

INSTRUCTIONS FOR EXECUTION OF AGREEMENT
(PLEASE READ BEFORE SIGNING THE SIGNATURE PAGE)

1. **Page 1:** Enter Name of Business and Legal Address
2. **Page 5:** Enter the following Applicant information:
 - a. Applicant Name/Title
 - b. Municipality/Other Entity
 - c. Legal Address
 - d. Telephone Number
 - e. Email Address
3. **Page 6:**
 - a. Select Business Type (i.e. Corporation, General Partnership, Joint Venture, Limited Liability Company, Limited Partnership, or Sole Proprietorship)
 - b. Enter designated Signatory Name and Title
 - c. Signatory MUST Sign and Date Agreement

Business Type Information:

- **CORPORATIONS:** (Companies, Inc., Corp., LTD., P.C.)
 - Agreement MUST be signed by the President, Vice President, Chief Executive Officer, Chief Operating Officer, or Chief Financial Officer
 - If someone other than the name officer signs the Agreement, please provide a Corporate Resolution or other delegation of signature authority.
- **GENERAL PARTNERSHIP:**
 - Agreement to be signed by any General Partner
 - Resolution is NOT required.
- **JOINT VENTURE:**
 - Involves two or more parties and may be made up of a Partnership or Corporation or two Corporations.
 - Agreement to be signed by General Partner, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Managing Member, Member, President or Vice President
- **LIMITED LIABILITY COMPANY (LLC):**
 - An association organized under the Limited Liability Company Law of 1994. Under this law documents MUST be executed by a duly authorized Member or Managing Member
 - Agreement MUST be signed by Member or Managing Member
- **LIMITED PARTNERSHIP:**
 - Agreement to be signed by any General Partner
 - Resolution is NOT required.
- **SOLE PROPRIETORSHIP:**
 - Agreement MUST be signed by Owner
 - Designated by Individual Name and Business Name (For example: Tom Doe t/a Doe's Tool Shop OR Tom Doe d/b/a Doe's Tool Shop)



Do NOT enter
information –
For Department
Use ONLY

Department Use Only

Agreement No. : _____

Business Partner ID No. : _____

AGREEMENT TO AUTHORIZE ELECTRONIC ACCESS TO PENNDOT SYSTEMS

This Agreement to Authorize Electronic Access to PennDOT Systems is between the Commonwealth of Pennsylvania, acting through the Department of Transportation ("PennDOT"),

And

Enter the Organization's **LEGAL Name of Business**

(NAME OF BUSINESS)

("Applicant"), with its principal office located at:

Enter the Organization's **FULL Legal Address**

(Principal Place of Business or Legal Address)

The Applicant desires to register as a PennDOT business partner to be permitted electronic access to the following PennDOT systems:

Engineering and Construction Management System ("System" whether singular or plural) for the purposes of entering information into and exchanging data with the System.

PennDOT, in furtherance of the powers and duties conferred on it by Section 2002 of the Administrative Code of 1929, as amended, 71 P.S. Section 512, to design and construct state highways and other transportation facilities and to enter into contracts for this purpose, is willing to permit the Applicant to electronically submit technical proposals, invoices, engineering plans, designs and other documents necessary to design and construct transportation projects as part of PennDOT's program to use the System.

If to PennDOT:

Bureau of Construction & Material
Engineering Automation & Services Division
400 North Street, 7th Floor
Harrisburg, PA 17120
(717) 783-8330 or toll free at (855) 783-8330
RA-PD-BPREGISTRATION@pa.gov

If to the [User][Applicant]:

Name and Title: _____

Municipality or other Entity: _____

Street, Address or P.O. Box: _____

City, State and Zip Code: _____

Telephone Number: _____

Email Address: _____

**Enter User/Applicant
Information**

or to such other person or address as the parties may provide to each other in writing.

1. **Integration and Merger.** The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this agreement, the parties did not rely upon oral or written statements or representations not contained within the document itself.
2. **Counterparts.** This agreement may be executed in counterparts, each of which is deemed an original and has the full force and effect as an original, but all of which constitute one and the same instrument.
3. **Electronic Signatures.** This agreement may be electronically signed in accordance with the Electronic Transactions Act, 73 P.S. § 2260.301, et seq.

[The remainder of this page is left blank intentionally.]

