

**REQUEST FOR PROPOSALS FOR
BACKGROUND SCREENING SERVICES**

**ISSUING OFFICE
PENNSYLVANIA GAMING CONTROL BOARD
(PGCB)**

RFP NUMBER

PGCB 2025-1

DATE OF ISSUANCE

07/07/2025

Small Diverse Businesses (SDB) and Veteran Business Enterprises (VBE) are encouraged to respond to this solicitation. If you haven't verified as an SDB or VBE within Pennsylvania, you may miss out on contracting opportunities designed to increase the Commonwealth's spending with SDBs and VBEs. These opportunities will be available for goods, services, information technology services and products, as well as design, engineering and construction contracts.

To review SDB and VBE program eligibility and for more information on seeking certification, please visit www.dgs.pa.gov and follow the links to "Small Diverse Business Program" or "Small Business Contracting Program" located under the "Businesses" heading. Direct customer assistance is also available from staff within the Bureau of Diversity, Inclusion, and Small Business Opportunities by calling 717-783-3119 or via email at gs-bdisbo@pa.gov.

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CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

| Activity | Responsibility | Date |
|--|--|----------------------|
| Pre-proposal Conference Call | Potential Offerors, SME, Legal Counsel, Issuing Officer and BDISBO | 07/02/2025 at 10a.m. |
| Deadline to submit Questions via email to: RA-RFPQuestions@pa.gov | Potential Offerors | 07/18/2025 |
| Answers to Potential Offeror questions posted to the PGCB website at www.gamingcontrolboard.pa.gov and to DGS website at http://www.emarketplace.state.pa.us/Search.aspx no later than this date. | Issuing Office | 07/25/2025 |
| Please monitor websites for all communications regarding the RFP. | Potential Offerors | |
| Proposals must be received by the Issuing Office at the secure FTP link and credentials provided by the Issuing Officer. | Offerors | 08/29/2025 |

PART I

GENERAL INFORMATION

- I-1. Purpose.** This request for proposals (RFP) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the **Pennsylvania Gaming Control Board’s** consideration to satisfy a need **for Background Screening Services** (“Project”). This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.
- I-2. Issuing Office.** The **Pennsylvania Gaming Control Board (“PGCB”)** Issuing Office has issued this RFP. The sole point of contact in the PGCB for this RFP shall be **Amanda Peters**, the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer @ RA-RFPQuestions@pa.gov
- I-3. Overview of Project.** The PGCB is responsible for ensuring the integrity of the Commonwealth’s gaming industry through background and suitability investigations of gaming operators and the individuals and entities associated with casinos in Pennsylvania. The PGCB is also responsible for ongoing evaluation and suitability determinations of all licensed individuals and entities engaged in license renewals.
- In fiscal year 2019/2020, the Bureau of Investigations and Enforcement (“BIE”) investigated over 1200 companies, principals, keys and gaming level two employees related to casino, sports wagering, iGaming, VGT and Fantasy operators, manufacturers, and suppliers; over 6,200 gaming and non-gaming employees; and over 630 companies and individuals associated with certified and registered Gaming Service Providers. Additional detail is provided in **Part III** of this RFP.
- I-4. Objectives.**
- A. General.** The PGCB is seeking an offeror that provides background screening services.
- B. Specific.** The offeror must provide background screening services, report the results, and invoice electronically via XML. See technical submittal within **Part III**.
- I-5. Type of Contract.** It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a **fixed price** contract containing the Contract Terms and Conditions as shown in **Part VI**. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.
- I-6. Rejection of Proposals.** The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.

- I-7. Incurring Costs.** The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.
- I-8. Pre-proposal Conference.** There will be a Pre-proposal conference for this RFP which will be held on 07/02/25 at 10a.m . Offerors will attend the pre-proposal conference via Skype call by calling 1-267-332-8737 and using pin 199004766#. If there are any questions, please forward them to the Issuing Officer in accordance with **Section I-9**.
- I-9. Questions & Answers.** If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line “RFP 2025-1 Question”**) to the Issuing Officer named in **Part I, Section I-2** of the RFP. If the Offeror has questions, they must be submitted via email **no later than** the date indicated on the Calendar of Events. The Issuing Officer shall post the answers to the questions on the PGCB website as well as eMarketplace by the date stated on the Calendar of Events. An Offeror who submits a question *after* the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its proposal will not be responsive or competitive because the PGCB is not able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a response or competitive proposal. When submitted after the deadline date for receipt of questions indicated in the Calendar of Events, the Issuing Officer *may* respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office decides to respond to a non-administrative question *after* the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided to all Offerors through an addendum.
- I-10. Addenda to the RFP.** If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the PGCB website at <http://gamingcontrolboard.pa.gov/> and DGS eMarketplace at <http://www.emarketplace.state.pa.us/Search.aspx>. It is the Offeror’s responsibility to periodically check eMarketplace and PGCB’s website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period will be posted to eMarketplace as well as the PGCB website as an addenda to the RFP.
- I-11. Response Date.** To be considered for selection, electronic proposal submissions as described in **Part I, Section I-9** must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office will **reject** any late proposals.
- I-12. Proposal Requirements.**
- A. Proposal Submission:** To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in **Section I-12B**, providing a single electronic proposal with separate files **for the Technical Submittal; the Cost Submittal; the Small Diverse Business (SDB) Participation Submittal (which must include either the SDB Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both) and the Veteran Business**

Enterprise (VBE) Participation Submittal (which must include either the VBE Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both).

To submit a proposal for the RFP, Offerors must email the Issuing Officer, Amanda Peters, at RA-RFPQuestions@pa.gov. In the email, the Offeror will state interest of submitting a proposal for the RFP. The proposal must be submitted electronically. The Issuing Officer will provide a secure link and credentials to the Offeror and that must be used to submit the proposal. Once the electronic proposal is received, the Officer will send a confirmation email indicating such.

The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the **Proposal Cover Sheet (Appendix A** to this RFP) and the Proposal Cover Sheet is scanned and provided in a PDF version in the Offeror's electronically submitted proposal, the requirement will be met. For this RFP, the proposal must remain valid for **120** days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw their proposal by email at RA-RFPQuestions@pa.gov. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by contacting the Issuing Officer in a timely manner requesting to submit a "Revised Proposal" which complies with the RFP requirements.

B. Proposal Format: Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all proposal requirements. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal and all Small Diverse Business and Veteran Business Enterprise cost data should be kept separate from and not included in the Technical Submittal. Offerors should not reiterate technical information in the cost submittal. Each electronic proposal shall consist of the following **four** separate electronic files:

1. Technical Submittal, in response to **Part III**:
 - a. Complete, sign and include **Appendix B – Domestic Workforce Utilization Certification**; and
 - b. Complete, sign and include **Appendix C, Iran Free Procurement Certification Form**.

2. Cost Submittal, in response to RFP **Part IV**;
3. SDB Participation Submittal (which must include the SDB Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both), in response to RFP **Part V**; and
4. VBE Participation Submittal (which must include the VBE Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both), in response to RFP **Part V**.

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

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

- I-13. Economy of Preparation.** Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.
- I-14. Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.
- I-15. Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.
- I-16. Oral Presentations.** The PGCB, at its sole discretion may require oral presentations from Offeror(s).
- I-17. Prime Contractor Responsibilities.** The selected Offeror must perform the largest percentage of work as compared to its subcontractors and suppliers. Nevertheless, the contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. Further, the Issuing Office will consider the selected Offeror to be the sole point of contact with regard to all contractual matters.

I-18. Proposal Contents.

- A. Confidential Information.** The PGCB is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection C below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.
- B. PGCB Use.** All material submitted with the proposal shall be considered the property of the Pennsylvania Gaming Control Board and may be returned only at the Issuing Office's option. The PGCB has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained in proposals, the PGCB shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. Public Disclosure.** After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Refer to **Appendix D** of the RFP for a **Trade Secret Confidential Proprietary Information Notice Form** that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to Part III of this RFP, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-19. Best and Final Offers (BAFO).

- A.** While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining "best and final offers." To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:

 - 1. Schedule oral presentations;
 - 2. Request revised proposals;

3. Conduct an online auction; and
 4. Enter into pre-selection negotiations.
- B.** The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:
1. Those Offerors which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
 2. Those Offerors which the Issuing Office has determined in accordance with **Part II, Section II-5** from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to assure good faith performance of the contract.
 3. Those Offerors whose score for their technical submittal of the proposal is less than 75% of the total amount of technical points allotted to the technical criterion.

The Issuing Office may further limit participation in the best and final offers process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.

- C.** The Evaluation Criteria found in **Part II, Section II-4**, shall also be used to evaluate the Best and Final offers.
- D.** Price reductions offered through any online auction shall have no effect upon the Offeror's Technical Submittal.
- I-20. News Releases.** Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.
- I-21. Restriction of Contact.** From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other PGCB personnel and/or competing Offeror personnel may be disqualified.
- I-22. Issuing Office Participation.** Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-21**. The PGCB shall provide staff from the Office of Information Technology for the testing and support of the automated interface described herein. For staff that will be ordering and interpreting results of the background screening services, the PGCB shall make them available for training. It is preferred that such training is either

web-based or presented at the three PGCB Regional Offices and the PGCB Harrisburg Office.

I-23. Term of Contract. The term of the contract will commence on the Effective Date and will end after two (2) years, with three (3) one (1) year renewal options. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the PGCB and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the PGCB shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

I-24. Offeror's Representations and Authorizations. By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The PGCB shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E. The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F. To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.

- G. To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H. The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.
- L. The Offeror is not currently engaged and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

I-25. Notification of Selection.

- A. **Contract Negotiations.** The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.
- B. **Award.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

I-26. Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See **Section I-27** of this RFP).

I-27. RFP Protest Procedure. The RFP Protest Procedure is on the DGS website at <http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf>. A protest by a party that has not or has not yet submitted a proposal must be filed no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

I-28. Use of Electronic Versions of this RFP. This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

I-29. Information Technology Policies.

This RFP is subject to the Information Technology Policies (ITPs) issued by the Office of Administration, Office for Information Technology (OA-OIT). ITPs may be found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.

All proposals must be submitted on the basis that all ITPs are applicable to this procurement. It is the responsibility of the Offeror to read and be familiar with the ITPs. Notwithstanding the foregoing, if the Offeror believes that any ITP is not applicable to this procurement, it must list all such ITPs in its technical response and explain why it believes the ITP is not applicable. The Issuing Office may, in its sole discretion, accept or reject any request that an ITP not be considered to be applicable to the procurement. The Offeror's failure to list an ITP will result in its waiving its right to do so later, unless the Issuing Office, in its sole discretion, determines that it would be in the best interest of the PGCB to waive the pertinent ITP.

PART II

CRITERIA FOR SELECTION

- II-1. Mandatory Responsiveness Requirements.** To be eligible for selection, a proposal must:
- A.** Be timely received from an Offeror (see **Part I, Section I-11**); and
 - B.** Be properly signed by the Offeror (see **Part I, Section I-12A**); and
 - C.** Contain an SDB Participation Submittal and additional required documentation, all completed in accordance with Part V and the Instructions for Completing the SDB Participation Submittal and Utilization Schedule; and
 - D.** Contain an VBE Participation Submittal and additional required documentation, all completed in accordance with Part V and the Instructions for Completing the VBE Participation Submittal and Utilization Schedule.
- II-2. Technical Nonconforming Proposals.** The two (2) Mandatory Responsiveness Requirements set forth in **Section II-1** above (A-B) are the only RFP requirements that the PGCB will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.
- II-3. Evaluation.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the Small Diverse Business and Small Business Participation Submittal and provide the Issuing Office with a decision of responsiveness for this component of the proposal. The Issuing Office will notify in writing of its selection for negotiation, the responsible Offeror whose proposal is determined to be the most advantageous to the PGCB, as determined by the Issuing Office after taking into consideration all of the evaluation factors.
- II-4. Evaluation Criteria.** The following criteria will be used in evaluating each proposal:
- A. Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as **60%** (600) of the total points. Evaluation will be based upon the following:
 - Soundness of Approach
 - Technical Solution
 - Experience and Qualifications
- The final Technical scores are determined by giving the maximum number of technical points available to the proposal(s) with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

- B. Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **40%** (400) of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth at the following webpage: <http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.
- C. Domestic Workforce Utilization:** Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum amount of bonus points available for this criterion is 3% of the total points for this RFP.

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. See the following webpage for the Domestic Workforce Utilization Formula:

http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx

- D. Iran Free Procurement Certification and Disclosure.** Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, an offeror must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). All offerors must complete and return the Iran Free Procurement Certification form, (**Appendix C, Iran Free Procurement Certification Form**), which is attached hereto and made part of this RFP. The completed and signed Iran Free Procurement Certification form must be submitted as part of the Technical Submittal.

See the following web page for current Iran Free Procurement list:

<http://www.dgs.pa.gov/businesses/materials%20and%20services%20procurement/procurement-resources/pages/default.aspx#.WDNfJJgo6Ht>

- II-5. Offeror Responsibility.** To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A.** The total score for the technical submittal of the Offeror's proposal must be greater than or equal to 75% (450 pts) of the **available technical points**; and
- B.** The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. The Issuing Office will review the Offeror's previous three financial statements, any additional information received from the Offeror, and any other publicly-available financial information concerning the Offeror, and assess each Offeror's financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.

An Offeror who fails to demonstrate sufficient financial capability to assure good faith performance of the contract as specified herein may be considered by the Issuing Office, in its sole discretion, for Best and Final Offers or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Issuing Office. Based on the financial condition of the Offeror, the Issuing Office may require a certified or bank (cashier's) check, letter of credit, or a performance bond conditioned upon the faithful performance of the contract by the Offeror. The required performance security must be issued or executed by a bank or surety company authorized to do business in the Commonwealth. The cost of the required performance security will be the sole responsibility of the Offeror and cannot increase the Offeror's cost proposal or the contract cost to the Commonwealth.

Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

II-6. Final Ranking and Award.

- A.** After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, the final cost scores, and (when applicable) the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B.** The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C.** The Issuing Office must select for contract negotiations the offeror with the highest overall score.

- D.** The Issuing Office has the discretion to reject all proposals or cancel the request for proposals at any time prior to the time a contract is fully executed when it is in the best interests of the PGCB. The reasons for the rejection or cancellation shall be made part of the contract file.

PART III
TECHNICAL SUBMITTAL

III-1. Requirements

A. Technical Requirements.

The PGCB requires that ordering of background screening services, the results reported, and invoicing all be electronically processed using an XML file format. Processing this information through an XML file should be available utilizing the following method;

1. Web Service Interface

The PGCB system will make calls to the service providers web services to order. Each request to the service will be for a single person or entity but may encompass multiple screening services. An order that cannot be successfully processed will receive an immediate response from the web service that contains details of the rejection.

The web service will include a method that will allow PCB to query the status of each background check in real-time as well as a method to return all completed or pending data for the applicant based on a PGCB provided reference number.

The web service will include a method that will allow PGCB to retrieve a finalized pdf report containing the results of all ordered screening services when a package is completed.

The web service will include a method that allows PGCB to contest the closing of a case. This method will be utilized if PGCB does not receive the minimum results expected from a requested screening service or package. These requests should be marked accordingly and should not appear on any invoices or billing statements until the results have been reviewed and all expected data returned to the PGCB.

The web service will provide a method of cancelling a background screening; no additional checks or costs should be accrued if a screening is cancelled in this manner.

The web service should provide methods to retrieve data for reporting purposes of number of background checks submitted, the number of pending background checks and completed background checks within a provided date range and by type.

a. Ordering Background Screening Services.

PGCB staff will place orders for background screening services electronically using an existing PGCB system. This ordering process includes the initial order for screening services and orders to re-run previously ordered screening services. Orders placed within 7 days for the same reference number\package number should be considered a duplicate and not processed unless a specifically requested by PGCB.

The automated interface shall be an XML file in the format described in Appendix J, Background Screening Services Order Interface File Specifications, attached herein. A confirmation shall be provided to the PGCB indicating that the background screening service has been ordered successfully. If the request was not successful, the PGCB shall be notified with the data that requires corrections. The PGCB shall have the ability to resubmit the requested background screening once the data has been corrected.

When requesting screening services, the order processing shall require the following PGCB data fields:

- Gaming ID
- Application ID
- Date ordered
- Specific screening services requested
- PGCB staff user ID that placed the order

Immediate feedback is needed to provide the PGCB staff the ability to correct the data when submitting the requested background screening. Results from online screening requests must be available electronically as described below in section III-1 b., Results Reporting.

