



CITY OF BETHLEHEM  
OFFICE OF THE CITY SOLICITOR

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INTEROFFICE MEMORANDUM

To: Tad J. Miller, City Clerk

From: John F. Spirk, Jr., Esq., City Solicitor

Re: Commonwealth of Pennsylvania, Department of Transportation  
Nonexclusive Video Sharing License Agreement

Date: July 9, 2025

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Attached for Council's consideration is a proposed Resolution and associated Nonexclusive Video Sharing License Agreement with the Commonwealth of Pennsylvania Department of Transportation.

Please place this matter on City Council's agenda for review and appropriate action.

John F. Spirk, Jr.

John F. Spirk, Jr., Esq., Solicitor

Cc: J. William Reynolds, Mayor  
Chief Michelle Kott, Police Department

**RESOLUTION NO. 2025-\_\_\_\_\_**

BE IT RESOLVED, by authority of the City Council of the City of Bethlehem, Counties of Lehigh and Northampton, Commonwealth of Pennsylvania, that it is hereby resolved by authority of the same, that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute a Nonexclusive Video Sharing License Agreement with the Commonwealth of Pennsylvania, acting through the Department of Transportation (hereinafter "PennDOT"), for the purpose of PennDOT granting a limited, non-exclusive, nontransferable, revocable license to the City to use Commonwealth intellectual property, in the form of video imagery from its transportation management systems consisting of PennDOT's statewide real-time live video and images from traffic cameras, to help enable the efficient and safe operation of the Pennsylvania highway systems, subject to the terms and conditions indicated in the Agreement and made a part hereof.

Sponsored by /s/ \_\_\_\_\_

/s/ \_\_\_\_\_

ADOPTED by Council this                      day of                      , 2025.

/s/ \_\_\_\_\_

President of Council

ATTEST:

/s/ \_\_\_\_\_

City Clerk

I, Tad J. Miller, City Clerk of the City of Bethlehem, Counties of Lehigh and Northampton, Commonwealth of Pennsylvania, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted at a regular meeting of Bethlehem City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Date: \_\_\_\_\_

\_\_\_\_\_  
Tad J. Miller, City Clerk

EFFECTIVE DATE:

AGREEMENT NO.:

FEDERAL I.D. NO.: 24-6000689

SAP VENDOR NO.:

## NONEXCLUSIVE VIDEO SHARING LICENSE AGREEMENT

This Nonexclusive Video Sharing License Agreement is between the Commonwealth of Pennsylvania ("Commonwealth"), acting through the Department of Transportation ("PennDOT") and City of Bethlehem, a political subdivision of the Commonwealth of Pennsylvania ("Licensee").

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

1. **Commonwealth Intellectual Property.** As used in this agreement, Commonwealth IP means Commonwealth intellectual property in the form of video imagery from its transportation management systems consisting of PennDOT's statewide real-time live video and images from traffic cameras. The Licensee shall use the Commonwealth IP to help enable the efficient and safe operation of the Pennsylvania highway systems.
2. **License to Commonwealth IP.** PennDOT grants Licensee a limited, non-exclusive, nontransferable, revocable license to use Commonwealth IP, subject to this agreement.
3. **Express Usage Conditions.** Title and ownership of the Commonwealth IP will remain with PennDOT and Licensee's unauthorized use of the Commonwealth IP may violate copyright law, trademark laws, the law of privacy and publicity, and communications, regulations and statutes. Licensee will be solely responsible for violation of any of these laws. Licensee shall:

- a. Ensure that the logo remains visible at all times.
  - b. Ensure that the Commonwealth IP is not mischaracterized by Licensee or any third party.
  - c. Request that its own licensees that advertise traffic camera coverage generated by PennDOT includes the disclaimer statement set forth in Section 5 below.
  - d. Terminate video images deemed by PennDOT at its sole decision to be unsuitable or inappropriate for public dissemination.
  - e. Prevent any action from taking place that would electronically or otherwise alter, enhance, modify, or create derivative works based upon use of the Commonwealth IP.
4. **Camera Control.** PennDOT shall control (on, off, pan, tilt, zoom) all PennDOT cameras providing the video feed.
5. **Disclaimer of Affiliation or Endorsement.** Licensee shall include the following disclaimer in license agreements where the Licensee licenses PennDOT's traffic camera coverage to another licensee:
- "Licensee shall refrain from making any representations or creating any inferences, express or implied, that use of the Commonwealth IP constitutes evidence of an affiliation with or endorsement by PennDOT of any of Licensee's products or services or any of Licensee's agents, sponsors, or advertisers."
6. **License Reservations.** PennDOT may delay or stop transmission of the Commonwealth IP video feed at any time for any reason. Licensee may not recoup any costs, or make claims for loss of business, loss of profits, or for other damages or loss arising from termination of the feed. Licensee may not use the Commonwealth IP for a purpose other than to show traffic status. If Licensee

