer or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the University. The University reserves the right to purchase materials and services covered under this Contract through a separate competitive procurement procedure, whenever University deems it to be in its best interest. In no event shall the cost of any goods or services ordered exceed any stated not to exceed amount for this Contract.
- b. **PRICING WARRANTY AND DISCOUNTS:** The University qualifies for governmental discounts and educational discounts. Unit prices shall reflect these discounts. Contractor warrants that the terms, conditions and price(s) for the goods or services sold to the University hereunder are not less favorable to the University than those extended to any other comparable agencies, institutions, universities, teaching hospitals, colleges, or community colleges ("similar parties") for the same or similar goods or services in similar quantities or scope of work. In the event Contractor reduces its prices or provides more favorable terms and conditions to the public or to similar parties for such goods or services during the term of this Contract, Contractor agrees to reduce the price(s) charged under this Contract effective as of the date of such price reduction and offer the more favorable terms and conditions as of the date of such offer. For purposes of determining whether a prompt-payment discount, if applicable, may be taken by the University, the starting date of such period shall be the later date of the properly executed invoice or the date of completion of services or delivery of product. Contractor warrants that prices on this Contract shall be complete, and no additional charges of any type shall be added without the University's express written consent. Such additional charges include, but are not limited to shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating.

5. COOPERATIVE PURCHASING/PIGGYBACKING

- a. The goods or services described within this Contract provided by the Contractor to the University may also be procured by any other university that is part of the Pennsylvania State System of Higher Education ("PASSHE"), including the Dixon University Center (Office of the Chancellor), subject to all other applicable procurement requirements. The Contractor agrees to supply the goods or services described within this Contract or competitively solicited as part of the award of this Contract on the same or more favorable terms and conditions.
- b. To the extent that other universities may procure goods or services, those individual universities will enter into a separate contract with the Contractor and assume all liability for payment to the Contractor.

6. DELIVERY

- a. **Compliance with Delivery Schedule:** Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date. Following the Effective Date of this Contract, if it is found the goods or services cannot be delivered within the time specified in this Contract, the Contractor must provide written notice thereof immediately to the University, including the reason(s)

for the delay along with the anticipated date of delivery. Any notice to the University as to possible delay shall not constitute a waiver of the University's rights under this Contract, nor shall such actions affect the responsibility of the Contractor to deliver goods or perform services in accordance with the delivery schedule prescribed by this Contract.

- b. Supplies Delivery: All item(s) shall be delivered duty paid (DDP) to the location specified. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the University. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations.
- c. Delivery of Services: The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel and in accordance with any completion criteria set forth in this Contract.

7. INSPECTION AND REJECTION

- a. No item(s) or services received by the University shall be deemed accepted until the University has had a reasonable opportunity to make an inspection. Any item(s) that is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. The decision of the Contracting Officer shall be final. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the University within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the University shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale that represents the University's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately render service(s) or replace all such rejected item(s) with others conforming to the specifications and that are not defective. If the Contractor fails, neglects or refuses to do so, the University shall then have the right to procure a corresponding quantity of such item(s) or services, and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in this Contract and the cost thereof to the University.
- b. The University shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within thirty (30) days of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean up. If the Contractor fails or refuses to remove the rejected material as demanded by the University, the University may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth of Pennsylvania, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the University.

8. CHANGES

- a. The University reserves the right to make changes at any time during the term of this Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in this Contract and actual quantities necessary to meet the requirements of the University; 2) to make non-material changes to the services within the scope of this Contract to meet the needs of the University except in no event shall the cost of any goods or services ordered exceed any stated not to exceed amount for this Contract; 3) to notify the Contractor that the University is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of this Contract to extend the completion date beyond the Expiration Date of this Contract or any renewals or extensions thereof.
- b. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the notification of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate this Contract, nor, if performance security is being furnished in conjunction with this Contract, release the security obligation. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through the section entitled "CONTRACT CONTROVERSIES".

9. OTHER CONTRACTORS

- a. The University may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and University 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 University employees.