The PGCB shall have the ability to cancel a case that is in process for situations when an applicant withdraws. All background work shall be terminated, and no additional charges incurred. Cancellation of background screening shall be handled through the same process to order services using the online or automated interfaces.

Explain the process for requesting more information from the PGCB when further information/documentation is needed to complete all or part of a background request.

b. Results Reporting.

Results of the background screening services shall be forwarded electronically to the PGCB in a secure XML file in the format described in Appendix K, Background Screening Services Results Interface File Specifications, attached herein.

Any immediate and all interim results shall be provided to the PGCB prior to the availability of the final results. If the results of one or more checks take longer to complete, such as an employment check, they should be made available to the PGCB in real-time as they are received by the screening service provider. Those updates would indicate that this case has not been closed with final results but shall identify all other items in the case that have been completed and results have been returned. Upon completion of the case (as defined in section **III-1 Section A. Technical Requirements**) will provide a completed report in pdf format as part of the XML file. This will be used for archival purposes. A copy of a sample report needs to be submitted as part of the proposal.

These results shall include, but are not limited to:

- Background screening services group ID
- Name of individual or entity being screened
- Unique Gaming ID and Application ID number as provided by PGCB
- Tax ID number (EIN or Social Security Number)
- For individuals, date of birth
- Date background screening service ordered
- Date background screening service request completed
- Name of requesting PGCB personnel
- Summary results
- Specific results for each screening service ordered

Once the screening service provider has implemented a web service to handle requests (as defined in Section **III-1. Technical Requirements, III-1**), the PGCB should have the ability to query the service for information regarding an existing case by our unique identifier, the Gaming ID and the Application ID. These web service calls should return real-time information regarding the provided case. Proposals should provide details on how this process shall work, as well as any development that may be required by the PGCB.

When a case is closed and additional information is received, explain the process of transmitting the supplemental information in real time to the PGCB.

III-2. Data Security.

The PGCB considers all data transmitted to and from the background screening service provider to be confidential. Such information shall be encrypted during transmission between the PGCB and the selected provider. At a minimum, the interfaces shall use a 256-bit encryption for all inbound and outbound file transfers.

Proposals shall describe in detail the approach to secure data transmitted to and from the PGCB to protect the confidential information. The proposals should also include the confidentiality provisions that govern their employees that will work with the PGCB background screening requests.

III-3. Billing and Invoicing Requirements.

Itemized billing invoices and summary billing invoices are required, and each charge must be accompanied by the following information in the itemized billing invoice:

- Screening service provided
- Unique Gaming ID number and Application ID number as provided by PGCB
- Name and SSN/EIN of individual/entity being screened
- Date background screening service ordered
- Date background screening service request completed
- Name of requesting PGCB personnel
- Fee for the screening service

The summary invoice must be itemized by expense category and include quantity, unit price, line total and grand total. Invoices must also identify vendor name and address, FEIN and purchase order number. Each item on the summary invoice must exactly match the purchase order issued by the PGCB.

The PGCB should be invoiced monthly for completed cases only. Items that are in contention will not be included on either invoice. The PGCB should receive both an itemized invoice and a summary invoice. A summary invoice shall also be sent directly to the Comptroller's Office at the following address:

RA-OB69180@pa.gov for **Electronic submission**

Or the address below for paper submission:

Commonwealth of Pennsylvania – PO invoice
65GCB
PO Box 69180
Harrisburg, PA 17106

Invoice data must also be submitted electronically in a secured XML file as specified in Appendix L, Background Screening Services Invoicing Interface File Specifications, attached herein. This electronic file shall be provided to the PGCB within forty-eight hours from the time the paper invoices have been prepared as described above. Any amended invoices or interim invoices shall also be provided in this same electronic format. Proposals shall include a description how your company will secure these files during transmission to the PGCB.

III-4. Statement of the Project. State in succinct terms your understanding of the project presented, or the service required by this RFP.

III-5. Qualifications.

A. Company Overview.

B. Prior Experience. Include experience in background screening services. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Work referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

C. Personnel. Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the Project. For key personnel, include the employee's name and, through a resume or similar document, the key person(s) education and experience in background searches. Indicate the responsibilities each individual named will have in this Project and how long each has been with your company.

D. Subcontractors: Provide a subcontracting plan for all subcontractors, including Small Diverse Business and Veteran Business Enterprise subcontractors, who will be assigned to the Project. The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project without the express written approval from the PGCB. Upon award of the contract resulting from this RFP, subcontractors included in the proposal submission are deemed approved. For each position included in your subcontracting plan provide:

1. Name of subcontractor;
2. Address of subcontractor;
3. Number of years worked with the subcontractor;
4. Number of employees by job category to work on this project;
5. Description of services to be performed;
6. What percentage of time the staff will be dedicated to this project;
7. Geographical location of staff; and

8. Resumes (if appropriate and available).

The Offeror's subcontractor information shall include (through a resume or a similar document) the employees' names, education and experience in the services outlined in this RFP. Information provided shall also indicate the responsibilities each individual will have in this Project and how long each has been with subcontractor's company.

III-6. Training. If appropriate, indicate recommended training of PGCB personnel. Include the PGCB personnel to be trained, the number to be trained, duration of the program, place of training, curricula, training materials to be used, number and frequency of sessions, and number and level of instructors.

III-7. Financial Capability.

If the Offerors company is a publicly traded company, please provide a link to financial records on your company website in lieu of providing hardcopies. The PGCB reserves the right to request additional information it deems necessary to evaluate an Offeror's financial capability.

III-8. Work Plan.

The Board requires the ability to obtain both domestic and international searches for individuals and entities. Please provide the following in the cost submittal, keeping in mind any search specifics identified

A. Domestic Searches:

1. Consumer Credit Reports

- Credit report from one of the three major credit bureaus.
- 4-hour response time.

2. Business Credit Reports

- Business Credit report from one of the three major credit bureaus - public record checks, UCC's, OFAC, EDGAR Financials, Fraud Flags, Dunn & Bradstreet, etc.
- 24-hour response time.

3. Employment Checks

- Includes access to the work number for verification.
- Name, last title held, dates employed, and rehire eligibility.
- Five-year history.
- 3 Attempts.
- 72-hour response time.

4. SSN# Validation/Verification

5. Education

6. County Criminal Check

B. International

The Board requires the ability to do international searches throughout the world. The Board presently has the capability of doing foreign searches **in at least 220 countries** and wishes to continue having the broadest possible access to international information as applicants for licensure come from a large variety of foreign countries.

International orders can be placed for both individuals and businesses/entities and fall into the following 4 categories (with the given search parameters where noted). Please provide costs in the cost submittal (Appendix E)* based upon these parameters for each of the five (5) countries provided below:

1. Credit (Individual)
 - Country selected by the PGCB
2. Credit (Entity)
 - As much of the following as possible: bankruptcies, liens, judgments, Dunn & Bradstreet Report, Employer ID# verification and validation
 - Country selected by the PGCB
3. Criminal (Individual)
 - 5 years with country selected by the PGCB
4. Criminal (Entity)
 - 5 years with country selected by the PGCB

Additional Contract Requirements

- There shall be no direct contact between the contractor and the subject of the investigation. Any requests for additional information about/from the subject of the investigation, shall be made to appropriate PGCB staff.
- One-hour response time to phone calls/emails during normal work hours M-F 8a – 5pm.
- Provide one dedicated email address exclusively for the PGCB to utilize and one point of contact (client rep) along with their phone number.

Responses Needed as Part of Technical Submission:

- A. Provide a list of all countries where you can obtain and provide information that falls into at least one of the 4 categories, above, and which of the 4 categories of information is available for each country listed (i.e. – each country listed should have either 1, 2, 3 or 4 categories listed)

- B. Explain pricing for all countries/categories listed. Is there a tiered pricing plan where multiple countries fall into the same price category or will each country and category have its own price?
- C. Explain how billing works when there are multiple “leads” in the criminal category. For example, if one search discovers multiple cases, how is that billed?

Responses Needed as Part of Cost Submittal

- A. Provide prices (under this contract if awarded) for each of the 4 categories, above, relative to each of the following countries:
 - a. United Kingdom
 - b. Belgium
 - c. Ireland
 - d. Canada
 - e. Cayman Islands

III-9. Other Requirements

A. Disaster Recovery Plan.

B. Emergency Preparedness.

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

- 1. Describe how you anticipate such a crisis will impact your operations.
- 2. Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:
 - a. Employee training (describe your organization’s training plan, and how frequently your plan will be shared with employees)
 - b. Identified essential business functions and key employees (within your organization) necessary to carry them out

c. Contingency plans for:

- i.** How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
- ii.** How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
- d.** How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
- e.** How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

III-10. Reports and Project Control.

- A. Status Report.** The PGCB requires quarterly progress reports covering activities, problems, IT issues and recommendations. This report should be keyed to the work plan the Offeror developed in its proposal, as amended or approved by the Issuing Office. Please explain how/the format this will be accomplished. Additionally, the offeror shall participate in a quarterly meeting to discuss this report.
- B. Problem Identification Report.** An “as required” report, identifying problem areas. The report should describe the problem and its impact on the overall project and on each affected task. It should list possible courses of action with advantages and disadvantages of each and include Offeror recommendations with supporting rationale. Please explain how/the format this will be presented

III-11. Objections and Additions to Standard Contract Terms and Conditions.

The Offeror will identify which, if any, of the terms and conditions (contained in **Part VI**) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror’s failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office’s sole discretion, would be in the best interest of the PGCB. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Part VI**.

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

PART IV

COST SUBMITTAL

- IV-1. Cost Submittal.** The information requested in this **Part IV** shall constitute the Cost Submittal. The Cost Submittal should be submitted electronically in accordance with **Part I, Section I-12A**. The total proposed cost should be broken down into the components set forth in **Appendix E – Cost Submittal Worksheet**. The percentage of commitments to Small Diverse Businesses and Veteran Business Enterprises should not be stated in the Cost Submittal. Offerors should **not** include any assumptions in their cost submittals. If the Offeror includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office pursuant to **Part I, Section I-9** of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

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

PART V

SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE PARTICIPATION INFORMATION

- V-1. SDB and VBE Participation Goals.** The Issuing Office and BDISBO have set an SDB Participation Goal and a VBE Participation Goal for this RFP which are listed on the SDB and VBE Participation Summary Sheet. The SDB and VBE Participation Goals were calculated based upon the market availability of SDBs and VBEs for work scopes identified for this solicitation and an assessment of past performance under the prior contract.

This is a significant programmatic change from the SDB and SB Participation program contained in prior RFPs issued by the Commonwealth. Offerors now must agree to meet the SDB and VBE Participation Goals in full or demonstrate they have made Good Faith Efforts to meet the Goals and obtain an approved waiver.

- V-2. Small Diverse Business (SDB) Participation Submittal, Appendix G.** The SDB Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing SDB Participation Submittal and SDB Utilization Schedule and shall be submitted electronically in accordance with Part 1, Section I-12A.

- V-3. Veteran Business Enterprise (VBE) Participation Submittal, Appendix H.** The VBE Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing VBE Participation Submittal and VBE Utilization Schedule and shall be submitted electronically in accordance with Part 1, Section I-12A.

NOTE: Equal employment opportunity and contract compliance statements referring to company equal employment opportunity policies or past contract compliance practices do not constitute proof of SDB or VBE Status or entitle an Offeror to receive credit towards the SDB or VBE participation goals.

- V-3. Contract Requirements—SDB and VBE Participation.**

- A. SDB and VBE Participation Documents. All documents completed and submitted by the selected Offeror in connection with its SDB Participation Submittal (including the SDB Participation Submittal, SDB Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of SDB Participation Goal) and its VBE Participation Submittal (including the VBE Participation Submittal, VBE Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of VBE Participation Goal) shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto.
- B. Required contract terms. All contracts containing SDB and/or VBE participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

1. Each SDB participation commitment and each VBE participation commitment which was credited by BDISBO and the total percentage of the SDB participation commitments and VBE participation commitments made at the time of proposal submittal or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.
2. For purposes of monitoring compliance with the selected Offeror's SDB participation commitments and VBE participation commitments, the contract cost is the total amount paid to the selected Offeror throughout the initial contract term and all renewal option terms.
3. The selected offeror cannot alter its overall SDB or VBE commitments or commitments made to individual SDB or VBE subcontractors without written approval from the Issuing Officer and BDISBO.
4. Both the overall percentage of SDB and VBE commitments, and individual SDB and VBE commitments must be maintained in the event the contract is assigned to another prime contractor.

C. Subcontract requirements.

1. The selected offeror and each SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule must enter into a final, definitive subcontract agreement signed by the selected offeror and the SDB or VBE within 30 calendar days of the final execution date of the Commonwealth contract. A Model Form of Small Diverse Business/Veteran Business Enterprise Subcontractor Agreement which may be used to satisfy this requirement – is available as **Appendix I**.
2. In addition to any requirements in the offeror's contract documents, the subcontract must contain:
 - a. The specific work, supplies or services the SDB or VBE will perform; location for work performed; how the work, supplies or services relate to the contract; and the specific timeframe during the initial term and any extensions, options and renewals of the prime contract when the work, supplies or services will be provided or performed;
 - b. The fixed percentage commitment and/or associated estimated dollar value that each SDB or VBE will receive based on the final negotiated cost for the initial term of the prime contract and any renewal option terms;
 - c. Payment terms indicating that the SDB or VBE will be paid for work satisfactorily completed within 14 calendar days of the selected offeror's receipt of payment from the Commonwealth for such work. Subcontractors are encouraged to utilize electronic payment methods;
 - d. Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected offeror's contract with the

Commonwealth and that do not place disproportionate risk on the SDB or VBE relative to the nature and level of the SDB's or VBE's participation in the contract; and

- e. The requirement that the SDB or VBE submit to BDISBO utilization reports.
- 3. If a subcontract agreement is required by the solicitation document and the subcontract terms omit any of the information required in subparagraph 2 but that information is otherwise reflected within the selected offeror's SDB Participation Submittal, VBE Participation Submittal, or associated documents (SDB Utilization Schedule, VBE Utilization Schedule, and Letters of Commitment), the information listed in the SDB Participation Submittal, VBE Participation Submittal, or associated documents is incorporated into the subcontract agreement. To the extent that any subcontract terms conflict with the requirements of paragraph (2) or information contained within the selected offeror's SDB Participation Submittal or VBE Participation Submittal and associated documents, the order of precedence is as follows: 1) the requirements of paragraph 2, 2) the selected offeror's SDB Participation Submittal, VBE Participation Submittal and associated documents; and 3) the terms of the subcontract agreement.
- 4. If the selected offeror and a SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule cannot agree upon a definitive subcontract within 30 calendar days of the final execution date of the Commonwealth contract or as specified in the solicitation, the selected offeror must provide written notification to the issuing Agency and BDISBO.
- 5. The prime contractor must provide a copy of any required subcontract with an SDB or VBE to BDISBO or the Agency within ten (10) business days of receiving such a request.

D. Utilization Reports.

- 1. The prime contractor must submit a Monthly Utilization Report to BDISBO and the contracting officer of the Issuing Office in the format required by BDISBO and within ten (10) business days at the end of each month of the contract term and any subsequent options or renewals. The Monthly Utilization Report must list payments made to each SDB or VBE subcontractor and any unpaid invoices over 30 calendar days old received from an SDB or VBE subcontractor, and the reason payment has not been made. This information will be used to track and confirm the actual dollar amount paid to SDB or VBE subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment(s). If there was no activity, the form must be completed by stating "No activity". A late fee of \$100.00 per day may be assessed against the prime contractor if the Utilization Report is not submitted in accordance with the schedule above.
- 2. The prime contractor must include in its agreements with its SDB and VBE subcontractors a requirement that the SDB and VBE subcontractors submit to

BDISBO, within the time frame set forth within the solicitation document, a report identifying the prime contract, and listing:

- a. Payments received from the prime contractor within the time frame covered by the report, and
- b. Invoices for which the subcontractor has not been paid.

E. Noncompliance with SDB and/or VBE commitments.

1. Upon BDISBO notifying the contracting Agency that a prime contractor did not comply with the SDB commitments or VBE commitments, the contracting Agency shall notify the prime contractor in writing of its findings and shall specify what corrective actions are required. The prime contractor is required to initiate the corrective actions within 10 business days and complete them within the time specified by the contracting Agency.
2. If a contracting Agency determines that material noncompliance with SDB or VBE contract provisions exists and that the prime contractor refuses or fails to take the corrective action required by the contracting Agency, the contracting Agency, in consultation with BDISBO, may impose any and all sanctions and remedies available under the contract as it deems appropriate. Such sanctions or remedies include, but are not limited to, withholding of payments; termination of the contract along with consequential damages; revocation of the prime contractor's SB, SDB, and/or VBE status; a determination that the Offeror's SDB or VBE participation submittal be deemed non-responsible in future procurements; and/or any actions under the Commonwealth's Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth.