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

Apt

**Signature of person authorized to bind the Business
in an Agreement and Date the Agreement**

BY:

(C) (D)

Print Signatory Name

Business Type

Select Business Type from Dropdown

Name: _____

Title:

Select Signatory Title from Dropdown

DO NOT WRITE BELOW THIS LINE - FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY:

Date

Title of Designee

APPROVED AS TO LEGALITY AND FORM

Office of Chief Counsel Date

18-FA-29.1

Office of General Counsel Date

18-FA-29.1

Office of Attorney General Date

For questions call 855-783-8330 and reference BP Registration/ ECMS Help Desk

Preapproved Form:

OGC No. 18-FA-29.1

Appv'd OAG



Before submitting your application, make sure you have completed the following steps. Failure to do so may result in the approval of your Business Partner application being delayed.

- Have you completed your online registration in the Engineering and Construction Management System (ECMS)? <http://www.dot2.state.pa.us>
- Ensure your online registration in ECMS and Agreement are registered with the full and correct Legal Name of Business. For example:
 - Sole Proprietor: John Smith DBA (Doing Business As) JS Sample Demolition
 - Fictitious Name: The Sample Corporation DBA Construction Technologies
- Have you included your full and correct Legal Address, Federal Employer Identification Number (EIN) and Phone Number?
- Has the correct person signed the application form? For example:
 - **Limited Liability Companies (LLC):** Member or Managing Member
 - **Corporations:** President or Vice President
 - **Sole Proprietorship:** Owner
 - **General or Limited Partnership:** Any partner
 - **Joint Ventures:** Joint Venture
- Signature and Date can be either wet ink (hand signed) OR electronically signed
- Email completed Agreement to: **RA-PD-BPREGISTRATION@pa.gov**

For Questions, please contact the ECMS Help Desk (reference BP Registration) at 855-783-8330.

PLEASE DO NOT RETURN THE INSTRUCTION PAGES WITH YOUR AGREEMENT.


Department Use Only

Agreement No. : _____

Business Partner ID No. : _____

AGREEMENT TO AUTHORIZE ELECTRONIC ACCESS TO PENNDOT SYSTEMS

This Agreement to Authorize Electronic Access to PennDOT Systems is between the Commonwealth of Pennsylvania, acting through the Department of Transportation ("PennDOT"),

And

(NAME OF BUSINESS)

("Applicant"), with its principal office located at:

(Principal Place of Business or Legal Address)

The Applicant desires to register as a PennDOT business partner to be permitted electronic access to the following PennDOT systems:

Engineering and Construction Management System ("System" whether singular or plural) for the purposes of entering information into and exchanging data with the System.

PennDOT, in furtherance of the powers and duties conferred on it by Section 2002 of the Administrative Code of 1929, as amended, 71 P.S. Section 512, to design and construct state highways and other transportation facilities and to enter into contracts for this purpose, is willing to permit the Applicant to electronically submit technical proposals, invoices, engineering plans, designs and other documents necessary to design and construct transportation projects as part of PennDOT's program to use the System.

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

1. **Applicant Responsibility.** The Applicant shall furnish and assume the total costs of all software and hardware necessary to connect to the System; such software must include an operating system, an Internet browser, and any software needed to operate a modem. The Applicant shall be responsible for the procurement and cost of any data communications lines required to connect to the System. The Applicant shall be responsible for the cost of telephone lines and usage.
2. **Grant of Access to System.** PennDOT grants the Applicant access to the System under the terms and conditions of this agreement and the Applicant will be permitted access to the System as PennDOT may direct. The Applicant shall be liable for any damage to PennDOT's databases or software owned or licensed by PennDOT in the event a computer virus originated from the Applicant, its agents, or employees to the extent that such computer virus was introduced on PennDOT's computer systems or networks as a result of Applicant's, Applicant's agents', or Applicant's employees' negligence or actions and Applicant has not used reasonable care to detect and eliminate computer viruses using then current industry standard security and anti-virus tools. For purposes of the agreement, the term "computer virus" means and includes, but is not limited to, any undocumented or hidden functionality or performance capability contained in software or data which is designed to facilitate the theft, destroying, or corruption of data or software, or disabling or locking software or a computer system, or any undocumented and unauthorized method for gaining access electronically to software or other corporate resources or data.
3. **No Waiver of Sovereign Immunity.** PennDOT cannot waive sovereign immunity and will not be liable for any damage to the Applicant's databases or software owned, leased, or licensed by the Applicant from any source, whatsoever, within or outside PennDOT.
4. **Security Measures.** The Applicant shall implement appropriate security measures to ensure that only authorized employees of the Applicant have access to and enter data into the System. The Applicant shall assign only its current employees User Identification Internet System access codes ("User ID codes") provided to the Applicant by PennDOT. The Applicant shall assign a separate and distinct User ID code to each employee who will submit invoices, letters of interest,