- b. The requirements set forth in this section shall be included in the contracts of all contractors with which this Contractor will be required to cooperate. The University shall equitably enforce this section as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

10. ASSIGNABILITY AND SUBCONTRACTING

- a. Subject to the terms and conditions of this section, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contracting Officer 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.
- g. A change of name by the Contractor, following which the Contractor's federal tax identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

11. COMPENSATION/INVOICES

- a. The Contractor shall be required to perform at the price(s) quoted in this Contract. All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and performed to the satisfaction of the University. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in this Contract.
- b. The Contractor shall send an **itemized invoice** to the address referenced on this Contract promptly after items are satisfactorily delivered. The invoice should include only amounts due under the Contract. This Contract number must be included on all invoices. In addition, the University 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.
- c. Contractor may not impose a surcharge or demurrage for any reason, unless authorized by the University in writing. Surcharges/demurrage charges not approved in writing shall not be paid if invoiced, and the University shall not be liable for or penalized in any way for lack of payment.

12. PAYMENT

- a. The University shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of this Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in this Contract (a "proper" invoice is not received until the University accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in this Contract. If any payment is not made within fifteen (15) days after the required payment date, the University 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 University 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.

- b. The University shall have the option of using the University purchasing card to make purchases under this Contract or a Purchase Order. The University's purchasing card is similar to a credit card in that there will be a small fee that the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the University. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the University allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of this Contract or Purchase Order.
- c. The University may make contract payments through Automated Clearing House (ACH). Within 10 days of award of this Contract or a Purchase Order, the Contractor must submit or must have already submitted their ACH information to the University. The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the University's ACH remittance advice to enable the Contractor to properly apply the University's payment to the invoice submitted. It is the responsibility of the Contractor to ensure that the ACH information provided to the University is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

13. TAXES

- a. The University is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The University is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued.
- b. Nothing in this section is meant to exempt a construction contractor from the payment of any of these taxes or fees that 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.

14. INSURANCE

- a. Unless otherwise agreed to in writing by the parties, Contractor shall procure and maintain during the term of this Contract, at its own expense, the following insurance coverage:
 - 1) Worker's compensation insurance as required by Pennsylvania law for all employees engaged in work.
 - 2) Commercial general liability insurance including coverage against any claims(s) that might occur in carryout out this Contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations.
 - 3) Automobile liability insurance for all owned, non-owned and hired vehicles that are used in carrying out this Contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damages per accident.
- b. The University reserves the right to require higher or lower limits where warranted.
- c. Upon request by the University, the Contractor is required to provide a Certificate of Insurance from a company licensed to do business in the Commonwealth of Pennsylvania, with a minimum AM Best rating of A-, and signed by an authorized agent. A minimum 60-day cancellation notice is desired.

15. CONTRACTOR REPRESENTATIONS, WARRANTIES AND COVENANTS

- a. **WARRANTY:** The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials and comply with all applicable safety requirements under applicable law, including OSHA Standards. Unless otherwise stated in this Contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the University. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the Contractor. The Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the University.

- b. **PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY:** The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of this Contract that is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the University under this Contract. The Contractor shall defend any suit or proceeding brought against the University on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of this Contract. This is upon condition that the University shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the University may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the University 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. The Contractor shall indemnify and hold the University harmless from all damages, costs, and expenses, including attorney's fees that the University may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of this Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software that is obtained contemporaneously with the infringing product, or, at the option of the University, only those items of equipment or software that are held to be infringing, and to pay the University: 1) any amounts paid by the University towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the University for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this section continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.
- c. **COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the University shall have the right to terminate this Contract without liability or in its discretion to deduct from this Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

16. RIGHTS IN DATA OR OTHER INTELLECTUAL PROPERTY

Unless otherwise agreed in writing, Contractor agrees: a) that any computer program, software, documentation, report, data, material, copyrightable work, discoveries, inventions or improvements developed by Contractor resulting from any performance of services or delivery of goods pursuant to this Contract are the property of the University; and b) to assign all rights therein to the University.

17. ASSIGNMENT OF ANTITRUST CLAIMS

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

18. LIMITATION OF UNIVERSITY LIABILITY

IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR OTHER DAMAGES ARISING OUT OF THIS CONTRACT. THE UNIVERSITY'S TOTAL OBLIGATION UNDER THIS CONTRACT SHALL NOT EXCEED THE COST FOR ALL GOODS AND SERVICES UNDER THIS CONTRACT WITHOUT REGARD TO THE THEORY OF RECOVERY OR THE NATURE OF THE CAUSE OF ACTION. THIS PROVISION SHALL NOT

BE CONSTRUED TO LIMIT THE SOVEREIGN IMMUNITY OF THE COMMONWEALTH OR OF THE STATE SYSTEM OF HIGHER EDUCATION OR THE UNIVERSITY.