PART VI

IT CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS.

- (a) Agency. Pennsylvania Gaming Control Board (“PGCB”)
- (b) Commonwealth. The Commonwealth of Pennsylvania.
- (c) Contract. The integrated documents as defined in [Section 11, Order of Precedence](#).
- (d) Contracting Officer. The person authorized to administer this Contract for the PGCB and to make written determinations with respect to the Contract.
- (e) Data. Any recorded information, regardless of the form, the media on which it is recorded or the method of recording.
- (f) Days. Calendar days, unless specifically indicated otherwise.
- (g) Developed Works. All of the fully or partially complete property, whether tangible or intangible prepared by the Contractor for ownership by the PGCB in fulfillment of the requirements of this Contract, including but not limited to: documents; sketches; drawings; designs; works; papers; files; reports; computer programs; documentation; data; records; software; samples; literary works and other works of authorship. Developed Works include all material necessary to exercise all attributes of ownership or of the license granted in [Section 46, Ownership of Developed Works](#).
- (h) Documentation. All materials required to support and convey information about the Services or Supplies required by this Contract, including, but not limited to: written reports and analyses; diagrams maps, logical and physical designs; system designs; computer programs; flow charts; and disks and/or other machine-readable storage media.
- (i) Expiration Date. The last valid date of the Contract, as indicated in the Contract documents to which these IT Contract Terms and Conditions are attached.
- (j) Purchase Order. Written authorization for Contractor to proceed to furnish Supplies or Services.
- (k) Proposal. Contractor’s response to a Solicitation issued by the Issuing Agency, as accepted by the PGCB.
- (l) Services. All Contractor activity necessary to satisfy the Contract.

- (m) Software. A collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).
- (n) Solicitation. A document issued by the PGCB to procure Services or Supplies, e.g., Request for Proposal; Request for Quotation; Supplier Pricing Request; or Invitation for Bid, including all attachments and addenda thereto.
- (o) Supplies. All tangible and intangible property including, but not limited to, materials and equipment provided by the Contractor to satisfy the Contract.

2. TERM OF CONTRACT.

- (a) Term. The term of the Contract shall commence on the Effective Date and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.
- (b) Effective Date. The Effective Date shall be one of the following:
 - (i) the date the Contract has been fully executed by the Contractor and all approvals required by Commonwealth contracting procedures have been obtained; or
 - (ii) the date stated in the Contract, whichever is later.

3. COMMENCEMENT OF PERFORMANCE.

- (a) General. The Contractor shall not commence performance and the PGCB shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred, until both of the following have occurred:
 - (i) the Effective Date has occurred; and
 - (ii) the Contractor has received a Purchase Order or other written notice to proceed signed by the Contracting Officer.
- (b) Prohibition Prior to Effective Date. No PGCB employee has the authority to verbally direct the commencement of any Service or delivery of any Supply under this Contract prior to the date performance may commence. The Contractor hereby waives any claim or cause of action for any Service performed or Supply delivered prior to the date performance may commence.

4. EXTENSION OF CONTRACT TERM.

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

5. ELECTRONIC SIGNATURES.

- (a) The Contract and/or Purchase Orders may be electronically signed by the PGCB.
 - (i) *Contract.* “Fully Executed” at the top of the first page of the Contract output indicates that the signatures of all the individuals required to bind the PGCB to the terms of the Contract have been obtained. If the Contract output form does not have “Fully Executed” at the top of the first page, the Contract has not been fully executed.
 - (ii) *Purchase Orders.* The electronically-printed name of the Purchasing Agent on the Purchase Order indicates that all approvals required by Commonwealth contracting procedures have been obtained.
- (b) The PGCB and the Contractor specifically agree as follows:
 - (i) *Written signature not required.* No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
 - (ii) *Validity; admissibility.* The parties agree that no writing shall be required in order to make the Contract or Purchase Order legally binding, notwithstanding contrary requirements in any law or regulation. The parties hereby agree not to contest the validity or enforceability of the Contract executed electronically, or acknowledgement issued electronically, under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement executed or issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgement shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- (c) Verification. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

6. PURCHASE ORDERS.

- (a) Purchase Orders. The PGCB may issue Purchase Orders against the Contract or issue a Purchase Order as the Contract. These Purchase Orders constitute the Contractor’s authority to make delivery. All Purchase Orders received by the Contractor up to, and including, the Expiration Date of the Contract are acceptable

and must be performed in accordance with the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.

- (b) Electronic transmission. Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a Purchase Order shall require acknowledgement of receipt of the transmission by the Contractor.
- (c) Receipt. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of a Purchase Order.
- (d) Received next business day. Purchase Orders received by the Contractor after 4 p.m. will be considered received the following business day.
- (e) Commonwealth Purchasing Card. Purchase Orders under \$10,000 in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the PGCB shall provide the employee name, credit card number and expiration date of the card. The Contractor agrees to accept payment through the use of a Commonwealth Purchasing card.

7. CONTRACT SCOPE.

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

8. ACCESS TO PGCB FACILITIES.

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

9. NON-EXCLUSIVE CONTRACT.

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

10. INFORMATION TECHNOLOGY POLICIES.

- (a) General. The Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (located at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Policy [ACC001, Accessibility Policy](#). The Contractor shall ensure that Services and Supplies procured under the Contract comply with the applicable standards. In the event such standards change during the Contractor's performance, and the PGCB requests that the Contractor comply with the changed standard, then any incremental costs incurred by the Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

- (b) Waiver. The Contractor may request a waiver from an Information Technology Policy (ITP) by providing detailed written justification as to why the ITP cannot be met. The PGCB may waive the ITP in whole, in part or conditionally, or require that the Contractor provide an acceptable alternative. Any PGCB waiver of the requirement must be in writing.

11. ORDER OF PRECEDENCE.

If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence shall be:

- (a) The documents containing the parties' signatures;
- (b) The IT Contract Terms and Conditions;
- (c) The Proposal; and
- (d) The Solicitation.

12. CONTRACT INTEGRATION.

- (a) Final contract. This Contract constitutes the final, complete, and exclusive Contract between the parties, containing all the terms and conditions agreed to by the parties.
- (b) Prior representations. All representations, understandings, promises, and agreements pertaining to the subject matter of this Contract made prior to or at the time this Contract is executed are superseded by this Contract.
- (c) Conditions precedent. There are no conditions precedent to the performance of this Contract except as expressly set forth herein.
- (d) Sole applicable terms. No contract terms or conditions are applicable to this Contract except as they are expressly set forth herein.
- (e) Other terms unenforceable. The Contractor may not require the PGCB or any user of the Services or Supplies acquired within the scope of this Contract to sign, click through, or in any other way agree to any terms associated with use of or interaction with those Services and/or Supplies, unless the PGCB has approved the terms in writing in advance under this Contract, and the terms are consistent with this Contract. Further, changes to terms may be accomplished only by processes set out in this Contract; no quotations, invoices, business forms or other documentation, or terms referred to therein, shall become part of this Contract merely by their submission to the PGCB or their ordinary use in meeting the requirements of this Contract. Any terms imposed upon the PGCB or a user in contravention of this subsection (e) must be removed at the direction of the PGCB and shall not be enforced or enforceable against the PGCB or the user.

13. PERIOD OF PERFORMANCE.

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

14. INDEPENDENT PRIME CONTRACTOR.

- (a) Independent contractor. In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the PGCB.
- (b) Sole point of contact. The Contractor will be responsible for all Services and Supplies in this Contract whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

15. SUBCONTRACTS.

The Contractor may subcontract any portion of the Services or Supplies described in this Contract to third parties selected by Contractor and approved in writing by the PGCB, whose approval shall not be unreasonably withheld. Notwithstanding the above, if Contractor has disclosed the identity of subcontractor(s) together with the scope of work to be subcontracted in its Proposal, award of the Contract is deemed approval of all named subcontractors and a separate approval is not required. The existence of any subcontract shall not change the obligations of Contractor to the PGCB under this Contract. Upon request of the PGCB, the Contractor must provide the PGCB with an un-redacted copy of the subcontract agreement between the Contractor and the subcontractor. The PGCB reserves the right, for good cause, to require that the Contractor remove a subcontractor from the project. The PGCB will not be responsible for any costs incurred by the Contractor in replacing the subcontractor if good cause exists.

16. OTHER CONTRACTORS.

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

17. ENHANCED MINIMUM WAGE.

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

- (g) Subcontractors. Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

18. COMPENSATION.

- (a) General. The Contractor shall be required to perform at the price(s) quoted in the Contract. All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and Services performed to the satisfaction of the PGCB.
- (b) Travel. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract. If not otherwise specified in the Contract, travel and related expenses shall be reimbursed in accordance with Management Directive 230.10 Amended, *Commonwealth Travel Policy*, and Manual 230.1, *Commonwealth Travel Procedures Manual*.

19. BILLING REQUIREMENTS.

- (a) Unless the Contractor has been authorized by the PGCB for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:
 - (i) Vendor name and "Remit to" address, including SAP Vendor number;
 - (ii) Bank routing information, if ACH;
 - (iii) SAP Purchase Order number;
 - (iv) Delivery Address, including the name PGCB;
 - (v) Description of the supplies/services delivered in accordance with SAP Purchase Order (include Purchase Order line number if possible);
 - (vi) Quantity provided;
 - (vii) Unit price;
 - (viii) Price extension;
 - (ix) Total price; and
 - (x) Delivery date of supplies or services.
- (b) If an invoice does not contain the minimum information set forth in this section, and comply with the provisions located at <https://www.budget.pa.gov/Programs/Pages/E-Invoicing.aspx>, relating to the Commonwealth E-Invoicing Program, the Commonwealth may return the invoice

as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

20. PAYMENT.

- (a) Payment Date. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
 - (i) the date on which payment is due under the terms of the Contract;
 - (ii) **thirty (30) days** after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or
 - (iii) the payment date specified on the invoice if later than the dates established by [paragraphs \(a\)\(i\) and \(a\)\(ii\)](#), above.
- (b) Delay; Interest. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within **15 days** after the required payment date, the PGCB may pay interest as determined by the Secretary of Budget in accordance with Act of December 13, 1982, P.L. 1155, No. 266, 72 P. S. § [1507](#), (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ [2.31—2.40](#) (relating to interest penalties for late payments to qualified small business concerns).
- (c) Payment should not be construed by the Contractor as acceptance of the Service performed by the Contractor. The PGCB reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications.

21. ELECTRONIC PAYMENTS.

- (a) The Commonwealth will make contract payments through the Automated Clearing House (ACH). Within **10 days** of award of the Contract, the Contractor must submit or must have already submitted its ACH information within its user profile in the Commonwealth’s procurement system (SRM).
- (b) The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth’s ACH remittance advice to enable the Contractor to properly apply the state agency’s payment to the invoice submitted.

- (c) It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

22. ASSIGNABILITY.

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

23. INSPECTION AND ACCEPTANCE.

- (a) Developed Works and Services.
 - (i) Acceptance. Acceptance of any Developed Work or Service will occur in accordance with an acceptance plan (Acceptance Plan) submitted by the Contractor and approved by the PGCB. Upon approval of the Acceptance Plan by the PGCB, the Acceptance Plan becomes part of this Contract.
 - (ii) Software Acceptance Test Plan. For contracts where the development of Software, the configuration of Software or the modification of Software is being inspected and accepted, the Acceptance Plan must include a

Software Acceptance Test Plan. The Software Acceptance Test Plan will provide for a final acceptance test, and may provide for interim acceptance tests. Each acceptance test will be designed to demonstrate that the Software conforms to the functional specifications, if any, and the requirements of this Contract. The Contractor shall notify the PGCB when the Software is completed and ready for acceptance testing. The PGCB will not unreasonably delay commencement of acceptance testing.

- (iii) If software integration is required at the end of the project, as set out in the Solicitation, the PGCB's acceptance of the Software shall be final unless at the time of final acceptance, the Software does not meet the acceptance criteria set forth in the Contract.
- (iv) If software integration is not required at the end of the project, as set out in the Solicitation, the PGCB's acceptance of the Software shall be complete and final.
- (v) Certification of Completion. The Contractor shall certify, in writing, to the PGCB when an item in the Acceptance Plan is completed and ready for acceptance. Unless otherwise agreed to by the PGCB in the Acceptance Plan, the acceptance period shall be **10 business days** for interim items and **30 business days** for final items. Following receipt of the Contractor's certification of completion of an item, the PGCB shall, either:
 - (1) Provide the Contractor with PGCB's written acceptance of the work product; or
 - (2) Identify to the Contractor, in writing, the failure of the work product to comply with the specifications, listing all such errors and omissions with reasonable detail.
- (vi) Deemed Acceptance. If the PGCB fails to notify the Contractor in writing of any failures in the work product within the applicable acceptance period, the work product shall be deemed accepted.
- (vii) Correction upon Rejection. Upon the Contractor's receipt of the PGCB's written notice of rejection, which must identify the reasons for the failure of the work product to comply with the specifications, the Contractor shall have **15 business days**, or such other time as the PGCB and the Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected item, certifying to the PGCB, in writing, that the failures have been corrected, and that the items have been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted items and certification, the PGCB shall have **30 business days** to test the corrected items to confirm that they are in compliance with the specifications. If the corrected items are in compliance with the specifications, then the PGCB shall provide the Contractor with its acceptance of the items in the completed milestone.

(viii) Options upon Continued Failure. If, in the opinion of the PGCB, the corrected items still contain material failures, the PGCB may either:

- (1) Repeat the procedure set forth above; or
- (2) Proceed with its rights under [Section 28, Termination](#), except that the cure period set forth in [Subsection 28\(c\)](#) may be exercised in the PGCB's sole discretion.

(b) Supplies.

- (i) *Inspection prior to Acceptance.* No Supplies received by the PGCB shall be deemed accepted until the PGCB has had a reasonable opportunity to inspect the Supplies.
- (ii) *Defective Supplies.* Any Supplies discovered to be defective or that fail to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Supplies or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection.
 - (1) The Contractor shall remove rejected item(s) from the premises without expense to the PGCB within **15 days** after notification.
 - (2) Rejected Supplies left longer than **30 days** will be regarded as abandoned, and the PGCB shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the PGCB's costs and expenses in regard to the storage and sale of the Supplies.
 - (3) Upon notice of rejection, the Contractor shall immediately replace all such rejected Supplies with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the PGCB may procure, in such manner as it determines, supplies similar or identical to the those that Contractor failed, neglected or refused to replace, and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to the PGCB.

24. **DEFAULT.**

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

- (i) Failure to begin Services within the time specified in the Contract or as otherwise specified;
- (ii) Failure to perform the Services with sufficient labor, equipment, or material to insure the completion of the specified Services in accordance with the Contract terms;
- (iii) Unsatisfactory performance of the Services;
- (iv) Failure to meet requirements within the time periods(s) specified in the Contract;
- (v) Multiple failures over time of a single service level agreement or a pattern of failure over time of multiple service level agreements;
- (vi) Failure to provide a Supply or Service that conforms with the specifications referenced in the Contract;
- (vii) Failure or refusal to remove material, or remove, replace or correct any Supply rejected as defective or noncompliant;
- (viii) Discontinuance of Services without approval;
- (ix) Failure to resume a Service, which has been discontinued, within a reasonable time after notice to do so;
- (x) Insolvency;
- (xi) Assignment made for the benefit of creditors;
- (xii) Failure or refusal, within **10 days** after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due subcontractors for materials furnished, labor supplied or performed, for equipment rentals or for utility services rendered;
- (xiii) Failure to protect, repair or make good any damage or injury to property;
- (xiv) Breach of any provision of this Contract;
- (xv) Any breach by Contractor of the security standards or procedures of this Contract;
- (xvi) Failure to comply with representations made in the Contractor's Proposal;
or
- (xvii) Failure to comply with applicable industry standards, customs and practice.

