

## STANDARD CONTRACT TERMS AND CONDITIONS FOR IT/SOFTWARE/SAAS CONTRACT

### 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. INDEPENDENT CONTRACTOR

In performing the services required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.

### 3. COMPLIANCE WITH LAW

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

### 4. COMPENSATION/EXPENSES

The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated in accordance with contract terms. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

### 5. PAYMENT

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.

### 6. CONTRACTOR REPRESENTATIONS, WARRANTIES AND COVENANTS

- a. **WARRANTY:** The Contractor warrants that all services or goods to be provided by the Contractor, its agents and subcontractors shall perform in material conformance with all specifications, standards, and service level agreements set forth in this contract and its attachments, or as set forth in any bid or proposal submitted with regard to the goods, services, or work to be performed under this contract.
- 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.

## **7. 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 a 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.

## **8. INTELLECTUAL PROPERTY**

Except where otherwise provided by this Contract or its attachments, the Parties agree that each party shall retain ownership of its intellectual property. In particular: the University, the State System of Higher Education and the Commonwealth of Pennsylvania shall retain ownership over their respective intellectual property, including, but not limited to, any data or information supplied pursuant to this agreement, any copyrights or

trademarks, and all associated names, trademarks, or logos. For the purposes of this section, "Data" shall be defined as: any recorded information, regardless of the form, the media on which it is recorded or the method of recording.

#### **9. TAXES**

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

#### **10. ASSIGNMENT OF ANTITRUST CLAIMS**

To the extent required by law, the Contractor and the Commonwealth 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 Commonwealth. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth 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.

#### **11. LIMITATION OF LIABILITY**

IN NO EVENT SHALL THE EITHER PARTY 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.

#### **12. HOLD HARMLESS PROVISION**

- a. **CONTRACTOR OBLIGATIONS.** The Contractor shall indemnify the University against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any of any negligent, intentional, or unlawful acts performed by the Contractor or its employees and agents that are related to this contract, as determined by the University in its sole discretion.
- b. **COMMONWEALTH ATTORNEYS ACT.** The University shall provide the Contractor with prompt notice of any claim or suit of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the University in actions brought against the University. The OAG may, however, in its sole discretion and under any terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the University will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- c. **Settlement.** Notwithstanding the above, neither party may enter into a settlement of any claim or suit without the other party's written consent, which will not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

#### **13. AUDIT PROVISIONS**

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Contractor to the extent that the books, documents and records directly relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the 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 Commonwealth and/or their authorized representatives.

#### **14. DEFAULT**

Excluding reasons of force majeure or breach by the Commonwealth, the Commonwealth may in addition to its other rights under the Contract declare Contractor is in default if contractor fails to perform any of its

material obligations under the contract and contractor has failed to cure such default within reasonable time upon written notice to contractor.

#### **15. FORCE MAJEURE**

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

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and contractor's obligations shall be deemed waived.

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

#### **16. TERMINATION PROVISIONS**

The Commonwealth has the right to terminate 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 Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds for this engagement. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the contract. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this contract. Such reimbursement shall not include loss of profit, loss of use of money. The reimbursement amount may be paid for any appropriations available for that purpose.
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract for Contractor default under the section entitled "DEFAULT", Default, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law.

#### **17. CONTRACT CONTROVERSIES**

- a. To the extent required by law in the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- b. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the University.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the

Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

#### **18. ASSIGNABILITY AND SUBCONTRACTING**

- a. Subject to the terms and conditions of this Paragraph 16, 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 maybe withheld at the sole and absolute discretion of the Contracting Officer.
- c. For the purposes of this provision, "subcontract" shall not include the engagement of third-party data processors that are otherwise regularly engaged by the Contractor to provide such services, or the incorporation of third-party software or hardware components that are regularly incorporated into the Contractor's product offering (collectively, "third-party integrations"). Provided, however, that the Contractor agrees: 1) that Contractor will be responsible for any third-party performance, as if that performance were Contractor's own, to include any warranty or indemnification obligation the Contractor would otherwise have under this Contract; 2) Where any party providing any third-party integration will have access to, or control over, any University data, Contractor has a contractual agreement with that entity, with terms and conditions regarding data security and data integrity that are no less restrictive than the terms and conditions set forth in this Contract.
- d. The Parties 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 other.
- e. 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.
- f. 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 (collectively, "Transfer of Control") provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- g. In connection with a Transfer of Control, Contractor may assign this Contract to Contractor's successor in interest without prior notice to the University. Provided, however, that Contractor shall provide written notice to the University within 30 days of the Assignment. The University shall have 10 days in which to accept or reject the assignment, which shall not be unreasonably withheld. In the event that the Contracting Officer rejects the assignment, the University shall have the right to terminate this agreement without penalty or recourse. 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. In no event shall payment be made to the entity acquiring Contractor's interest in connection with the Transfer of Control until the requirements of this paragraph have been satisfied.
- h. 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.
- i. A change of name by the Contractor, following which the Contractor's federal 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.

#### **19. 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. 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."
- c. 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.

- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. 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 Office ("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.
- j. 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.
- k. 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.

## **20. 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.

## **21. NONDISCRIMINATION/SEXUAL HARASSMENT**

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 on 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. To the extent required by the Governor's Management Directives 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 University may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## **22. CONTRACTOR STANDARDS; ETHICS; DEBARMENT**

- a. Contractor Standards. Contractor shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with The University or the Commonwealth.
- b. Ethics. Contractor shall not, in connection with this Agreement, 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 University. Nor shall Contractor, directly or indirectly, offer, give, or agree to promise to give to any person, any gratuity for the benefit of or at the direction or request of any officer or employee of the University. Except with the consent of the University, neither Contractor nor any of its subcontractors who perform work under this Agreement 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 Agreement. Contractor, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these provisions. Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the University in writing.

## **23. CONTRACTOR RESPONSIBILITY/DEBARMENT**

- a. Contractor represents warrants and certifies that, as of the date of this Agreement, it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.
- b. If Contractor is subsequently suspended or debarred by the Commonwealth, any other state, or the federal government, during the term of this Agreement or any extensions or renewals thereof, Contractor shall provide prompt written notice thereof to the University, and the University shall have the right to terminate this Agreement.
- c. If Contractor enters into any subcontract under this Agreement with any subcontractor(s) and, at any point during subcontractor's performance of work under this agreement, Contractor becomes aware that the subcontractor is currently suspended or debarred by the Commonwealth, any other state, or the federal government, or becomes suspended or debarred by the Commonwealth, any other state, or the federal government, Contractor shall immediately notify the University. The University shall have the right to require Contractor to cease its engagement of subcontractor for work under this agreement and terminate any subcontracts

specific to the work under this agreement. If Contractor does not, or cannot, terminate the subcontractor as specified above, the University shall have the right to terminate this Agreement.

**24. 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 is 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

**25. 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," 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.

**26. 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 law provisions).

**27. 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.