19. HOLD HARMLESS

The Contractor shall hold the University harmless from and indemnify the University, the State System of Higher Education and the Commonwealth of Pennsylvania 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 University gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the University in actions brought against the University. 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 University will cooperate with all reasonable requests of Contractor made in the defense of such suits. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The University may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

20. COMPLIANCE WITH LAW

- a. The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this Contract.
- b. ENVIRONMENTAL LAWS AND REGULATIONS: In the performance of this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.
- c. POST-CONSUMER RECYCLED CONTENT: Except as specifically waived by the University in writing, any supplies that are provided to the University as a part of the performance of this Contract must meet the minimum percentage levels for total recycled content and post-consumer recycled content or are otherwise environmentally preferable as certified under a third party independently verified life cycle analysis conforming to the ISO 14040 series of standards or as specified in the guidelines or in the Department of General Services (DGS) specifications (available on the DGS website at www.dgs.state.pa.us), whichever reflects the higher level of post-consumer recycled content on the date of submission of the bid, proposal or contract offer.
- d. RECYCLED CONTENT ENFORCEMENT: The Contractor may be required, after delivery of the Contract item(s), to provide the University with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.
- e. HAZARDOUS SUBSTANCES: The Contractor shall provide information to the University about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1 et seq., as well as all applicable federal law, which includes providing a copy of any Material Safety Data Sheet for each order of a hazardous chemical, as defined under 29 CFR 1910.1200.
- f. EXPORT CONTROL LAW COMPLIANCE: To the extent Contractor is providing devices/technology or data under this Contract, Contractor acknowledges that a foreign national(s) may use the device/technology/and or data at the University. Contractor shall comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Contract. In the absence of available license exemptions/exceptions, Contractor shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions. Prior to disclosing or transferring to University any hardware, technical data, software or product utilizing any such data which is subject to export controls under federal law, Contractor shall notify the University in writing of the nature and extent of the export control. The University shall have the right to decline any such technical data or product utilizing such data. In the event Contractor sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the University has the right to immediately terminate this Contract.

21. DEFAULT

- a. The University may, subject to the provisions of the section entitled "FORCE MAJEURE", and in addition to its other rights under this Contract, declare the Contractor in default by written notice

thereof to the Contractor, and terminate (as provided in the section entitled "TERMINATION") the whole or any part of this Contract or any Purchase Order for any of the following reasons:

- 1) Failure to begin work within the time specified in this Contract or a Purchase Order or as otherwise specified;
 - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the terms of this Contract or a Purchase Order;
 - 3) Unsatisfactory performance of the work;
 - 4) Failure to deliver awarded item(s) within the time specified in this Contract or a Purchase Order or as otherwise specified;
 - 5) Improper or untimely delivery;
 - 6) Failure to provide an item(s) that is in conformance with the specifications referenced in this Contract or a Purchase Order;
 - 7) Delivery of a defective item;
 - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - 9) Discontinuance of work without approval;
 - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - 11) Insolvency, bankruptcy or placed into receivership;
 - 12) Assignment made for the benefit of creditors;
 - 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - 14) Failure to protect, to repair, or to make good any damage or injury to property;
 - 15) Breach of any provision of this Contract;
 - 16) Failure to comply with representations made in the Contractor's bid, proposal or contract offer; or
 - 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the University terminates this Contract or any Purchase Order in whole or in part as provided in subparagraph a. above, the University may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the University for any reasonable excess costs for such similar or identical items included within the terminated part of this Contract or a Purchase Order.
- c. If this Contract or a Purchase Order is terminated as provided in subparagraph a. above, the University, in addition to any other rights provided in this section, may require the Contractor to transfer title and deliver immediately to the University in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract or a Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the University shall be at the price set forth in this Contract. Except as provided below, payment for partially completed items including, where applicable, reports and working papers delivered to and accepted by the University shall be in an amount agreed upon by the Contractor and Contracting Officer. The University may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the University against loss.
- d. The rights and remedies of the University provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The University's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver by the University of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in the section entitled "CONTRACT CONTROVERSIES", the Contractor's exclusive remedy shall be to seek damages in the Commonwealth of Pennsylvania Board of Claims.