25. NOTICE OF DELAYS.

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

26. CONDUCT OF SERVICES.

- (a) Following the Effective Date of the Contract, Contractor shall proceed diligently with all Services and shall perform such Services with qualified personnel, in accordance with the completion criteria set forth in the Contract.
- (b) In determining whether the Contractor has performed with due diligence under the Contract, it is agreed and understood that the PGCB may measure the amount and quality of the Contractor's effort against the representations made in the Contractor's Proposal. The Contractor's Services hereunder shall be monitored by the PGCB and the PGCB's designated representatives. If the PGCB reasonably determines that the Contractor has not performed with due diligence, the PGCB and the Contractor will attempt to reach agreement with respect to such matter. Failure of the PGCB or the Contractor to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of [Section 30, Contract Controversies](#).

27. CHANGES.

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

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

28. TERMINATION.

(a) For Convenience.

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

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

- (1) all Services performed consistent with the terms of the Contract prior to the effective date of termination;
- (2) all actual and reasonable costs incurred by Contractor as a result of the termination of the Contract; and

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

Failure to agree on any termination costs shall be a dispute handled in accordance with [Section 30, Contract Controversies](#), of this Contract.

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

- (iii) The above shall not be deemed to limit the PGCB's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.
- (b) Non-Appropriation. Any payment obligation or portion thereof of the PGCB created by this Contract is conditioned upon the availability and appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance or full performance in a subsequent fiscal year period, the PGCB shall have the right to terminate the Contract in whole or in part. The Contractor shall be reimbursed in the same manner as that described in [subsection \(a\)](#) to the extent that appropriated funds are available.
- (c) Default. The PGCB may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under the Contract and does not cure such failure within **30 days**, or if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the PGCB may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.
 - (i) Subject to [Section 38, Limitation of Liability](#), in the event the PGCB terminates this Contract in whole or in part as provided in this subsection (c), the PGCB may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the PGCB for the difference between the Contract price for the terminated portion of the Services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated Services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.
 - (ii) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism and unusually severe weather. The Contractor shall notify the Contracting Officer promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.
 - (iii) Nothing in this subsection (c) shall abridge the PGCB's right to suspend, debar or take other administrative action against the Contractor.

- (iv) If it is later determined that the PGCB erred in terminating the Contract for default, then the Contract shall be deemed to have been terminated for convenience under [subsection \(a\)](#).
- (v) If this Contract is terminated as provided by this subsection (c), the PGCB may, in addition to any other rights provided in this subsection (c), and subject law and to other applicable provisions of this Contract, require the Contractor to deliver to the PGCB in the manner and to the extent directed by the Contracting Officer, such Software, Data, Developed Works, Documentation and other materials as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated.
- (d) The rights and remedies of the PGCB 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 PGCB's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver by the PGCB of its rights and remedies in regard to the event of default or any succeeding event of default.
- (f) Following exhaustion of the Contractor's administrative remedies as set forth in [Section 30, Contract Controversies](#), the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

29. **BACKGROUND CHECKS.**

- (a) The Contractor, at its expense, must arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to PGCB IT facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <https://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>. The background check must be conducted prior to initial access and on an annual basis thereafter.
- (b) Before the PGCB will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that an employee of the Contractor or an employee of a subcontractor of the Contractor has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any PGCB facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the PGCB consents to the access, in writing, prior to the access. The PGCB may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to

cure any single failure to the satisfaction of the PGCB may result in the Contractor being deemed in default of its Contract.

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

30. CONTRACT CONTROVERSIES.

- (a) Pursuant to Section [1712.1](#) of the [Commonwealth Procurement Code](#), 62 Pa. C.S. § [1712.1](#), in the event of a claim arising from the Contract or a purchase order, the Contractor, within **six (6) months** after the cause of action accrues, must file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.
- (b) If the Contractor or the Contracting Officer requests mediation, and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- (c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract or Purchase Order in a manner consistent with the determination of the contracting officer and the PGCB shall compensate the Contractor pursuant to the terms of the Contract or Purchase Order.

31. CONFIDENTIALITY, PRIVACY AND COMPLIANCE.

- (a) General. The Contractor agrees to protect the confidentiality of the PGCB's confidential information. The PGCB agrees to protect the confidentiality of Contractor's confidential information. Unless the context otherwise clearly

indicates the need for confidentiality, information is deemed confidential only when the party claiming confidentiality designates the information as “confidential” in such a way as to give notice to the other party (for example, notice may be communicated by describing the information, and the specifications around its use or disclosure, in the Solicitation or in the Proposal). Neither party may assert that information owned by the other party is such party’s confidential information. Notwithstanding the foregoing, all Data provided by, or collected, processed, or created on behalf of the PGCB is Confidential Information unless otherwise indicated in writing.

- (b) Copying; Disclosure; Termination. The parties agree that confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon expiration or termination of this Contract or any license granted hereunder, the receiving party will return to the disclosing party, or certify as to the destruction of, all confidential information in the receiving party’s possession, other than one copy (where permitted by law or regulation), which may be maintained for archival purposes only, and which will remain subject to this Contract’s security, privacy, data retention/destruction and confidentiality provisions. A material breach of these requirements may result in termination for default pursuant to [Subsection 28\(c\)](#), in addition to other remedies available to the non-breaching party.
- (c) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this section do not apply to information:
 - (i) already known to the recipient at the time of disclosure other than through the contractual relationship;
 - (ii) independently generated by the recipient and not derived from the information supplied by the disclosing party;
 - (iii) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - (iv) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - (v) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how or data processing techniques developed alone or jointly with the PGCB in connection with services provided to the PGCB under this Contract.

- (d) The Contractor shall use the following process when submitting information to the PGCB it believes to be confidential and/or proprietary information or trade secrets:
 - (i) Prepare and submit an un-redacted version of the appropriate document;
 - (ii) Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret. The Contractor shall use a redaction program that ensures the information is permanently and irreversibly redacted; and
 - (iii) Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:
 - (1) the attached material contains confidential or proprietary information or trade secrets;
 - (2) the Contractor is submitting the material in both redacted and un-redacted format, if possible, in accordance with 65 P.S. § [67.707\(b\)](#); and
 - (3) the Contractor is requesting that the material be considered exempt under 65 P.S. § [67.708\(b\)\(11\)](#) from public records requests.
- (e) Disclosure of Recipient or Beneficiary Information Prohibited. The Contractor shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a PGCB program affected by or benefiting from Services under the Contract for any purpose not connected with the Contractor's responsibilities, except with consent pursuant to applicable law or regulations. All material associated with direct disclosures of this kind (including the disclosed information) shall be provided to the PGCB prior to the direct disclosure.
- (f) Compliance with Laws. Contractor will comply with all applicable laws or regulations related to the use and disclosure of information, including information that constitutes Protected Health Information (PHI) as defined by the *Health Insurance Portability and Accountability Act* (HIPAA).
- (g) Additional Provisions. Additional privacy and confidentiality requirements may be specified in the Contract.
- (h) Restrictions on Use. All Data and all intellectual property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the PGCB pursuant to this Contract shall be used only for the work of this Contract. No Data, intellectual property, Documentation or Developed Works may be used, disclosed, or otherwise opened for access by or to the Contractor or any third party unless directly related to and necessary under the Contract.

32. PCI SECURITY COMPLIANCE.

- (a) General. By providing the Services under this Contract, the Contractor may create, receive, or have access to credit card records or record systems containing cardholder data including credit card numbers (collectively the “Cardholder Data”). Contractor shall comply with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements for Cardholder Data that are prescribed by the payment brands (including, but not limited to, Visa, MasterCard, American Express, and Discover), as they may be amended from time to time. The Contractor acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment brands, for purposes of this Contract or as required by applicable law or regulations.
- (b) Compliance with Standards. The Contractor shall conform to and comply with the PCI DSS standards as defined by The PCI Security Standards Council at: https://www.pcisecuritystandards.org/security_standards/index.php. The Contractor shall monitor these PCI DSS standards and will promptly notify the PGCB if its practices should not conform to such standards. The Contractor shall provide a letter of certification to attest to meeting this requirement within **seven (7) days** of the Contractor’s receipt of the annual PCI DSS compliance report.

33. DATA BREACH OR LOSS.

- (a) The Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the [Breach of Personal Information Notification Act](#), Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301—2329.
- (b) For Data and Confidential Information in the possession, custody, and control of the Contractor or its employees, agents, and/or subcontractors:
 - (i) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information (“Incident”) to the PGCB within **two (2) hours** of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such Data or Confidential Information.
 - (ii) The Contractor shall provide timely notice to all individuals that may require notice under any applicable law or regulation as a result of an Incident. The notice must be pre-approved by the PGCB. At the PGCB’s request, Contractor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.

- (iii) The Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the PGCB due to Incidents.
- (c) As to Data and Confidential Information fully or partially in the possession, custody, or control of the Contractor and the PGCB, the Contractor shall diligently perform all of the duties required in this section in cooperation with the PGCB, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

34. **INSURANCE.**

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

- (v) Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under Company's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of **\$3,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
 - (vi) Completed Operations Insurance in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
 - (vii) Comprehensive crime insurance in an amount of not less than **\$5,000,000** per claim.
- (b) Certificate of Insurance. Prior to commencing Services under the Contract, and annually thereafter, the Contractor shall provide the PGCB with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been given to the PGCB. Such cancellation or change shall not relieve the Contractor of its continuing obligation to maintain insurance coverage in accordance with this section.
 - (c) Insurance coverage length. The Contractor agrees to maintain such insurance for the latter of the life of the Contract, or the life of any Purchase Orders issued under the Contract.

35. CONTRACTOR RESPONSIBILITY PROGRAM.

- (a) 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.
- (b) 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 subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

- (c) 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.
- (d) 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 PGCB 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.
- (e) The failure of the Contractor to notify the PGCB 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 PGCB.
- (f) 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 PGCB 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.
- (g) The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <https://www.dgs.pa.gov/Pages/default.aspx> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No. (717) 783-6472
FAX No. (717) 787-9138

36. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS.

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

37. TAXES-FEDERAL, STATE AND LOCAL.

The PGCB is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-7400001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The PGCB is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

38. LIMITATION OF LIABILITY.

- (a) General. The Contractor's liability to the PGCB under this Contract shall be limited to the greater of **\$250,000** or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:
- (i) for bodily injury;
 - (ii) for death;
 - (iii) for intentional injury;
 - (iv) for damage to real property or tangible personal property for which the Contractor is legally liable;
 - (v) under [Section 42, Patent, Copyright, Trademark and Trade Secret Protection](#);
 - (vi) under [Section 33, Data Breach or Loss](#); or
 - (vii) under [Section 41, Virus, Malicious, Mischievous or Destructive Programming](#).

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

39. PGCB HELD HARMLESS.

- (a) The Contractor shall indemnify the PGCB 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 PGCB gives Contractor prompt notice of any such claim of which it learns. Pursuant to the [Commonwealth Attorneys Act](#), Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the PGCB in actions brought against the PGCB. 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 PGCB will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- (b) Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The PGCB may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

40. SOVEREIGN IMMUNITY.

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

41. VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING.

- (a) The Contractor shall be liable for any damages incurred by the PGCB and the Commonwealth if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the PGCB's or Commonwealth's software or computer networks and has failed to comply with the PGCB and Commonwealth software security standards. The PGCB or the Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the PGCB or the Commonwealth has not fully complied with its own software security standards.
- (b) The Contractor shall be liable for any damages incurred by the PGCB or the Commonwealth including, but not limited to, the expenditure of PGCB or Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of

anti-virus software and software security updates (such as operating systems security patches, etc.).

- (c) In the event of destruction or modification of Software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the PGCB's or Commonwealth's software, and be liable to the PGCB or the Commonwealth for any resulting damages.
- (d) The Contractor shall be responsible for reviewing PGCB and/or Commonwealth software security standards and complying with those standards.
- (e) The PGCB may, at any time, audit, by a means deemed appropriate by the PGCB, any computing devices being used by representatives of the Contractor to provide Services to the PGCB for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the PGCB network until the proper installations have been made.
- (f) The Contractor may use the anti-virus software used by the PGCB to protect Contractor's computing devices used in the course of providing services to the PGCB. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the PGCB, and that all copies of the software will be removed from all devices upon termination of this Contract.
- (g) The PGCB will not be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the PGCB's anti-virus software or monitoring software on the Contractor's computers.

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

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

prevents the PGCB from continuing to use the Developed Works as provided herein shall be made without the Commonwealth's prior written consent. In all events, the PGCB shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the PGCB provide support to the Contractor in defending any such claim, the Contractor shall reimburse the PGCB for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the PGCB for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor, at its expense, will provide whatever cooperation OAG requests in the defense of the suit.

- (b) The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all works produced under this Contract do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that work produced for the PGCB under this contract shall be free and clear from all claims of any nature.
- (c) If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs awarded therein against the PGCB. If information and assistance are furnished by the PGCB at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.
- (d) If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, trademark or trade dress, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense:
 - (i) substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs; or
 - (ii) obtain the rights for the PGCB to continue the use of such products, materials, reports, studies, or computer programs.
- (e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.

- (f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the PGCB:
 - (i) any amounts paid by the PGCB less a reasonable amount based on the acceptance and use of the deliverable;
 - (ii) any license fee less an amount for the period of usage of any software; and
 - (iii) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (g) Notwithstanding the above, the Contractor shall have no obligation for:
 - (i) modification of any product, service, or deliverable provided by the PGCB;
 - (ii) any material provided by the PGCB to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
 - (iii) use of the product, service, or deliverable in other than its specified operating environment;
 - (iv) the combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
 - (v) infringement of a non-Contractor product alone;
 - (vi) the PGCB's distribution, marketing or use beyond the scope contemplated by the Contract; or
 - (vii) the PGCB's failure to use corrections or enhancements made available to the PGCB by the Contractor at no charge.
- (h) The obligation to indemnify the PGCB, under the terms of this section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

43. CONTRACT CONSTRUCTION.

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

44. USE OF CONTRACTOR AND THIRD PARTY PROPERTY.

- (a) Definitions.
 - (i) “Contractor Property” refers to Contractor-owned tangible and intangible property.
 - (ii) “Third Party” refers to a party that licenses its property to Contractor for use under this Contract.
 - (iii) “Third Party Property” refers to property licensed by the Contractor for use in its work under this Contract.
- (b) Contractor Property shall remain the sole and exclusive property of the Contractor. Third Party Property shall remain the sole and exclusive property of the Third Party. The PGCB acquires rights to the Contractor Property and Third Party Property as set forth in this Contract.
 - (i) Where the Contractor Property or Third Party Property is integrated into the Supplies or Services which are not Developed Works), or the Contractor Property is otherwise necessary for the PGCB to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor hereby grants to the PGCB a non-exclusive, fully-paid up, worldwide license to use the Contractor Property as necessary to meet the requirements of the Contract, including the rights to reproduce, distribute, publicly perform, display and create derivative works of the Contractor Property. These rights are granted for a duration and to an extent necessary to meet the requirements under this Contract. If the Contractor requires a separate license agreement, such license terms shall include the aforementioned rights, be acceptable to the PGCB and include the applicable provisions set forth in these terms at Appendix M, Software License Requirements
 - (ii) If Third Party Property is integrated into the Supplies or Services which are not Developed Works, or the Third Party Property is otherwise necessary for the PGCB to attain the full benefit of the Supplies or Services in accordance with the terms of the Contract, the Contractor shall gain the written approval of the PGCB prior to the use of the Third Party Property or the integration of the Third Party Property into the Supplies or Services. Third Party Property approved by the PGCB is hereby licensed to the PGCB as necessary to meet the Contract requirements.
 - (iii) If the Third Party requires a separate license agreement, the license terms shall be acceptable to the PGCB and include the applicable provisions set forth in these terms Appendix M, Software License Requirements.

- (iv) If the use or integration of the Third Party Property is not approved in writing under this section, the Third Party Property shall be deemed to be licensed under [paragraph \(b\)\(i\)](#) above.
- (v) If the Contract expires or is terminated for default pursuant to [subsection 28\(c\)](#) before the Contract requirements are complete, all rights are granted for a duration and for purposes necessary to facilitate PGCB's or a PGCB-approved vendor's completion of the Supplies, Services or Developed Works under this Contract. The Contractor, in the form used by Contractor in connection with the Supplies, Services, or Developed Works, shall deliver to PGCB the object code version of such Contractor Property, the Third Party Property and associated licenses immediately prior to such expiration or termination to allow the PGCB to complete such work.
- (vi) Where third party users are reasonably anticipated by the Contract, all users are granted the right to access and use Contractor Property for the purposes of and within the scope indicated in the Contract.
- (c) The PGCB will limit its agents and contractors' use and disclosure of the Contractor Property as necessary to perform work on behalf of the PGCB.
- (d) The parties agree that the PGCB, by acknowledging the Contractor Property, does not agree to any terms and conditions of the Contractor Property agreements that are inconsistent with or supplemental to this Contract.
- (e) Reports. When a report is provided under this Contract, but was not developed specifically for the PGCB under this Contract, the ownership of the report will remain with the Contractor; provided, however, that the PGCB has the right to use, copy and distribute the report within the executive agencies of the Commonwealth.