technical proposals, or other project documents or participate as a member of a project team under an engineering agreement or construction contract with PennDOT. The Applicant shall accept full responsibility for controlling the User ID codes that it assigns to its employees. The Applicant shall deactivate an employee's User ID code immediately upon the employee's separation or dismissal from the employment of or association with the Applicant. The Applicant shall instruct its employees to not share User ID codes. The Applicant shall be liable for the items negligently submitted under one of its assigned User ID codes and for the negligent submissions, actions, or omissions of anyone using a User ID code of the Applicant or the Applicant's employee.

5. **Training.** PennDOT shall make provisions for the Applicant to obtain initial training for the System. This training may not include any non-System program topics, nor may it include training on any other computer hardware or software, including, but not limited to, operation of a personal computer.
6. **Availability of System.** PennDOT shall make reasonable attempts (barring unforeseen interruptions due to calamity, natural disaster, or technical impossibility) to make the System available for on-line access 24 hours per day, seven days per week. PennDOT shall provide support only during the normal business hours of PennDOT offices (7:30 AM until 4:30 PM.).
7. **Damages.** The Applicant shall not be responsible for any consequential, indirect, special, or punitive damages with respect to claims made under this agreement. In any event, PennDOT may not recover direct damages in excess of \$1,000,000.
8. **Commonwealth Standard Provisions.** The Applicant shall comply with the Commonwealth provisions attached as Exhibit A. As used in Exhibit A, the term Contractor refers to the Applicant.
9. **Effective Date.** The Effective Date is the date that this agreement is fully executed by the Applicant and PennDOT and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature.
10. **Term and Termination.** This agreement will continue until terminated by either party at any time, without cause, within fifteen days upon receipt of written notice of termination from the other party. Any material breach of this agreement by either party will entitle the other party to terminate this agreement without prejudice to its rights or remedies available at law or in equity. Upon termination

or expiration of this agreement, the Applicant shall cease and shall cause its users to cease attempts to access the System.

11. **Amendments and Modifications.** No alterations or variations to this agreement will be valid unless made in writing and signed by the parties. Amendments to this agreement must be accomplished through a formal written document signed by the parties with the same formality as the original agreement.
12. **Severability.** The provisions of this agreement are severable. If any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and its applicability to any government, agency, person, or circumstance will not be affected.
13. **No Waiver.** Either party may elect not to enforce its rights and remedies under this agreement in the event of a breach by other parties of any term or condition of this agreement. In any event, the failure by either party to enforce its rights and remedies under this agreement may not be construed as a waiver of any subsequent breach of the same or any other term or condition of this agreement.
14. **Independence of the Parties.** Nothing contained in this agreement is intended or may be construed to, in any respect, create or establish the relationship of partners between the Applicant and PennDOT, or as constituting PennDOT as the representative or general agent of the Applicant.
15. **Assignment.** This agreement may not be assigned, either in whole or in part, without PennDOT's written consent.
16. **Third Party Beneficiary Rights.** This agreement does not create or confer any rights in or on persons or entities not a party to this agreement.
17. **Notices.** All notices and reports arising out of, or from, the provisions of this agreement must be in writing and given to the parties at the address provided under this agreement, either by e-mail:

If to PennDOT:

Bureau of Construction & Material
Engineering Automation & Services Division
400 North Street, 7th Floor
Harrisburg, PA 17120
(717) 783-8330 or toll free at (855) 783-8330
RA-PD-BPREGISTRATION@pa.gov

If to the [User][Applicant]:

Name and Title: _____

Municipality or other Entity: _____

Street, Address or P.O. Box: _____

City, State and Zip Code: _____

Telephone Number: _____

Email Address: _____

or to such other person or address as the parties may provide to each other in writing.

18. **Integration and Merger.** The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this agreement, the parties did not rely upon oral or written statements or representations not contained within the document itself.
19. **Counterparts.** This agreement may be executed in counterparts, each of which is deemed an original and has the full force and effect as an original, but all of which constitute one and the same instrument.
20. **Electronic Signatures.** This agreement may be electronically signed in accordance with the Electronic Transactions Act, 73 P.S. § 2260.301, et seq.

[The remainder of this page is left blank intentionally.]