22. TERMINATION

The University has the right to terminate this Contract (including any Purchase Order issued under this Contract) for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- a. **TERMINATION FOR CONVENIENCE:** The University shall have the right to terminate this Contract for its convenience without penalty or recourse if the University determines termination to be in its best interest. Upon receipt of the written notice, the Contractor shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the University. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, and this shall be the Contractor's sole remedy against the University in the event of termination under this provision. In no event shall the Contractor be entitled to recover loss of profits, loss of use of money, or administrative or overhead costs.
- b. **NON-APPROPRIATION:** The University's obligation to make payments during any University fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds by a granting agency, the Commonwealth or a governing body. When funds are not appropriated or otherwise made available to support continued performance in a subsequent fiscal year period, the University shall have the right to terminate this Contract. The Contractor shall be paid for work satisfactorily completed prior to the notice of non-appropriation. The Contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations made available for that purpose.
- c. **TERMINATION FOR CAUSE:** The University shall have the right to terminate this Contract for Contractor default under the section entitled "DEFAULT", upon written notice to the Contractor. The University shall also have the right, upon written notice to the Contractor, to terminate this Contract for other cause as specified in the Contract or by law. If it is later determined that the University erred in terminating this Contract for cause, then, at the University's discretion, this Contract shall be deemed to have been terminated for convenience under subparagraph a above.

23. CONTRACT CONTROVERSIES

- a. In the event of a controversy or claim arising from this Contract, the Contractor must, within six (6) months after the cause of action occurs, file a written claim with the Contracting Officer for a determination, stating all grounds upon which the Contractor asserts a controversy or claim. The written claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth of Pennsylvania's Office of General Counsel Mediation Program.
- b. If the Contractor or the Contracting Officer requests mediation and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful.
- c. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- d. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of this Contract in a manner consistent with the determination of the Contracting Officer and the University shall compensate the Contractor pursuant to the terms of this Contract.

24. FORCE MAJEURE

- a. Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by an event or circumstance beyond its control, regardless of whether it was foreseeable, that was not caused by the party who is unable to perform (the "nonperforming party") provided the nonperforming party complies with the provisions of this section. Causes and circumstances beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade or other labor disputes affecting either party, and freight embargoes. Causes and circumstances beyond a party's control do not include a strike or other labor unrest that affects only one party or an increase in prices.
- b. Upon identifying an event or circumstance a party believes is beyond its control, nonperforming party shall notify the other party as soon as practicable and in writing no later than five (5) days after the date on which the nonperforming party becomes aware, or should have reasonably become aware, that such event or circumstance would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under this Contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay and all reasonable efforts being undertaken to attempt performance, limit delay and limit damages. The nonperforming party shall have the burden of proving that such event or circumstance delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the other party may reasonably request, including providing updates regarding the event or circumstance as it is ongoing. After receipt of such notification, the party receiving notice of the event or circumstance may elect to cancel this Contract, cancel a Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the delay.
- c. In the event of a declared emergency by competent governmental authorities, the University by notice to the Contractor may suspend all or a portion of this Contract or a Purchase Order issued under this Contract.

25. USE OF CONFIDENTIAL INFORMATION

- a. As Used in this Section "the PA Data Breach Notification Act" shall refer to the Pennsylvania Breach of Personal Information and Notification Act, 71 Pa.C.S. § 2031, *et. seq.*, as amended by Act No. 151 of 2022, and any subsequent amendments through the term of this Contract.
- b. In addition to all other Notice requirements otherwise provided for by this Agreement, any notice required of Contractor pursuant to this section shall be made by email directed to: ContractorCyberIncident@passhe.edu
- c. The following words or phrases, as used in this Section, shall be given the same definition as they are given in the PA Data Breach Act: "Breach of the security of the system," "Determination," "Discovery," and "Personal Information."
- d. Covered Data and Information ("CDI") includes, Personal Information, paper and electronic financial information, student education records, as well as any other data marked as confidential provided by the University or its students to the Contractor to perform the services under this Contract.
- e. Disclosure of CDI: Contractor shall not copy, report or release CDI or information concerning the University or its students, employees or customers to third parties except when essential for authorized use under this Contract and then only with University's prior written approval and only where the third parties sign agreements containing substantially the same provisions as contained in this section. Any such report or release of information shall, at a minimum, comply with those requirements enumerated in the Gramm-Leach-Bliley Act (15 U.S.C. §6801 *et seq.*), the Family and Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g), and applicable University or Board of Governors policies or standards for safeguarding such information, and all other applicable laws regarding consumer privacy and confidential information. The Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.
- f. Maintenance of CDI: The Contractor shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted CDI received from or on behalf of the University or its students. The Contractor will extend these measures by contract to all subcontractors used by the Contractor. At a minimum, the Contractor agrees to guard the confidentiality of the