45. USE OF COMMONWEALTH PROPERTY.

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

- (a) Confidentiality of Commonwealth Property. All Commonwealth Property provided to the Contractor pursuant to this Contract or collected or generated by the Contractor on behalf of the Commonwealth pursuant to this Contract shall be considered confidential information under [Section 31, Confidentiality, Privacy, and Compliance](#).
- (b) License grant and restrictions. During the term of this Contract, Commonwealth grants to Contractor and its subcontractors for the limited purpose of providing the Services covered under this Contract, a limited, nonexclusive, nontransferable, royalty-free right (subject to the terms of any third party agreement to which the Commonwealth is a party) to access, use, reproduce, and modify Commonwealth

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

- (i) The Contractor hereby assigns to the Commonwealth its rights, if any, in any derivative works resulting from Contractor's modification of the Commonwealth Intellectual Property. Contractor agrees to execute any documents required to evidence this assignment and to waive any moral rights and rights of attribution provided for in Section 106A of Title 17 of the United States Code, the *Copyright Act of 1976*, as amended.
 - (ii) Neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Intellectual Property. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this section.
- (c) Reservation of rights. All rights not expressly granted here to Contractor are reserved by the Commonwealth.
- (d) Termination of Commonwealth license grant.
 - (i) *Rights Cease.* Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, all rights granted to Contractor under this section shall immediately cease.
 - (ii) *Return Commonwealth Property.* Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Intellectual Property (including any related source code then in Contractor's possession or under its control) in the form in use as of the Effective Date of such expiration or termination (except that Commonwealth Data shall be turned over in a form acceptable to the Commonwealth).
 - (iii) *List of utilized Commonwealth Property/Destruction.* Within **15 days** after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Intellectual Property in use as of the date of such expiration or termination. Concurrently therewith, Contractor shall destroy or erase all other copies of any of the Commonwealth Software then in Contractor's possession or under its control unless otherwise instructed by Commonwealth, in writing; provided, however, that Contractor may retain one archival copy of such Commonwealth Software, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.
- (e) Effect of license grant termination. Consistent with the provisions of this section, Contractor shall refrain from manufacturing, copying, marketing, distributing or

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

(f) Commonwealth Property Protection.

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

46. OWNERSHIP OF DEVELOPED WORKS.

Unless otherwise specified in the Contract's Statement of Work, ownership of all Developed Works shall be in accordance with the provisions set forth in this section.

(a) Rules for usage for Developed Works.

- (i) *Property of Contractor.* If Developed Works modify, improve, contain, or enhance application software programs or other materials generally licensed by the Contractor, then such Developed Works shall be the property of the Contractor, and Contractor hereby grants PGCB an irrevocable, nonexclusive, worldwide, fully paid-up license (to include source code and relevant documentation) in perpetuity to use, modify, execute, reproduce, display, perform, prepare derivative works from and distribute, within the PGCB, such Developed Works.
- (ii) *Property of PGCB/licensor.* If the Developed Works modify, improve or enhance application software or other materials not licensed to the PGCB by the Contractor, then such modifications, improvements and enhancements shall be the property of the PGCB or its licensor.

(b) Copyright Ownership.

- (i) *Works made for hire; general.* Except as indicated in [paragraph \(a\)\(i\)](#), above, Developed Works developed as part of the scope of work for the Project, including Developed Works developed by subcontractors, are the sole and exclusive property of the PGCB and shall be considered "works

made for hire” under the *Copyright Act of 1976*, as amended, 17 United States Code.

- (ii) *Assignment.* In the event that the Developed Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, Contractor agrees to assign and, upon their authorship or creation, expressly and automatically assigns, all copyright interests, proprietary rights, trade secrets, and other right, title, and interest in and to such Developed Works to PGCB. Contractor further agrees that it will have its subcontractors assign, and upon their authorship or creation, expressly and automatically assigns all copyright interest, proprietary rights, trade secrets, and other right, title, and interest in and to the Developed Works to the PGCB.
 - (iii) *Rights to PGCB.* PGCB shall have all rights accorded an owner of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Developed Works in multiple copies, the right to distribute copies by sales or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the Developed Works and the right to display the Developed Works.
 - (iv) *Subcontracts.* The Contractor further agrees that it will include the requirements of this section in any subcontractor or other agreement with third parties who in any way participate in the creation or development of Developed Works.
 - (v) *Completion or termination of Contract.* Upon completion or termination of this Contract, Developed Works, or completed portions thereof, shall immediately be delivered by Contractor to the PGCB.
 - (vi) *Warranty of noninfringement.* Contractor represents and warrants that the Developed Works are original and do not infringe any copyright, patent, trademark, or other intellectual property right of any third party and are in conformance with the intellectual property laws and regulations of the United States.
- (c) Patent ownership. Contractor and its subcontractors shall retain ownership to patentable items, patents, processes, inventions or discoveries (collectively, the Patentable Items) made by the Contractor during the performance of this Contract. Notwithstanding the foregoing, the PGCB shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. PGCB may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. PGCB understands and agrees that any third party disclosure will not confer any license to such Patentable Items.

- (d) Federal government interests. Certain funding under this Contract may be provided by the federal government. Accordingly, the rights to Developed Works or Patentable Items of Contractors or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. [Part 401](#), as amended, and other applicable law or regulations.
- (e) Usage rights. Except as otherwise covered by this section either Party, in the ordinary course of conducting business, may use any ideas, concepts, know-how, methodologies, processes, components, technologies, algorithms, designs, modules or techniques relating to the Services.
- (f) Contractor's copyright notice obligations. Contractor will affix the following Copyright Notice to the Developed Works developed under this section and all accompanying documentation: "*Copyright © [year] by the Pennsylvania Gaming Control Board. All Rights Reserved.*" This notice shall appear on all versions of the Developed Works delivered under this Contract and any associated documentation. It shall also be programmed into any and all Developed Works delivered hereunder so that it appears at the beginning of all visual displays of such Developed Works.

47. SOURCE CODE AND ESCROW ITEMS OBLIGATIONS.

- (a) Source code. Simultaneously with delivery of the Developed Works to PGCB, Contractor shall deliver a true, accurate and complete copy of all source codes relating to the Developed Works.
- (b) Escrow. To the extent that Developed Works and/or any perpetually-licensed software include application software or other materials generally licensed by the Contractor, Contractor agrees to place in escrow with an escrow agent copies of the most current version of the source code for the applicable software that is included as a part of the Services, including all updates, improvements, and enhancements thereof from time to time developed by Contractor.
- (c) Escrow agreement. An escrow agreement must be executed by the parties, with terms acceptable to the PGCB, prior to deposit of any source code into escrow.
- (d) Obtaining source code. Contractor agrees that upon the occurrence of any event or circumstance which demonstrates with reasonable certainty the inability or unwillingness of Contractor to fulfill its obligations to PGCB under this Contract, PGCB shall be able to obtain the source code of the then-current source codes related to Developed Works and/or any Contractor Property placed in escrow under [subsection \(b\)](#), above, from the escrow agent.

48. LOCATION, STATUS AND DISPOSITION OF DATA.

Unless the Solicitation specifies otherwise:

- (i) All Data must be stored within the United States;
- (ii) The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor's or its subcontractors' possession;
- (iii) All Data shall be provided to the PGCB upon request, in a form acceptable to the PGCB and at no cost;
- (iv) Any Data shall be destroyed by the Contractor at the PGCB's request; and
- (v) Any Data shall be held for litigation or public records purposes by the Contractor at the PGCB's request, and in accordance with the security, privacy and accessibility requirements of this Contract.

49. PUBLICATION RIGHTS AND/OR COPYRIGHTS.

- (a) Except as otherwise provided in [Section 46, Ownership of Developed Works](#), the Contractor shall not publish any of the results of the work without the written permission of the PGCB. The publication shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the Pennsylvania Gaming Control Board." The Contractor shall not include in the documentation any copyrighted matter, unless the Contractor provides the PGCB with written permission of the copyright owner.
- (b) Except as otherwise provided in the Contract, the PGCB shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the PGCB as part of the performance of the Contract.

50. CHANGE OF OWNERSHIP OR INSOLVENCY.

In the event that the Contractor should change ownership for any reason whatsoever, the PGCB shall have the exclusive option of continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract, or continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs, or immediately terminating this Contract. Nothing in this section limits the PGCB's exercise of any rights that the PGCB may have under [Section 28, Termination](#).

51. OFFICIALS NOT TO BENEFIT.

No official or employee of the PGCB or the interest of any corporation, partnership, or association in which they are, directly or indirectly, interested; nor shall any such official or employee of the PGCB have any interest, direct or indirect, in this Contract or the proceeds thereof.

52. COMPLIANCE WITH LAWS.

- (a) The Contractor shall comply with all federal, state and local laws, regulations and policies applicable to its Services or Supplies, including, but not limited to, all statutes, regulations and rules that are in effect as of the Effective Date of the Contract and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation.
- (b) If any existing law, regulation or policy is changed or if any new law, regulation or policy is enacted that affects the Services or Supplies provided under this Contract, the Parties shall modify this Contract, via [Section 27, Changes](#), to the extent reasonably necessary to:
 - (i) Ensure that such Services or Supplies will be in full compliance with such laws, regulations and policies; and
 - (ii) Modify the rates applicable to such Services or Supplies, unless otherwise indicated in the Solicitation.

53. THE AMERICANS WITH DISABILITIES ACT.

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

- (a) Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through Contracts with outside Contractors.
- (b) The Contractor shall be responsible for and agrees to indemnify and hold harmless the PGCB from losses, damages, expenses claims, demands, suits, and actions brought by any party against the PGCB as a result of the Contractor's failure to comply with the provisions of [subsection \(a\)](#).

54. EXAMINATION OF RECORDS.

- (a) The Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under this Contract to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.
- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in [subsection \(c\)](#) below, any of the records for inspection, audit, or reproduction by any authorized PGCB representative. To the extent allowed by applicable laws or regulations, the PGCB agrees to maintain any documents so provided in accordance with the confidentiality provisions in [Section 31, Confidentiality, Privacy and Compliance](#).
- (c) The Contractor shall preserve and make available its records for a period of **three (3) years** from the date of final payment under this Contract.
 - (i) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of **three (3) years** from the date of any resulting final settlement.
 - (ii) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.
- (d) Except for documentary evidence retained pursuant to [paragraph \(c\)\(ii\)](#) above, the Contractor may in fulfillment of its obligation to retain its records as required by this section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of **two (2) years** following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the PGCB with the concurrence of its auditors.
- (e) The provisions of this section shall be applicable to and included in each subcontract hereunder.

55. SINGLE AUDIT ACT OF 1984.

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

- (a) This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the

Comptroller General of the United States and specified in the most current version of [Government Auditing Standards](#) (Yellow Book).

- (b) The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, as amended, 31 U.S.C. § [7501, et seq.](#), and all rules and regulations promulgated pursuant to the Act.
- (c) The PGCB reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
- (d) The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984*, as amended.

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

- (a) Contractor understands that its level of access may allow or require it to view or access highly sensitive and confidential Commonwealth and third party data. This data is subject to various state and federal laws, regulations and policies that vary from agency to agency, and from program to program within an agency. If applicable, prior to deployment of the Supplies or Services, the Contractor must receive and sign off on particular instructions and limitations as dictated by that Commonwealth agency, including but not limited to, as necessary, HIPAA Business Associate Agreements.
- (b) The Contractor hereby certifies and warrants that, after being informed by the Commonwealth agency of the nature of the data which may be implicated and prior to the deployment of the Supplies or Services, the Contractor is and shall remain compliant with all applicable state and federal laws, regulations and policies regarding the data's protection, and with the requirements memorialized in every completed and signed sign-off document. Every sign-off document completed by a Commonwealth agency and signed by at least one signatory authorized to bind the Contractor is valid and is hereby integrated and incorporated by reference into this Contract.
- (c) This section does not require a Commonwealth agency to exhaustively list the laws, regulations or policies to which implicated data is subject; the Commonwealth agency is obligated only to list the nature of the data implicated by the Contractor's access, to refer the Contractor to its privacy and security policies, and to specify requirements that are not otherwise inherent in compliance with applicable laws, regulations and policies.
- (d) The requirements of this section are in addition to and not in lieu of other requirements of this Contract, its Exhibits, Appendices and Attachments, having to do with data privacy and security, including but not limited to the requirement that

the Contractor comply with all applicable Commonwealth ITPs, which can be found at <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.

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

57. FEDERAL REQUIREMENTS.

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

58. ADDITIONAL FEDERAL PROVISIONS.

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

59. ENVIRONMENTAL PROTECTION.

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

60. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE.

The Contractor agrees:

- (a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the [Pennsylvania Human Relations Act \(PHRA\)](#) and applicable federal laws, against any citizen of

this Commonwealth who is qualified and available to perform the work to which the employment relates.

- (b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the [PHRA](#) and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- (c) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the [PHRA](#) and applicable federal laws, in the provision of services under the contract.
- (d) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the [Public Employee Relations Act](#), [Pennsylvania Labor Relations Act](#) or [National Labor Relations Act](#), as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- (e) The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- (f) The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of [PHRA](#) and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- (g) The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII* of the *Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the PGCB, furnish all necessary

employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

- (h) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- (i) The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the PGCB if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- (j) The PGCB may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

61. CONTRACTOR INTEGRITY PROVISIONS.

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

- (a) Definitions. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this section:
 - (i) *"Affiliate"* means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - (ii) *"Consent"* means written permission signed by a duly authorized officer or employee of the PGCB, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the PGCB shall be deemed to have consented by virtue of the execution of this contract.
 - (iii) *"Contractor"* means the individual or entity, that has entered into this contract with the PGCB.

- (iv) “*Contractor Related Parties*” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
 - (v) “*Financial Interest*” means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - (vi) “*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.
 - (vii) “*Non-bid Basis*” means a contract awarded or executed by the PGCB with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- (b) In furtherance of this policy, Contractor agrees to the following:
- (i) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the PGCB.
 - (ii) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the PGCB and PGCB employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
 - (iii) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the PGCB in connection with performance of work under this contract, except as provided in this contract.

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

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

- (vi) Contractor shall comply with the requirements of the [Lobbying Disclosure Act](#) (65 Pa. C.S. § 13A01, et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply

with the requirements of the Section [1641](#) of the [Pennsylvania Election Code](#) (25 P.S. § 3260a).

- (vii) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a PGCB officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the PGCB contracting officer or the Office of the State Inspector General in writing.
- (viii) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the PGCB in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the PGCB for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the PGCB that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- (ix) Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this subsection in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the PGCB and any such subcontractor, and no third party beneficiaries shall be created thereby.
- (x) For violation of any of these Contractor Integrity Provisions, the PGCB 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 PGCB. 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 PGCB may have under law, statute, regulation, or otherwise.

62. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS.

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

63. WARRANTIES.

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

- (a) Disruption. The Contractor hereby represents and warrants to the PGCB that the Contractor will not cause, or take any action that, directly or indirectly, may cause a disruption of the PGCB's operations.
- (b) Nonconformity. In the event of any nonconformity with the foregoing warranties, the PGCB will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the PGCB, shall within **10 days'** notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the PGCB, until such time as the deliverable conforms, in all material respects, to the Service requirements and/or the functional specifications of the Developed Works set forth in this Contract. The Contractor shall have no obligation with respect to nonconformities arising out of:
 - (i) Modifications to Developed Works made by the PGCB;
 - (ii) Use of the Developed Works not in accordance with the documentation or specifications applicable thereto;
 - (iii) Failure by the PGCB to implement any corrections or enhancements made available by the Contractor;

- (iv) Combination of the Developed Works with any items not supplied or approved by the Contractor; or
 - (v) Failure of any software licensed under a separate license agreement to conform to its specifications or documentation.
- (c) Industry standards. The Contractor hereby represents and warrants to the PGCB that the Services shall be performed in accordance with industry standards using the utmost care and skill.
 - (d) Right to perform. The Contractor hereby represents and warrants to the PGCB that the Contractor has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Developed Works under this Contract.
 - (e) Sole warranties. THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

64. LIQUIDATED DAMAGES.

- (a) By accepting this Contract, the Contractor agrees to the delivery and acceptance requirements of this Contract. If a due date is not met, the delay will interfere with the PGCB's program. In the event of any such delay, it would be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. The PGCB and the Contractor therefore agree that in the event of any such delay, the amount of damage shall be the amount set forth in this section, unless otherwise indicated in the Contract, and agree that the Contractor shall pay such amount as liquidated damages, not as a penalty. Such liquidated damages are in lieu of all other damages arising from such delay.
- (b) The amount of liquidated damages shall be as set out in the Solicitation. If not amount is set out in the Solicitation, the amount of liquidated damages for failure to meet a due date shall be three-tenths of a percent **(.3%)** of the price of the deliverable for each calendar day following the scheduled completion date. If the price of the deliverable associated with the missed due date is not identified, liquidated damages shall apply to the total value of the Contract. Liquidated damages shall be assessed each calendar day until the date on which the Contractor meets the requirements for the deliverable associated with the due date, up to a maximum of **30 days**. If indicated in the Contract, the Contractor may recoup all or some of the amount of liquidated damages assessed if the Contractor meets the final project completion date set out in the Contract.