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

Applicant**Business Type**

BY: _____
(Signature) (Date)

Name: _____

Title: _____

DO NOT WRITE BELOW THIS LINE - FOR COMMONWEALTH USE ONLY

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

BY: _____

Chief, EASD Date
Title of Designee

APPROVED AS TO LEGALITY AND FORM

Office of Chief Counsel Date

18-FA-29.1

Office of General Counsel Date

18-FA-29.1

Office of Attorney General Date

For questions call 855-783-8330 and reference BP Registration/ ECMS Help Desk

Preapproved Form:
OGC No. 18-FA-29.1
Appv'd OAG

Commonwealth Standard Terms and Conditions

(Revised - 10/1/2023)

1. DEFINITIONS.

Capitalized terms used in these Commonwealth standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the contract to which it is attached.

2. ENHANCED MINIMUM WAGE.

- a. **Enhanced Minimum Wage.** Contractor shall pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this contract/lease, and for an employee's hours performing ancillary services necessary for the performance of the services or lease when the employee spends at least 20% of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate will be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions do not apply to employees
 - i. Exempt from minimum wage under the Minimum Wage Act of 1968;
 - ii. covered by a collective bargaining agreement;
 - iii. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - iv. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** The Contractor shall: (1) post this Enhanced Minimum Wage Provision for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.
- e. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.

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

3. INDEMNIFICATION.

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

4. NONDISCRIMINATION/SEXUAL HARASSMENT.

- a. **Representations.** The Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the contract. The Contractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- b. **Nondiscrimination/Sexual Harassment Obligations.** The Contractor shall not:
 - i. in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act ("PHRA") and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
 - ii. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and

applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this contract.

- iii. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this contract.
- iv. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which this contract relates.
- v. in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

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

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

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

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

of a subcontractor's violation of this clause, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

5. CONTRACTOR INTEGRITY.

- a. **Definitions.** For purposes of these Contractor Integrity Provisions, the following definitions apply:
 - i. "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - ii. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
 - iii. "Contractor Related Parties" means any Affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
 - iv. "Financial Interest" means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - v. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), as may be amended, 4 Pa. Code §7.153(b), apply.
 - vi. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- b. **Representations and Warranties.**
 - i. **Contractor Representation and Warranties.** The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:
 - 1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - 2. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 - 3. had any business license or professional license suspended or revoked;
 - 4. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

- 5. been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.
- ii. **Contractor Explanation.** If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the contract.
- iii. **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
- iv. **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.

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

- i. maintain the highest standards of honesty and integrity.
- ii. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.
- iii. establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
- iv. not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable to the provision of goods or services under this contract.
- v. not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest. The Contractor must disclose the financial interest to the Commonwealth at the time of bid or proposal submission,

or if no bids or proposals are solicited, no later than the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.

- vi. comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
- vii. comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.
- viii. immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.

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

- i. reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- ii. cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions and make identified Contractor employees available for interviews at reasonable times and places.
- iii. upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. This information may include, but is not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.

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

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

6. CONTRACTOR RESPONSIBILITY.

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

b. **Contractor Representations.**

- i. The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.
- ii. The Contractor represents that as of the date of its execution of this contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

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

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

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

documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

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

7. AMERICANS WITH DISABILITIES ACT.

- a. **No Exclusion.** Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract.
- b. **Compliance.** For all goods and services provided pursuant to this contract, the Contractor shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.
- c. **Indemnification.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

8. APPLICABLE LAW AND FORUM.

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

9. RIGHT TO KNOW LAW.

- a. **Applicability.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this contract.
- b. **Contractor Assistance.** If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Contractor that it requires the Contractor's assistance, and the Contractor shall provide to the Commonwealth:
 - i. access to, and copies of, any document or information in the Contractor's possession (Requested Information) arising out of this contract that the

Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and

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

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

- d. **Reimbursement.**

- i. **Commonwealth Reimbursement.** If the Contractor fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Contractor shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- ii. **Contractor Reimbursement.** The Commonwealth will reimburse the Contractor for any costs that the Contractor incurs as a direct result of complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL.

- e. **Challenges of Commonwealth Release.** The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Contractor's legal challenge, regardless of the outcome.
- f. **Waiver.** As between the parties, the Contractor waives all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- g. **Survival.** The Contractor's obligations contained in this Section survive the termination or expiration of this contract.

10. OFFSET. [Intentionally Omitted]

11. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS. [Intentionally Omitted]

12. WORKER PROTECTION AND INVESTMENT. [Intentionally Omitted]