University's confidential information with the same diligence with which it guards its own proprietary information.

- g. If the Contractor maintains or stores computerized data on behalf of the University that constitutes Personal Information the Contractor shall:
 - 1) Utilize encryption, or other appropriate security measures, to reasonably protect the transmission of personal information from being viewed or modified by an unauthorized third party. The Contractor shall develop and maintain (or continue to maintain if such a policy already exists) a policy to govern the proper encryption or other appropriate security measures and transmission of data to the University. In developing the policy, the Contractor shall reasonably consider similar existing Federal policies and other policies, best practices identified by other states and relevant studies and other sources as appropriate in accordance with best practices as established by the Federal Government and the Commonwealth of Pennsylvania. The policy shall be reviewed at least annually and updated as necessary.
 - 2) Develop (or continue to maintain if such a policy already exists) a policy to govern reasonable proper storage of the Personal Information. A goal of the policy shall be to reduce the risk of future breaches of the security of the system. In developing the policy, the Contractor shall reasonably consider similar existing Federal policies and other policies, best practices identified by other states and relevant studies and other sources as appropriate in accordance with best practices as established by the Federal Government and the Commonwealth of Pennsylvania. The policy shall be reviewed at least annually and updated as necessary.
- h. Destruction or Return of CDI: Upon termination, cancellation, expiration or other conclusion of this Contract or any license granted hereunder, the Contractor will return to the University all copies of CDI in the Contractor's possession, unless the Contracting Officer consents in writing to the preservation of a copy of the CDI for archival purposes. The Contractor shall provide a certificate to the University confirming the date of destruction of the CDI.
- i. Reporting of Unauthorized Disclosures Misuse of CDI, or Breach of the security of the system: The Contractor shall, as soon as reasonably practicable upon Discovery, and in accordance with all applicable state and federal statutes and regulations, and in no event more than 24-hours following Determination of the Breach of the security of the system, report to the University any Breach of the security of the system, use or disclosure of CDI not authorized by this Contract, by Contractor or any party to whom Contractor has given access or control of CDI. The Contractor's report shall identify: (i) the nature of the unauthorized Breach of the security, use or disclosure, (ii) any CDI used or disclosed, (iii) the identity of any known party who perpetrated the Breach of the security of the system, made the unauthorized use or received the unauthorized disclosure, (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the Beach of the security of the system, unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar Breach of the security of the system, unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the University.
- j. Notification following Breach of the Security of the System: Upon Determination that a Breach of the security of the system has occurred, Contractor shall, in addition to the above requirement regarding notification of the State System, comply with all relevant state and federal laws and regulations regarding notification of data breach, including, but not limited to, the PA Data Breach Notification Act.
- k. Remedies: If the University reasonably determines in good faith that the Contractor has materially breached any of its obligations under this provision, the University, in its sole discretion, shall have the right to require the Contractor to submit to a plan of monitoring and reporting; provide the Contractor with a thirty (30) day period to cure the breach; or terminate this Contract immediately if cure is not possible. Before exercising any of these options, the University shall provide written notice to the Contractor describing the violation and the action it intends to take. If the Office of the Chief Privacy Officer ("OCPO") of the U.S. Department of Education determines that the Contractor improperly disclosed personally identifiable information obtained from the University's education records, the University may not allow the Contractor access to education records for at least five (5) years.
- l. The obligations stated in this section do not apply to information:
 - 1) already known to the recipient at the time of disclosure other than through the contractual relationship;

- 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
 - 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - 4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- m. Indemnity: The Contractor shall defend and hold the University harmless from all claims, liabilities, damages, or judgments brought by a third party, including the University's costs and attorney fees, to the extent arising as a result of the Contractor's negligent or willful failure to meet any of its obligations under this section.