- (c) If, at the end of the **30-day** period specified in [subsection \(b\)](#) above, the Contractor still has not met the requirements for the deliverable associated with the due date, then the PGCB, at no additional expense and at its option, may either:
 - (i) Immediately terminate the Contract in accordance with [Subsection 28\(c\)](#) and with no opportunity to cure; or
 - (ii) Order the Contractor to continue with no decrease in effort until the work is completed in accordance with the Contract and accepted by the PGCB or until the PGCB terminates the Contract. If the Contract is continued, any liquidated damages will also continue until the work is completed.
- (d) At the end of a calendar month, or at such other time(s) as identified in the Contract, liquidated damages shall be paid by the Contractor and collected by the PGCB by:
 - (i) Deducting the amount from the invoices submitted under this Contract or any other contract Contractor has with the PGCB;
 - (ii) Collecting the amount through the performance security, if any; or
 - (iii) Billing the Contractor as a separate item.

65. SERVICE LEVELS.

- (a) The Contractor shall comply with the procedures and requirements of the Service Level Agreements, if any, which are made part of this Contract.
- (b) Where there are expressly defined Service Levels, Contractor shall measure and report its performance against these standards on at least a monthly basis, except as may otherwise be agreed between the parties. Regardless of the presence or absence of expressly defined Service Levels, any failure to adequately or timely perform a Service may result in consequences under this Contract, up to and including Contract termination.
- (c) The PGCB's acceptance of any financial credit incurred by the Contractor in favor of the PGCB for a Service Level default ("Service Level Credit") shall not bar or impair PGCB's rights and remedies in respect of the failure or root cause as set forth elsewhere in this Contract, including without limitation other claims for liquidated damages, injunctive relief and termination rights; provided however, Service Level Credits paid would be credited against any such claims for damages.

66. FORCE MAJEURE.

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

regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

- (b) The Contractor shall notify the PGCB orally within **five (5) days** and in writing within **10 days** of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the PGCB may reasonably request. After receipt of such notification, the PGCB may elect to cancel the Contract, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.
- (c) In the event of a declared emergency by competent governmental authorities, the PGCB by notice to the Contractor, may suspend all or a portion of the Contract.

67. PUBLICITY/ADVERTISEMENT.

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

68. TERMINATION ASSISTANCE.

- (a) Upon the PGCB's request, Contractor shall provide termination assistance services (Termination Assistance Services) directly to the PGCB, or to any vendor designated by the PGCB. The PGCB may request termination assistance from the Contractor upon full or partial termination of the Contract and/or upon the expiration of the Contract term, including any renewal periods. Contractor shall take all necessary and appropriate actions to accomplish a complete, timely and seamless transition of any Services from Contractor to the PGCB, or to any vendor designated by the PGCB, without material interruption of or material adverse impact on the Services. Contractor shall cooperate with the PGCB and any new contractor and otherwise promptly take all steps required or reasonably requested to assist the PGCB in effecting a complete and timely transition of any Services.
- (b) Such Termination Assistance Services shall first be rendered using resources included within the fees for the Services, provided that the use of such resources shall not adversely impact the level of service provided to the PGCB; then by resources already included within the fees for the Services, to the extent that the PGCB permits the level of service to be relaxed; and finally, using additional resources at costs determined by the Parties via [Section 27, Changes](#).

69. NOTICE.

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

70. RIGHT-TO-KNOW LAW.

- (a) The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101—3104, *as amended*, (“RTKL”) applies to this Contract.
- (b) If the PGCB needs the Contractor’s assistance in any matter arising out of the RTKL that is 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 PGCB.
- (c) Upon written notification from the PGCB that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
 - (i) Provide the PGCB, within **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 PGCB reasonably believes is Requested Information and may be a public record under the RTKL; and
 - (ii) Provide such other assistance as the PGCB 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 PGCB 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 PGCB will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the PGCB determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the PGCB determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within **five (5) business days** of receipt of written notification of the PGCB’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 PGCB harmless for any damages, penalties, costs, detriment or harm that the PGCB may incur as a result of the Contractor's failure, including any statutory damages assessed against the PGCB.
- (g) The PGCB will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the [RTKL](#) if the fee schedule is inapplicable.
- (h) The Contractor may file a legal challenge to any PGCB decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the PGCB for any legal expenses incurred by the PGCB as a result of such a challenge and shall hold the PGCB harmless for any damages, penalties, costs, detriment or harm that the PGCB may incur as a result of the Contractor's failure, including any statutory damages assessed against the PGCB, 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 PGCB's disclosure of Requested Information pursuant to the [RTKL](#).
- (i) The Contractor's duties relating to the [RTKL](#) are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

71. GOVERNING LAW.

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

72. CONTROLLING TERMS AND CONDITIONS.

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the PGCB. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's website, quotations, invoices, business forms, click-through agreements, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor, and not binding on the PGCB.

73. SMALL DIVERSE BUSINESS/SMALL BUSINESS COMMITMENT.

The Contractor shall meet and maintain the commitments to small diverse businesses in the Small Diverse Business and Small Business ("SDB/SB") portion of its Proposal. Any proposed change to a SDB/SB commitment must be submitted to the DGS Bureau of Diversity, Inclusion and Small Business Opportunities ("BDISBO"), which will make a recommendation as to a course of action to the PGCB Contracting Officer. Contractor shall complete the Prime Contractor's Quarterly Utilization Report and submit it to the PGCB Contracting Officer and BDISBO within **10 business days** at the end of each calendar quarter that the Contract is in effect.

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

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

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

75. SURVIVAL.

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

**APPENDIX A
PROPOSAL COVER SHEET
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA GAMING CONTROL BOARD**

RFP# 2020-1

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

| Offeror Information: | |
|-----------------------------------|--|
| Offeror Name | |
| Offeror Mailing Address | |
| Offeror Website | |
| Offeror Contact Person | |
| Contact Person's Phone Number | |
| Contact Person's Facsimile Number | |
| Contact Person's E-Mail Address | |
| Offeror Federal ID Number | |
| Offeror SAP/SRM Vendor Number | |

| Submittals Enclosed and Separately Sealed: | |
|---|--|
| <input type="checkbox"/> | Technical Submittal <input type="checkbox"/> Domestic Workforce Utilization Certification |
| <input type="checkbox"/> | Small Diverse Business and Small Business Participation Submittal <input type="checkbox"/> Small Diverse Business and Small Business Participation Submittal Form <input type="checkbox"/> Small Diverse Business and Small Business Letter(s) of Intent |
| <input type="checkbox"/> | Cost Submittal |

| Signature | |
|--|--|
| Signature of an official authorized to bind the Offeror to the provisions contained in the Offeror's proposal: | |
| Printed Name | |
| Title | |

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

APPENDIX B
DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

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

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

☐ All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

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

[Use additional sheets if necessary]

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

Attest or Witness:

Signature/Date

Printed Name/Title

Corporate or Legal Entity's Name

Signature/Date

Printed Name/Title

APPENDIX C IRAN FREE PROCUREMENT CERTIFICATION FORM



IRAN FREE PROCUREMENT CERTIFICATION FORM

(Pennsylvania's Procurement Code Sections 3501-3506, 62 Pa.C.S. §§ 3501-3506)

To be eligible for an award of a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 or more, a vendor must either: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

To comply with this requirement, please insert your vendor or financial institution name and complete one of the options below. Please note: Pennsylvania law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Section 3503 of the Procurement Code.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is eligible to contract with the Commonwealth of Pennsylvania Sections 3501-3506 of the Procurement Code.

| | |
|--|----------------------|
| <i>Vendor Name/Financial Institution (Printed)</i> | |
| <i>By (Authorized Signature)</i> | |
| <i>Printed Name and Title of Person Signing</i> | <i>Date Executed</i> |

OPTION #2 - EXEMPTION

Pursuant to Procurement Code Section 3503(e), DGS may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to enter into a contract for goods and services.

If you have obtained a written exemption from the certification requirement, please fill out the information below, and attach the written documentation demonstrating the exemption approval.

| | |
|--|----------------------|
| <i>Vendor Name/Financial Institution (Printed)</i> | |
| <i>By (Authorized Signature)</i> | |
| <i>Printed Name and Title of Person Signing</i> | <i>Date Executed</i> |

Appendix D
Trade Secret/Confidential Proprietary Information Notice

Proposal Contents

- a. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Contractors' submissions in order to evaluate proposals submitted in response to an RFQ. Accordingly, except as provided herein, Contractors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Contractor who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.
- b. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Contractor copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- c. Public Disclosure. After the award of a contract pursuant to a RFQ, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests (See **Trade Secret/Confidential Proprietary Information Notice**). Financial capability information submitted in response to a RFQ is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

Instructions:

The Commonwealth may not assert on behalf of a third party an exception to the public release of materials that contain trade secrets or confidential proprietary information unless the materials are accompanied, at the time they are submitted, by this form or a document containing similar information.

It is the responsibility of the party submitting this form to ensure that all statements and assertions made below are legally defensible and accurate. The Commonwealth will not provide a submitting party any advice with regard to trade secret law.

Name of submitting party:

Contact information for submitting party:

Please provide a brief overview of the materials that you are submitting (e.g. bid, grant application, technical schematics):

Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g. response to bid #12345, application for grant XYZ being offered by the Department of Health, documents required to be submitted under law ABC)

Please provide a list detailing which portions of the material being submitted you believe constitute a trade secret or confidential proprietary information, and please provide an explanation of why you think those materials constitute a trade secret or confidential proprietary information. Also, please mark the submitted material in such a way to allow a reviewer to easily distinguish between the parts referenced below. (You may attach additional pages if needed)

Note: The following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of a vendor's cost bid
- Information submitted as part of a vendor's technical response that does not pertain to specific business practices or product specification
- Information submitted as part of a vendor's technical or small diverse business response that is otherwise publicly available or otherwise easily obtained
- Information detailing the name, quantity, and price paid for any product or service being purchased by the Commonwealth

[illegible]

Acknowledgment

The undersigned party hereby agrees that it has read and completed this form, and has marked the material being submitted in accordance with the instructions above. The undersigned party acknowledges that the Commonwealth is not liable for the use or disclosure of trade secret data or confidential proprietary information that has not been clearly marked as such, and which was not accompanied by a specific explanation included with this form.

The undersigned agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, and indemnify and hold harmless the Commonwealth, its agents and employees, from any judgments awarded against the Commonwealth in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives so long as the Commonwealth has possession of the submitted material, and will apply to all costs unless and until the undersigned provides a written statement or similar notice to the Commonwealth stating that it no longer wishes to exempt the submitted material from public disclosure.

The undersigned acknowledges that the Commonwealth is required to keep all records for at least as long as specified in its published records retention schedule.

The undersigned acknowledges that the Commonwealth reserves the right to reject the undersigned's claim of trade secret/confidential proprietary information if the Commonwealth determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret or is confidential. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret or is confidential, the remainder of the submitted material will become public; only the protected information will be removed and remain nonpublic.

If being submitted electronically, the undersigned agrees that the mark below is a valid electronic signature.

Signature

Title

Date

APPENDIX E COST SUBMITTAL



Appendix E Cost
Submittal.xlsx

APPENDIX F
SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE SUMMARY SHEET

Veteran Business Enterprise (VBE) Participation Summary Sheet

Solicitation/Project #: _____

Issuing Agency: _____

Name of Procurement/Project: _____

VBE Participation Goal (for VBE and SDVBE): _____ 3 %

Attachments:

| | |
|---------|--|
| VBE-1 | Instructions for completing VBE Participation Submittal and VBE Utilization Schedule |
| VBE-2 | VBE Participation Submittal |
| VBE-3 | VBE Utilization Schedule |
| VBE-3.1 | VBE Letter of Commitment |
| VBE-4 | Guidance for Documenting Good Faith Efforts to meet the VBE participation goal |
| VBE-5 | Good Faith Efforts Documentation to Support Waiver Request of VBE Participation Goal |

Small Diverse Business (SDB) Participation Summary Sheet

Solicitation/Project #: _____

Issuing Agency: _____

Name of Procurement/Project: _____

SDB Participation Goal (for MBE, WBE, LGBTBE, DOBE, and SDVBE): 11 %

Attachments:

| | |
|---------|--|
| SDB-1 | Instructions for completing SDB Participation Submittal and SDB Utilization Schedule |
| SDB-2 | SDB Participation Submittal |
| SDB-3 | SDB Utilization Schedule |
| SDB-3.1 | SDB Letter of Commitment |
| SDB-4 | Guidance for Documenting Good Faith Efforts to meet the SDB Participation goal |
| SDB-5 | Good Faith Efforts Documentation to Support Waiver Request of SDB Participation Goal |

APPENDIX G

SMALL DIVERSE BUSINESS PARTICIPATION PACKET



SDB Participation
Packet - Supplies an

APPENDIX H

VETERAN BUSINESS ENTERPRISE PARTICIPATION PACKET



VBE Participation
Packet - Supplies an

APPENDIX I

MODEL FORM OF SMALL DIVERSE BUSINESS/VETERAN BUSINESS ENTERPRISE SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement ("Subcontract") is made effective as of _____, 20__, by and between _____, ("Contractor") and _____, a Small Diverse Business or Veteran Business Enterprise ("Subcontractor") (collectively referred to as the "Parties").

RECITALS

Contractor has entered into a contract dated _____ (the "Prime Contract") with the Department of _____ the Commonwealth of Pennsylvania ("Commonwealth"). Under the Prime Contract, Contractor has agreed to provide certain supplies, services or construction ("Services") to the Commonwealth.

In connection with the Procurement leading to the Prime Contract, Contractor and Subcontractor entered into a letter agreement dated _____ ("Letter of Commitment") whereby the Contractor committed a certain percentage of work ("Small Diverse Business or Veteran Business Enterprise Commitment") under the Prime Contract to the Subcontractor.

As contemplated by the Letter of Commitment and in accordance with the provisions of the Procurement and Prime Contract, the Parties have agreed to enter into this Subcontract to fulfill the Small Diverse Business or Veteran Business Enterprise Commitment expressed in the Letter of Commitment and as required by the Prime Contract.

DEFINITIONS

The following words and terms when used in this Subcontract shall have the following meanings:

Bureau – The Department's Bureau of Diversity, Inclusion and Small Business Opportunities.

Contracting Officer – The person authorized to administer and make written determinations for the Commonwealth with respect to the Prime Contract.

Department – The Department of General Services of the Commonwealth of Pennsylvania.

Issuing Office – The department, board, commission or other agency of the Commonwealth of Pennsylvania that issued the Procurement.

Procurement – The Invitation for Bids, Request for Quotes, Request for Proposals or other solicitation and all associated final procurement documentation issued by the Commonwealth to obtain proposals from firms for award of the Prime Contract.

Small Business – A business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$38.5 million in gross annual revenues.

Small Diverse Business – A Department-verified minority-owned small business, woman-owned small business, LGBT-owned small business, disability-owned small business, or service-disabled veteran-owned small business.

Veteran Business Enterprise – A Department-verified veteran-owned small business or service-disabled veteran-owned small business.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Subcontractor Representations. Subcontractor represents and warrants to Contractor as follows:

(a) Subcontractor is verified as a Small Diverse Business or Veteran Business Enterprise by the Bureau of Diversity, Inclusion and Small Business Opportunities in accordance with the requirements and procedures established by the Bureau;

(b) Subcontractor possesses the necessary knowledge, experience, expertise, capital, resources and personnel required to perform the Services it will provide under this Subcontract;

(c) Subcontractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(d) The execution and performance by Subcontractor of the terms and provisions of this Subcontract have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract by Subcontractor will violate any provision of law, any order of any court or other agency of government, the organizational documents of Subcontractor or any indenture, agreement or other instrument to which Subcontractor is a party, or by which Subcontractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Subcontractor pursuant to, any such indenture agreement or instrument;

(e) Subcontractor has obtained all licenses, permits and approvals required to perform the Services it will provide under this Subcontract; and

(f) Subcontractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

2. Contractor Representations. Contractor represents and warrants to Subcontractor as follows:

(a) Contractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(b) The execution and performance by Contractor of the terms and provisions of this Subcontract by Contractor have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract will violate any provision of law, any order of any court or other agency of government, the organizational documents of Contractor or any indenture, agreement or other instrument to which Contractor is a party, or by which Contractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Contractor pursuant to, any such indenture agreement or instrument;

(c) Contractor has obtained all licenses, permits and approvals required to perform the Services to be provided by Contractor under the Prime Contract; and

(d) Contractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

3. Relationship of the Parties. The provisions of this Subcontract are not intended to create, nor shall be deemed or construed to create, any joint venture, partnership or other relationship between Contractor and Subcontractor, other than that of independent entities contracting with each other solely for the purpose of carrying out the provisions of this Subcontract. Neither of the Parties to this Subcontract, nor any of their respective employees, agents, or other representatives, shall be construed to be the agent, employee or representative of the other party. Neither party shall have the authority to bind the other party, nor shall a party be responsible for the acts or omissions of the other party, unless otherwise stated in this Subcontract. Similarly, the Parties expressly acknowledge that neither the Contractor nor the Subcontractor is an agent, employee or representative of the Commonwealth and each party covenants not to represent itself accordingly.

4. Prime Contract Flow-Down.

(a) General. This agreement is a subcontract under the Prime Contract and all provisions of the Prime Contract and any amendments thereto applicable to the Services being performed by the Subcontractor shall extend to and be binding upon the Parties as part of this Subcontract.

(b) Specific. The Parties agree to comply with the following provisions of the Prime Contract, which are incorporated herein by reference:

- (1) The Americans with Disabilities Act Provisions.
- (2) Nondiscrimination/Sexual Harassment Clause.

- (3) Contractor Integrity Provisions.
- (4) Contractor Responsibility Provisions.

(c) Termination. Should the Prime Contract be terminated pursuant to the terms and conditions provided in the Procurement, such termination shall have the same effect on this Subcontract. Payment for Services provided as of the date of termination must be made in accordance with the Section 13 of this Subcontract.

(d) 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 Parties to the extent that the books, documents, and records relate to the Parties' compliance with the provisions set forth in subsection (b) above or to the Small Diverse Business or Veteran Business Enterprise Commitment effectuated through this Subcontract. The Parties shall preserve such books, documents, and records for a period of three years from the date of final payment hereunder. The Parties shall give full and free access to all such records to the Commonwealth and/or its authorized representatives.

5. Order of Precedence. The Letter of Commitment, Procurement and Prime Contract are incorporated herein by reference into this Subcontract. In the event of any conflict or inconsistency among the individual components of this Subcontract, such conflict or inconsistency shall be resolved by observing the following order of precedence:

- (a) This Subcontract;
- (b) The Letter of Commitment;
- (c) The Prime Contract; and
- (d) The Procurement.

6. Further Action. The Parties shall take such actions and complete, execute and deliver any and all documents or instruments necessary to carry out the terms and provisions of this Subcontract, to effectuate the purpose of this Subcontract, and to fulfill the obligations of each party hereunder.

7. Description of Services. Subcontractor will perform the following Services for the Contractor which Contractor is obligated to provide to the Commonwealth under the Prime Contract:

[DESCRIBE IN DETAIL THE SPECIFIC SUPPLIES, SERVICES OR CONSTRUCTION THE SUBCONTRACTOR WILL PROVIDE OR PERFORM WITH THE CORRESPONDING UNITED NATIONS STANDARD PRODUCTS AND SERVICES CODES (UNSPSC)]

8. Small Diverse Business or Veteran Business Enterprise Commitment. The above-referenced Services represent ___ % of the final negotiated total cost for the initial term of the

Prime Contract. Any proposed change to the Small Diverse Business or Veteran Business Enterprise Commitment must be submitted in writing to the Bureau and the Contracting Officer. The Bureau will make a recommendation to the Commonwealth Contracting Officer regarding a course of action.

9. Performance of Services. Subcontractor may not subcontract more than 50% of the work subcontracted to it hereunder without written permission from the Bureau. Subcontractor will perform the Services strictly in accordance with any applicable plans and specifications as contained in the Prime Contract and the reasonable deadlines set by Contractor in view of the requirements of the Prime Contract, and in a good workmanlike manner consistent with industry standards, meeting all applicable local, state and federal laws, regulations and policies.

10. Location of Services. Subcontractor will provide the Services at the following address(es):

_____.

11. Timeframe for Performance of Services. The Services will be provided by Subcontractor during the initial term of the Prime Contract, and during any extensions, options or renewal periods of the Prime Contract exercised by the Commonwealth, as more specifically set forth below:

[IDENTIFY THE SPECIFIC TIME PERIODS DURING THE INITIAL CONTRACT TERM AND EXTENSIONS, OPTIONS AND RENEWALS WHEN THE SUBCONTRACTOR WILL PERFORM COMPONENT SERVICES]

_____.

12. Pricing of Services. Subcontractor shall provide or perform the Services at the pricing specified in Exhibit ____ to this Subcontract.

[ATTACH A BILL OF MATERIALS, RATE CARD OR OTHER APPROPRIATE COST SHEET COVERING THE SERVICES TO BE PROVIDED.]

13. Payment for Services. Contractor shall exert reasonable and diligent efforts to collect prompt payment from the Commonwealth. Contractor shall pay Subcontractor in proportion to amounts received from the Commonwealth which are attributable to the Services performed by Subcontractor. Contractor shall pay Subcontractor within fourteen (14) days after the Contractor receives such payment from the Commonwealth, unless the parties expressly agree upon a different payment schedule or structure as set forth below:

_____.

14. Utilization Reports. Both the Contractor and Subcontractor shall complete Monthly Utilization Reports (or similar type documents containing the same information) and submit them

to the Contracting Officer and to the Bureau within ten (10) business days at the end of each month. This information will be used to determine the actual dollar amount paid to Subcontractor and will also serve as a record of fulfillment of Contractor's Small Diverse Business and Veteran Business Enterprise Commitments. If there was no activity during the month, then the form must be completed by stating "No activity in this month." A late fee of \$100.00 per day may be assessed against the Contractor if the Contractor's Utilization Report is not submitted in accordance with the schedule above.

15. Change Orders. If the Commonwealth issues any change order or other formal contract instrument either expanding or limiting the work to be performed under the Prime Contract, the Parties shall accept such Change Orders. Contractor agrees to provide Subcontractor with written notice of any such change orders that affect the Services to be provided by the Subcontractor hereunder as soon as practical after Contractor receives such notice. Any resulting increase or decrease in the Services, Small Diverse Business or Veteran Business Enterprise Commitment provided for in Paragraphs 7 or 8 above must be in writing, mutually agreed to, and signed by both Parties and communicated to the Bureau. If the Parties are unable to reach an agreement regarding any adjustment to the Services, Small Diverse Business or Veteran Business Enterprise Commitment necessitated by a Commonwealth Change Order, the Parties must submit the matter in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.

16. Force Majeure. Neither party will incur any liability to the other if its performance of any obligation under this Subcontract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemic and quarantines, general strikes throughout the trade, and freight embargoes. The existence of such causes beyond a party's control shall extend the period for performance to such extent as may be necessary to enable complete performance in the exercise of reasonable diligence after the causes have been removed.

17. Dispute Resolution.

(a) The Parties will attempt to resolve any dispute arising out of or relating to this Subcontract through friendly negotiations.

(1) The Parties expressly acknowledge and confer upon the Bureau and Contracting Officer the authority to adjudicate disputes that the Parties cannot resolve amicably concerning the Parties' compliance with their Small Diverse Business and Veteran Business Enterprise Commitments as provided in the Prime Contract and this Subcontract.

(2) The Bureau may recommend to the Contracting Officer a range of sanctions it deems appropriate if the Bureau determines a party has failed to satisfy or perform its Small Diverse Business or Veteran Business Enterprise commitment. Such sanctions include, but are not limited to, one or more of the following: a determination that the party is not responsible under the Contractor Responsibility Program; withholding of Prime Contract and/or Subcontract payments; suspension or termination of the Prime

Contract and/or Subcontract together with consequential damages; revocation of the party's Small Diverse Business and/or Veteran Business Enterprise verification status; and/or suspension or debarment of one or both parties from future contracting opportunities with the Commonwealth.

(3) The Parties' acknowledge that their prior performance in meeting their Small Diverse Business and Veteran Business Enterprise contractual obligations may be considered by the Commonwealth when reviewing future bids or proposals for responsiveness and responsibility.

(b) Nothing herein shall be construed to prevent either party from seeking such relief as provided by law in a court or tribunal of competent jurisdiction.

18. Notices. Any written notice to any party under this Subcontract 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 following:

If to Contractor:

If to Subcontractor:

19. Waiver. No waiver by either party of any breach of this Subcontract shall be deemed to waive any other breach. No acceptance of payment or performance after any breach shall be deemed a waiver of any breach. No failure or delay to exercise any right by a party upon another's default shall prevent that party from later exercising that right, nor shall such failure or delay operate as a waiver of any default.

20. Severability. If any provision of this Subcontract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

21. Assignment. Neither party may assign or transfer this Subcontract without the prior written consent of the Commonwealth. If Contractor's Prime Contract with the Commonwealth is assigned to another contractor, the new contractor must maintain the Small Diverse Business and Veteran Business Enterprise Commitments set forth in the Prime Contract as implemented through this Subcontract.

22. Applicable Law. This Subcontract shall be governed by the laws of the Commonwealth of Pennsylvania.

23. Entire Agreement. This Subcontract constitutes the entire agreement of the Parties regarding the subject of this Subcontract as of the date of execution. No other agreement or understandings, verbal or written, expressed or implied, are a part of this Subcontract unless specified herein.

24. Amendment. This Subcontract may be modified or amended only if made in writing and signed by both Parties. Any proposed change to the Contractor's Small Diverse Business or Veteran Business Enterprise Commitment to Subcontractor must be submitted in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.

25. Binding Effect. This Subcontract shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, representatives, successors and assigns.

26. Counterparts. This Subcontract may be executed by the Parties in counterparts, each of which together shall be deemed an original but all of which together shall constitute one and the same instrument. A party's delivery of a duly executed signature page of this Subcontract in electronic format shall have the same force and effect as delivery of an original signature page.

ADDITIONAL TERMS AND CONDITIONS

[THE PARTIES MAY INCLUDE ADDITIONAL TERMS AND CONDITIONS APPROPRIATE FOR THE SERVICES TO BE PROVIDED SO LONG AS THEY ARE COMMERCIALY REASONABLE TERMS FOR THE APPLICABLE BUSINESS OR INDUSTRY, ARE NO LESS FAVORABLE THAN THE TERMS OF THE PRIME CONTRACT, AND DO NOT PLACE DISPROPORTIONATE RISK ON THE SMALL DIVERSE BUSINESS OR VETERAN BUSINESS ENTERPRISE RELATIVE TO THE NATURE AND LEVEL OF THE SMALL DIVERSE BUSINESS' OR VETERAN BUSINESS ENTERPRISE'S PARTICIPATION IN THE PROJECT. SUCH TERMS MAY INCLUDE:

- Background Checks
- Confidentiality/Disclosure of Information
- Data Security
- Insurance
- Invoicing Requirements
- Environmental Protection
- Intellectual Property Rights
- Record Retention/Audits
- Service Level Agreements (SLAs) (consistent with Prime Contract SLAs)
- Public Works Construction Requirements (including Bonding, E-Verify, Prevailing Wage, and Prompt Payment provisions)

IN WITNESS WHEREOF, the Parties hereto have caused this Subcontract to be executed by their duly authorized officers as set forth below.

Contractor

Subcontractor

Insert Company Name

Insert Company Name

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Date

Date

APPENDIX J BACKGROUND SCREENING SERVICES ORDER INTERFACE FILE SPECIFICATIONS

The background screening services file layout may be modified upon the prior written approval of the PGCB Office of Information Technology due to the background screening services or package ordered and the information available from the selected organization.

The following information is the recommended format:

```
<?xml version="1.0" encoding="UTF-8" standalone="yes" ?>
<BackgroundRequest count="nnn">

<RequestType type="INDIVIDUAL">
  <ScreeningServicesProvider>xxxxxxxxxx</ScreeningServicesProvider>
  <ScreeningServicesID>xxxnnn</ScreeningServicesID> – individual or package
    screening services ID

  <References>
    <GamingID>nnnnnn</GamingID>
    <ApplicationID>nn</ApplicationID>
    <TargetID>nnnnnn</TargetID> – an internal PGCB database ID
    <AppSysID>n</AppSysID> – default is 0 unless provided by the PGCB
  </References>

  <PersonalData>
    <PersonName type="SUBJECT">
      <FirstName>xxxxxxxxxx</FirstName>
      <MiddleName>xxxxxxxxxx</MiddleName>
      <LastName>xxxxxxxxxx</LastName>
      <MaidenName>xxxxxxxxxx</MaidenName>
    </PersonName>

    <PersonName type="ALIAS">
      <FirstName>xxxxxxxxxx</ FirstName>
      <MiddleName>xxxxxxxxxx</MiddleName>
      <LastName>xxxxxxxxxx</ LastName>
    </PersonName>

    <DemographicDetail>
      <TaxId>nnnnnnnnnn</TaxId>
      <Gender>x</Gender>
      <DateOfBirth>yyyy-mm-dd</DateOfBirth>
    </DemographicDetail>

    <PostalAddress type="CURRENT" validFrom="yyyy-mm-dd" validTo="yyyy-mm-
      dd">
      <PostalCode>xxxxxx</PostalCode>
```

```

    <Region>xx</Region>
    <Municipality>xxxxxxxxxx</Municipality>
    <MailingAddress>
        <Unit>nnnnn</Unit>
        <AddressLine>xxxxxxxxxx</AddressLine>
    </MailingAddress>
</PostalAddress>

<PostalAddress type="PRIOR" validFrom="yyyy-mm-dd" validTo="yyyy-mm-
dd">
    <PostalCode>xxxxx</PostalCode>
    <Region>xx</Region>
    <Municipality>xxxxxxxxxx</Municipality>
    <MailingAddress>
        <Unit>nnnn</Unit>
        <AddressLine>xxxxxxxxxx</AddressLine>
    </MailingAddress>
</PostalAddress>

```

NOTE: Multiply Prior Addresses may be attached to a background screening request.

```

<ContactMethod>
    <EmailAddress>xxxxxxxxxx@xxxxxxxxxx.com</EmailAddress>
    <Telephone type="WORK">
        <Number>nnn-nnn-nnnn</Number>
    </Telephone>
    <Telephone type="HOME">
        <Number>nnn-nnn-nnnn</Number>
    </Telephone>
    <Telephone type="CELL">
        <Number>nnn-nnn-nnnn</Number>
    </Telephone>
    <Telephone type="FAX">
        <Number>nnn-nnn-nnnn</Number>
    </Telephone>
</ContactMethod>

<EmploymentHistory>
    <Employer employerType="CURRENT">
        <Title>xxxxxxxxxx</Title>
        <ReasonForLeaving>xxxxxxxxxx</ReasonForLeaving>
        <EmployerName>xxxxxxxxxx</EmployerName>
        <Compensation intervalType="YEARLY"
            currency="US">nnnnnn</Compensation>
        <EmployerAddress>
            <PostalCode>xxxxx</PostalCode>
            <Region>xx</Region>

```

```

        <Municipality>xxxxxxxxxx</Municipality>
        <MailingAddress>
            <Unit>nnnnnn</Unit>
            <AddressLine>xxxxxxxxxx</AddressLine>
        </MailingAddress>
    </EmployerAddress>
    <DatesOfEmployment>
        <StartDate>yyyy-mm-dd</StartDate>
        <EndDate>yyyy-mm-dd</EndDate>
    </DatesOfEmployment>
    <ContactInfo>
        <PersonName>xxxxxxxxxx</PersonName>
        <Telephone>nnn-nnn-nnnn</Telephone>
    </ContactInfo>
</Employer>

<Employer employerType="PRIOR">
    <Title>xxxxxxxxxx</Title>
    <ReasonForLeaving>xxxxxxxxxx</ReasonForLeaving>
    <EmployerName>xxxxxxxxxxxxxxxx</EmployerName>
    <Compensation
        currency="US">nnnnnn</Compensation
        intervalType="YEARLY"
    </EmployerAddress>
        <PostalCode>xxxxx</PostalCode>
        <Region>xx</Region>
        <Municipality>xxxxxxxxxx</Municipality>
        <MailingAddress>
            <Unit>nnnnnn</Unit>
            <AddressLine>xxxxxxxxxx</AddressLine>
        </MailingAddress>
    </EmployerAddress>
    <DatesOfEmployment>
        <StartDate>yyyy-mm-dd</StartDate>
        <EndDate>yyyy-mm-dd</EndDate>
    </DatesOfEmployment>
    <ContactInfo>
        <PersonName>xxxxxxxxxx</PersonName>
        <Telephone>nnn-nnn-nnnn</Telephone>
    </ContactInfo>
</Employer>

```

NOTE: Multiply Prior Addresses may be attached to a background screening request.

```

</EmploymentHistory>
    <TaxHistory formType="4506T">
        <TaxYear>2015
    </TaxYear>
        <TaxYear>2014
    </TaxYear>
    </TaxHistory>
</EmploymentHistory>

```

</TaxYear>
<TaxYear>2013
</TaxYear>

</TaxHistory>

NOTE: -- formType can be 4506T or 4506TEZ and multiple tax years may be attached to each request to the maximum allowed per form.