26. NONDISCRIMINATION

The parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination and immigration. The parties agree to continue their respective policies of nondiscrimination based on Title VI of the Civil Rights Act of 1964 in regard to sex, age, race, color, creed, and national origin; Title IX of the Education Amendments of 1972 and other applicable laws; as well as the provisions of the Americans with Disabilities Act. 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 it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under 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" set forth in 28 C.F.R. § 35.130, and all other regulations promulgated under Title II 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.

27. SEXUAL HARASSMENT

Federal law and the policies of the University prohibit sexual harassment of University employees or students. Sexual harassment includes any unwelcome sexual advance toward a University employee or student, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive working environment for University employees, or a hostile or offensive academic environment for university students. University vendors, subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of University employees and students. The employer of any person who the University, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of this Contract to cause such person to be removed from the project site and from University premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease. In addition, the agency may proceed with debarment or suspension or make appropriate reports in accordance with the Contractor Responsibility Program.

28. BACKGROUND CHECKS FOR SECURE OR SENSITIVE AREAS

- a. At the direction of the University, the Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to secure or sensitive areas on the University's campus, either through on-site access or through remote access, as determined by the University. Before the University will permit an employee or subcontractor of the Contractor to have access to secure or sensitive areas on the University's campus, the Contractor may be required provide written confirmation that appropriate background checks have been conducted.
- b. Access to certain University buildings may be controlled by means of card readers and secured visitors' entrances. University contracted personnel who have regular and routine business in University worksites may be issued a photo identification or access badge, at the discretion of the University, subject to University policy or direction. The Contractor shall be responsible for all fees in connection with issuance of photo identification or access badges.
- c. The University may provide Contractor employees who work on a University campus with a designated email or other network access for use by the employee for performance under this Contract. Any such access must be in accordance with all applicable laws and University policies.
- d. If it is discovered at any time that an individual has access to a secure or sensitive area on campus has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, breach of trust/fiduciary responsibility or that raises concerns about building, system or personal security, or is otherwise job-related, the Contractor shall not assign that employee to any University facilities, shall remove any access privileges already given to the employee and

shall not permit that employee remote access unless the University consents to the access, in writing, prior to the access.

- e. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the University may result in the Contractor being deemed in default of its Contract.

29. BACKGROUND CHECKS FOR MINORS

- a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will provide a program, activity or service to the University that is responsible for the care, supervision, guidance, or control of children or as otherwise designated by the University under applicable policy.
- b. Before the University will permit an employee or subcontractor of the Contractor to provide any program, activity or service to the University where the employee or subcontractor is responsible for the care, supervision, guidance, or control of children, the Contractor must provide written confirmation that background checks have been conducted in accordance with applicable law, and Board of Governors and University policies. If it is discovered at any time that an individual has a criminal record that includes one of the enumerated offenses set forth in section 6344(c) of the Child Protective Services Law, 23 Pa.C.S. § 6344, the Contractor shall immediately remove the employee or subcontractor from assignment to the University under this Contract.
- c. The University specifically reserves the right to conduct background checks over and above that described herein or as otherwise required by applicable law.
- d. The University may provide Contractor employees who work on a University campus with a designated email or other network access for use by the employee for performance under this Contract. Any such access must be in accordance with all applicable laws and University policies.
- e. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the University may result in the Contractor being deemed in default of its Contract.

30. MANDATORY REPORTING REQUIREMENTS

- a. All employees, subcontractors and volunteers of Contractor who provide a program, activity, or service to the University that are responsible for the care, supervision, guidance, or control of children are considered mandated reporters of suspected cases of child abuse under Pennsylvania law. All mandated reporters shall make an immediate report of suspected child abuse if the individual has reasonable cause to suspect that a child is the victim of child abuse under any of the following circumstances: (i) the mandated reporter comes into contact with the child in the course of employment, occupation and practice of a profession or through a regularly scheduled program, activity or service; (ii) the mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child; (iii) a person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse; or (iv) an individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse. The minor is not required to come before the mandated reporter in order for the mandated reporter to make a report of suspected child abuse. The mandated reporter does not need to determine the identity of the person responsible for the child abuse to make a report of suspected child abuse.
- b. Mandated reporters must immediately make an oral report of suspected child abuse to the Department of Human Services (DHS), formerly the Department of Public Welfare, by calling ChildLine at 1-800-932-0313, or by filing a written report with DHS through Pennsylvania's Child Welfare Information Solution portal (<https://www.compass.state.pa.us/CWIS>). If an oral report is made, a written report shall also be made within 48 hours to DHS or the county agency assigned to the case as prescribed by DHS. If a mandated reporter feels that a child is in an emergency situation, the mandated reporter should call local law enforcement or 911 immediately. In addition to the mandatory reporting requirements above, employees and subcontractors of Contractor must immediately notify the University that a report of suspected child abuse has been made.

31. CONTRACTOR RESPONSIBILITY

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant,

lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- c. 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, to the best knowledge of the Contractor, 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 that 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 search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

32. CONTRACTOR INTEGRITY

- a. It is essential that those who seek to contract with the Commonwealth observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.
- b. DEFINITIONS. For purposes of this section, the following terms shall be defined as follows:
 - 1) "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - 2) "Consent" means written permission signed by a duly authorized officer or employee of the University, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the University shall be deemed to have consented by virtue of the execution of this Contract.
 - 3) "Contractor" means the individual or entity that has entered into this Contract with the University.
 - 4) "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5% or more interest in the Contractor.
 - 5) "Financial Interest" means either:
 - (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 any position of management.
 - 6) "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The

exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

- 7) "Non-bid Basis" means a contract awarded or executed by the University with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- c. In furtherance of this policy, Contractor agrees to the following:
- 1) Contractor shall maintain the highest standards of honesty and integrity during the performance of this Contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
 - 2) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where the services are performed, shall satisfy this requirement.
 - 3) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this Contract, except as provided in this Contract.
 - 4) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this Contract, unless the financial interest is disclosed to the University in writing and the University consents to Contractor's financial interest. Contractor shall disclose the financial interest to the University at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of this Contract signed by Contractor.
 - 5) Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - (a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (b) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - (c) had any business license or professional license suspended or revoked;
 - (d) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - (e) been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the University will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the Effective Date of this Contract through the Expiration Date. Accordingly, the Contractor shall have an obligation to immediately notify the University in writing if at any time during the term of this Contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. Contractor acknowledges that the University may, in its sole discretion, terminate this Contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.
- d. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this Contract was awarded on a non-bid Basis, Contractor must also comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

- e. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Contracting Officer or the Office of the State Inspector General in writing.
- f. Contractor, by submission of its bid or proposal or execution of this Contract and by the submission of any bills, invoices or requests for payment pursuant to this Contract, certifies and represents that it has not violated any of these Contractor Integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of this Contract, to include any extensions thereof. Contractor shall immediately notify the Contracting Officer in writing of any actions for occurrences that would result in a violation of these Contractor Integrity provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General, the University and the Commonwealth for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- g. Contractor shall cooperate with the Office of the State Inspector General, the University and the Commonwealth in any investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of a Commonwealth investigator, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the investigating Commonwealth agency to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this Contract. Contractor shall incorporate the obligations set forth in this section in any agreement, contract or subcontract it enters into in the course of the performance of this Contract solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the University and any such subcontractor, and no third party beneficiaries shall be created thereby.
- h. For violation of any of these Contractor Integrity provisions, the University may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this Contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, policy or otherwise.

33. COMMONWEALTH EMPLOYEE ETHICS

- a. The Commonwealth Procurement Code, 62 Pa.C.S. § 101 et seq., provides that any attempt by a Commonwealth employee to realize personal gain through public employment by conduct inconsistent with the proper discharge of the duties of the employee is a breach of a public trust and that Commonwealth employees must avoid conflict of interest or improper use of confidential information. 62 Pa. C. S. § 2302(a).
- b. Pursuant to the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq., subject to certain statutory exceptions, "public officials" or "public employees" as defined by the Ethics Act, 65 Pa.C.S. § 1102, are prohibited from: a) using the authority of their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of their immediate family, or businesses with which they or member(s) of their immediate family are associated; and b) using any confidential information received from their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of their immediate family, or businesses with which they or member(s) of immediate family are associated. 65 Pa.C.S. § 1103(a).
- c. "State advisors" and "State consultants" as those terms are defined in the State Adverse Interest Act, 71 P.S. § 7761 et eq., having recommended to the State agency that he or she served, either in the making of a contract or a course of action of which the making of a contract is an express or implied

part, are prohibited from "hav[ing] an adverse interest" in such contract, as that term is defined in the statute. A State employee, as that term is defined in the statute, is prohibited from having an adverse interest in a contract with the State agency by that he or she is employed and from influencing or attempting to influence the making of or supervise or in any manner deal with any contract in which the employee has an adverse interest. For purposes of this section, State agency shall refer to the Pennsylvania State System of Higher Education.