<SupportingDocumentation>

<![CDATA[!-- Client provided link to release form --
Documentation type="release" mediaType = "pdf"
sftp://ftpsite.com/screenings/R123456.pdf]]>

Note: R preceding the file name is for release

<![CDATA[!-- Client provided link to 4506 form --
Documentation type="4506" mediaType = "pdf"
sftp://ftpsite.com/screenings/T123456.pdf]]>

Note: T preceding the file name is for 4506T or 4506TEZ

</SupportingDocumentation>

</PersonalData>

</RequestType>

<RequestType type="ENTITY">

<ScreeningServicesProvider>xxxxxxxxxx</ScreeningServicesProvider>

<ScreeningServicesID>xxxnnn</ScreeningServicesID> – individual or package
screening services ID

<References>

<GamingID>nnnnnn</GamingID>

<ApplicationID>nn</ApplicationID>

<TargetID>nnnnnn</TargetID> – an internal PGCB database ID

<AppSysID>n</AppSysID> – default is 0 unless provided by the PGCB

</References >

<EntityData>

<EntityType type="xxxxxxxxxx">

<EntityName>xxxxxxxxxx</EntityName >

<TaxId>nnnnnnnnnn</TaxId>

</EntityData>

<PostalAddress type="MAILING" >

<PostalCode>xxxxxx</PostalCode>

<Region>xx</Region>

<Municipality>xxxxxxxxxx</Municipality>

<MailingAddress>

<Unit>nnnn</Unit>

<AddressLine>xxxxxxxxxx</AddressLine>

</MailingAddress>

</PostalAddress>

```
<PostalAddress type="PHYSICAL">
  <PostalCode>xxxxx</PostalCode>
  <Region>xx</Region>
  <Municipality>xxxxxxxxxx</Municipality>
  <MailingAddress>
    <Unit>nnnn</Unit>
    <AddressLine>xxxxxxxxx</AddressLine>
  </MailingAddress>
</PostalAddress>

<ContactMethod>
  <EmailAddress>xxxxxxxxx@xxxxxxxxxx.com</EmailAddress>
  <Telephone type="WORK">
    <Number>nnn-nnn-nnnn</Number>
  </Telephone>
  <Telephone type="FAX">
    <Number>nnn-nnn-nnnn</Number>
  </Telephone>
</ContactMethod>

</RequestType>

</BackgroundRequest>
```



```

    <Screenings> - for results from specific screenings
        <Screening type="xxxxxxx" subtype="xxxxxx">
            <ScreeningStatus>xxxxxxxx</ScreeningStatus>
            <ScreeningResultsReport          mediaType="html">xxxxxxxxxxxxxxxx
                xxxxxxxxxxxxxxxxxxxxxxxxxxx</ScreeningResultsReport>

            <Screening type="TaxHistory" subtype="4506T"> -- or 4506TEZ
            <ScreeningStatus>xxxxxxxx</ScreeningStatus>
                Accepted or Rejected
            <ScreeningResultsReport          mediaType="html">xxxxxxxxxxxxxxxx
                xxxxxxxxxxxxxxxxxxxxxxxxxxx</ScreeningResultsReport>
        NOTE: ScreeningResultsReport should contain the reason for the request being
            rejected
        <Screening type="link">
            <ScreeningResults          type="result"          mediaType="pdf"
            resultType="finalreport"
            <Status>COMPLETE</Status>
    <WebLocation>http://xxx.xxxxx.xxxx/xxxxxxx/FR12345.pdf</WebLocation>
        </ScreeningResults>

    </Screenings>
</ScreeningResults>

</BackgroundResults>

<BackgroundResults type="ENTITY">
    <ScreeningServicesProvider>xxxxxxxx</ScreeningServicesProvider>
    <ScreeningServicesID>xxxnnn</ScreeningServicesID> - individual or package
        screening services ID

    <References>
        <GamingID>nnnnn</GamingID>
        <ApplicationID>nn</ApplicationID>
        <TargetID>nnnnn</TargetID> - an internal PGCB database ID
        <AppSysID>n</AppSysID> - default is 0 unless provided by the PGCB
    </References>

    <DateInformation>
        <DateOrdered>yyyy-mm-dd</DateOrdered>
        <DateRequested>yyyy-mm-dd</DateRequested>
    </DateInformation>

    <OrderedBy>xxxxxxxx</OrderedBy> - PGCB staff ID

    <EntityData>
        <EntityName>xxxxxxxx</EntityName>
        <TaxId>nnnnnnnnnn</TaxId>
    </EntityData>

```

```
<ScreeningResults>
  <SummaryResultsReport      mediaType="html">xxxxxxxxxxxxxxxxxxxx
    xxxxxxxxxxxxxxxxxxxxxxx</SummaryResultsReport>
  <Screenings> - for results from specific screenings
    <Screening type="xxxxxxx" subtype="xxxxxx">
      <ScreeningStatus>xxxxxxxx</ScreeningStatus>
      <ScreeningResultsReport      mediaType="html">xxxxxxxxxxxxxxxx
        xxxxxxxxxxxxxxxxxxxxxxx</ScreeningResultsReport>
      <Screening type="link">
        <ScreeningResults      type="result"      mediaType="pdf"
          resultType="finalreport"
        <Status>COMPLETE</Status>
      <WebLocation>http://xxx.xxxxx.xxxx/xxxxxxx/FR12345.pdf</WebLocation>
    </ScreeningResults>
  </Screenings>
</ScreeningResults>

</BackgroundResults>

</BackgroundReports>
```

APPENDIX L BACKGROUND SCREENING SERVICES INVOICING INTERFACE FILE SPECIFICATIONS

The invoicing file layout may be modified upon the prior written approval of the PGCB Office of Information Technology due to the background screening services or package ordered and the information available from the selected organization.

The following information is the recommended format:

```
<?xml version="1.0" encoding="UTF-8" ?>
```

```
<BackgroundCheck>
```

```
<Charge type="INDIVIDUAL">
```

```
<ScreeningServicesProvider>xxxxxxxxxx</ScreeningServicesProvider>
```

```
<InvoiceNumber>xxxxnnnn</InvoiceNumber>
```

```
<InvoiceDate>yyyy-mm-dd</InvoiceDate>
```

```
<DateOrdered>yyyy-mm-dd</DateOrdered>
```

```
<DateCompleted>yyyy-mm-dd</DateCompleted>
```

```
<OrderedBy>xxxxxxxxxx</OrderedBy> - PGCB staff ID
```

```
<GamingID>nnnnn</GamingID>
```

```
<ApplicationID>nn</ApplicationID>
```

```
<TargetID>nnnnn</TargetID> – an internal PGCB database ID
```

```
<AppSysID>n</AppSysID> – default is 0 unless provided by the PGCB
```

```
<FirstName>xxxxxx</FirstName>
```

```
<MiddleName>xxxxxx</MiddleName>
```

```
<LastName>xxxxxxxxxx</LastName>
```

```
<TaxId>xxxxxxxxxx</TaxId>
```

```
<DateOfBirth>yyyy-mm-dd</DateOfBirth>
```

```
<ScreeningServicesID>xxxnnn</ScreeningServicesID> – individual or package  
screening services ID
```

```
<Charge>nnnnn.nn</Charge>
```

```
<ChargeDescription>xxxxxxxxxxxxxxxxxxxxxx</ChargeDescription>
```

```
</Charge>
```

```
<Charge type="ENTITY">
```

```
<ScreeningServicesProvider>xxxxxxxxxx</ScreeningServicesProvider>
```

```
<InvoiceNumber>xxxxnnnn</InvoiceNumber>
```

```
<InvoiceDate>yyyy-mm-dd</InvoiceDate>
```

<DateOrdered>yyyy-mm-dd</DateOrdered>
<DateCompleted>yyyy-mm-dd</DateCompleted>
<OrderedBy>xxxxxxxxxx</OrderedBy> - *PGCB staff ID*

<GamingID>nnnnn</GamingID>
<ApplicationID>nn</ApplicationID>
<TargetID>nnnnn</TargetID> – *an internal PGCB database ID*
<AppSysID>n</AppSysID> – *default is 0 unless provided by the PGCB*

<EntityName>xxxxxxxxxx</EntityName>
<TaxId>xxxxxxxxxx</TaxId>

<ScreeningServicesID>xxxnnn</ScreeningServicesID> – *individual or package
screening services ID*
<Charge>nnnnn.nn</Charge>
<ChargeDescription>xxxxxxxxxxxxxxxxxxxxxx</ChargeDescription>

</Charge>

</BackgroundCheck>

APPENDIX M

SOFTWARE LICENSE REQUIREMENTS

This Appendix shall be attached to and made a material part of Software Publisher's Software License Agreement (collectively the "Agreement") between Licensor and the Commonwealth of Pennsylvania ("Commonwealth"). The terms and conditions of this Appendix shall supplement, and to the extent a conflict exists, shall supersede and take precedence over the terms and conditions of Software Publisher's Software License Agreement.

- 1. Enterprise Language:** The parties agree that more than one agency of the Commonwealth may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "Commonwealth Agency" as defined by the Commonwealth Procurement Code, 62 Pa.C.S. § 103, the terms and conditions of this Agreement apply to any purchase of products made by the Commonwealth, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree that the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software.
- 2. Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, without regard to principles of conflict of laws.
- 3. Indemnification:** The Commonwealth does not have the authority to and shall not indemnify any entity. The Commonwealth agrees to pay for any loss, liability or expense, which arises out of or relates to the Commonwealth's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Commonwealth is established by a court of law or where settlement has been agreed to by the Commonwealth. This provision shall not be construed to limit the Commonwealth's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the Commonwealth.
- 4. Patent, Copyright, Trademark, and Trade Secret Protection:**
 - a) The Licensor shall, at its expense, defend, indemnify and hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim

and (b) reimburse the Commonwealth for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The Commonwealth agrees to give Licensors prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act 71 P.S. § 732-101, et seq., the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion, delegate to Licensors its right of defense of a Claim and the authority to control any potential settlements thereof. Licensors shall not without the Commonwealth's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the Commonwealth has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the Commonwealth to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the Commonwealth to make a payment which Licensors is not obligated by this Agreement to pay on behalf of the Commonwealth. If OAG delegates such rights to the Licensors, the Commonwealth will cooperate with all reasonable requests of Licensors made in the defense and or settlement of a Claim. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at its own expense and without derogation of Licensors' authority to control the defense and settlement of a Claim. It is expressly agreed by the Licensors that, in the event it requests that the Commonwealth to provide support to the Licensors in defending any such Claim, the Licensors shall reimburse the Commonwealth for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensors' request) incurred by the Commonwealth for such support. If OAG does not delegate to Licensors the authority to control the defense and settlement of a Claim, the Licensors' obligation under this section ceases. If OAG does not delegate the right of defense to Licensors, upon written request from the OAG, the Licensors will, in its sole reasonable discretion, cooperate with OAG in its defense of the suit.

- b) The Licensors agree to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensors certify that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties.
- c) If the right of defense of a Claim and the authority to control any potential settlements thereof is delegated to the Licensors, the Licensors shall pay all damages and costs finally awarded therein against the Commonwealth or agreed to by Licensors in any settlement. If information and assistance are furnished by the Commonwealth at the Licensors' written request, it shall be at the Licensors' expense, but the responsibility for such expense shall be only that within the Licensors' written authorization.
- d) If, in the Licensors' opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent,

copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the Commonwealth to continue the use of such licensed products.

- e) If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor 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 items, or modify them so that they are no longer infringing.
- f) If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the Commonwealth the license fee paid for the infringing licensed products, pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.
- g) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.
- h) Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:
 - (1) modification of any licensed products provided by the Commonwealth or a third party acting under the direction of the Commonwealth;
 - (2) any material provided by the Commonwealth to the Licensor and incorporated into, or used to prepare the product;
 - (3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;
 - (4) use of the licensed products in other than its specified operating environment;
 - (5) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
 - (6) infringement of a non-Licensor product alone;

- (7) the Commonwealth's use of the licensed product beyond the scope contemplated by the Agreement; or
 - (8) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Licensor at no charge.
- i) The obligation to indemnify the Commonwealth, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

5. Virus, Malicious, Mischievous or Destructive Programming: Licensor warrants that the licensed product as delivered by Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a "Virus").

The Commonwealth's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the licensed products with a copy that does not contain Virus, and (b) if the Commonwealth, has suffered an interruption in the availability of its computer system caused by Virus contained in the licensed product, reimburse the Commonwealth for the actual reasonable cost to remove the Virus and restore the Commonwealth's most recent back up copy of data provided that:

- the licensed products have been installed and used by the Commonwealth in accordance with the Documentation;
- the licensed products has not been modified by any party other than Licensor;
- the Commonwealth has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the Commonwealth for loss of the Commonwealth's data arising from the failure of the licensed products to conform to the warranty stated above.

6. Limitation of Liability: The Licensor's liability to the Commonwealth under this Agreement shall be limited to the greater of (a) the value of any purchase order issued; or (b) \$250,000. This limitation does not apply to damages for:

- (1) bodily injury;
- (2) death;
- (3) intentional injury;
- (4) damage to real property or tangible personal property for which the Licensor is legally liable; or
- (5) Licensor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection.

In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement. Licensor will not be liable for damages due to lost records or data.

7. Termination:

- a) Licensor may not terminate this Agreement for non-payment.
- b) The Commonwealth may terminate this Agreement without cause by giving Licensor thirty (30) calendar days prior written notice whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth.

8. Background Checks: Upon prior written request by the Commonwealth, Licensor must, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have on site access to the Commonwealth's IT facilities. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.pa.gov/Pages/Request-a-Criminal-History-Record.aspx>.

The background check must be conducted prior to initial access by an IT employee and annually thereafter.

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

9. Confidentiality: Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.

10. Publicity/Advertisement: The Licensor must obtain Commonwealth approval prior to mentioning the Commonwealth or a Commonwealth agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.

11. Signatures: The fully executed Agreement shall not contain ink signatures by the Commonwealth. The Licensor understands and agrees that the receipt of an electronically-printed Agreement with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of

the purchasing agent on the Agreement represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Agreement. The printed name also indicates that all approvals required by Commonwealth contracting procedures have been obtained.

Software Publisher acknowledges and agrees the terms and conditions of this Appendix shall supplement, and to the extent a conflict exists, shall supersede and take precedence over the terms and conditions of Software Publisher's Software License Agreement.

IN WITNESS WHEREOF, Software Publisher has executed this Appendix to Software Publisher's Software License Agreement on the date indicated below.

Witness:

Signature Date

Printed Name

Title

Software Publisher:

Signature Date

Printed Name

Title

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA GAMING CONTROL BOARD**

By: _____ [Signature Affixed Electronically]
Administrative Director Date

APPROVED:

_____ [Signature Affixed Electronically]
Comptroller Date

APPROVED AS TO FORM AND LEGALITY:

_____ [Signature Affixed Electronically]
Office of Chief Counsel Date

_____ [Signature Affixed Electronically]
Office of General Counsel Date

_____ [Signature Affixed Electronically]
Office of Attorney General Date