- d. The Contractor must report any known or suspected violations of the provisions of this section to the University or the Office of the Chancellor, attn.: Chief Counsel.

34. AUDIT

The University and the Commonwealth of Pennsylvania shall have the right, at reasonable times and at a site designated by the University, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for this Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for this Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for this Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the University, the Commonwealth of Pennsylvania and their authorized representatives.

35. RIGHT OF OFFSET

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

36. RIGHT TO KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract.
- b. If the University needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the University.
- c. Upon written notification from the University that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - 1) Provide the University, within ten (10) days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the University reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2) Provide such other assistance as the University may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the University and provide, within seven (7) days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The University will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the University determines that the Requested Information is clearly not protected from disclosure under the RTKL in which case the Contractor shall provide the Requested Information within five (5) days of receipt of written notification of the University's determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the University harmless for any damages, penalties, costs, detriment or harm that the University may incur as a result of the Contractor's failure, including any statutory damages assessed against the University.
- g. The University will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by University, or if none, by the Office of Open Records or as otherwise provided by the RTKL if a fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any University decision to release a record to the public with the Office of Open Records, or in an appropriate Pennsylvania Court; however, the Contractor shall indemnify the University for any legal expenses incurred as a result of such a challenge and shall

hold the University harmless for any damages, penalties, costs, detriment or harm that the University may incur as a result of the Contractor's failure, including any statutory damages assessed against the University, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the University's disclosure of Requested Information pursuant to the RTKL.

37. APPLICABLE LAW

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

38. MISCELLANEOUS

- a. **NONEXCLUSIVITY:** Unless otherwise specified in the provisions of this Contract, the University reserves the right to purchase goods and services covered under this Contract through a separate procurement procedure whenever University deems it to be in its best interest.
- b. **PUBLICITY:** Contractor shall not reference or use the name of the Commonwealth of Pennsylvania, the State System of Higher Education, the University or, any official, employee, unit or department or any logo, trademark or symbol associated with any of the above for commercial promotion. News releases or other publicity pertaining to this Contract shall not be made without the prior written approval of the University.
- c. **INTEGRATION:** This Contract, including all referenced documents and any issued Purchase Order, constitute the entire agreement between the parties. No agent, representative, employee or officer of either the University or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Contract. No modifications, alterations, changes, or waiver to this Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate University form.
- d. **CONTROLLING TERMS AND CONDITIONS:** The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the University. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the University unless specifically referenced as being incorporated into this Contract. In the event attachments containing additional terms are incorporated as part of this Contract, the terms and conditions herein shall control and prevail over any such attachments, regardless of any language contained therein to the contrary.
- e. **SEVERABILITY:** If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law or rendered unlawful by a legislative act, such provision shall be interpreted to be modified so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Contract shall remain in full force and effect.
- f. **SURVIVAL:** The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.
- g. **NOTICE:** Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to the other party at the address set forth on this Contract. In the case of an alleged breach of this Contract, a copy of the written notice to the University shall also be provided to the following: University Legal Counsel, 2300 Vartan Way, Suite 207, Harrisburg, PA 17110.
- h. **LEGISLATIVE AND POLICY UPDATES:** The parties acknowledge that it may be necessary from time to time to modify the provisions of this Contract to comply with legislative or policy updates, including updates to policies of the Pennsylvania State System of Higher Education. In such cases, the University

will notify the Contractor of the necessary changes and the parties will incorporate such changes into an amendment to this Contract.

- i. **THIRD PARTY BENEFICIARY:** The University and the Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or is intended to give or shall be construed to give or provide any benefit or right, directly or indirectly, to third parties.
- j. **INDEPENDENT CONTRACTOR:** In performing its obligations under this Contract, the Contractor will act as an independent contractor and not as an employee or agent of the University. 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 this Contract.
- k. **COUNTERPARTS:** This Contract may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.