desires to use the Commonwealth IP for another purpose, Licensee shall submit a letter to PennDOT describing the proposed use and obtain PennDOT's written pre-approval. This letter must be signed by both parties and retained in PennDOT's files. Licensee may not archive the Commonwealth IP for later use without PennDOT's written consent. Nothing in this agreement constitutes a waiver of PennDOT's rights under Federal or state law, or may be construed as a grant of a license to an invention, copyright, trademark, trade secret or patent by implication or under this agreement. This Section will survive termination of this agreement.

7. **Third Party Licensee Restrictions.** Licensee may not distribute the Commonwealth IP to a non-governmental third party without PennDOT's written permission. If Licensee receives permission to do so, Licensee shall ensure that the third party first executes a non-exclusive video sharing license agreement with PennDOT.
8. **Advertising Restrictions.** If in PennDOT's sole discretion, the Licensee includes advertising used in conjunction with the Commonwealth IP that does not comply with PennDOT guidelines or does not contribute to a positive, quality image of PennDOT and the Commonwealth, or is inappropriate for any reason, Licensee shall promptly remove the advertising upon PennDOT's written request.
9. **Right of Entry.** If Licensee intends to enter PennDOT property to connect to infrastructure, Licensee shall provide PennDOT one week's advance notice of intent to access PennDOT property. Licensee shall receive PennDOT's approval before entering PennDOT property; it is in PennDOT's sole discretion to grant or deny the entry. For purposes of this agreement, PennDOT property means a PennDOT traffic management center or other physical facility and does not include access to highway right-of-way.

10. **Insurance Requirements for Right of Entry.** Licensees who require a right to entry to PennDOT property under section 9, above, shall maintain comprehensive general liability insurance and property damage insurance. The minimum amounts of coverage are \$250,000.00 per person and \$1,000,000.00 per occurrence for bodily injury, including death, and \$250,000.00 per person and \$1,000,000.00 per occurrence for property damage. These coverages must be occurrence-based. The policies must name the Commonwealth and PennDOT as an additional insured and contain a provision that the coverages may not be cancelled or changed unless at least 30 days' prior written notice has been given to PennDOT, excepting cancellation for nonpayment of premium for which 15 days' prior written notice will be given to PennDOT. Before beginning work under this agreement, Licensee shall provide PennDOT with current certificates of insurance showing the required coverage and provisions. Licensee shall immediately notify PennDOT of a change in its insurance coverage, including termination of the required coverage.
11. **Breach.** If Licensee breaches this agreement and fails to cure the breach within 24 hours after notice by PennDOT to the Licensee, PennDOT may take appropriate legal action. Legal action may include a cease and desist letter, discontinuance of the feed, and if necessary, termination of this agreement.
12. **Costs.** Access to the Commonwealth IP is free of charge; however, costs incurred to acquire the Commonwealth IP (for example, connections, hardware, transmission) are Licensee's sole responsibility. Licensee shall reimburse costs that PennDOT incurs to facilitate the Licensee's use of the Commonwealth IP. PennDOT may change the process or systems through which Licensee accesses the Commonwealth IP at PennDOT's sole discretion. Licensee is responsible for costs for alterations necessary to maintain access to the Commonwealth IP.

13. **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 this agreement.
14. **Assignment.** This agreement may not be assigned, either in whole or in part, without PennDOT's written consent.
15. **Licensee's Damage Responsibilities.** Licensee's use of the Commonwealth IP, or access to or connection to PennDOT systems or infrastructure may not cause damage or result in the malfunction of PennDOT's systems or video feed interruption.
16. **Disclaimer of Warranties.** THE COMMONWEALTH IP IS PROVIDED "AS IS." PENNDOT MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE COMMONWEALTH IP'S QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE LICENSEE ASSUMES THE ENTIRE RISK AS TO THE QUALITY OF THE COMMONWEALTH IP. PENNDOT WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED, IN WHOLE OR IN PART, BY USE OF THE COMMONWEALTH IP.
17. **Records and Audits.** Licensee shall keep accurate books of account and records covering transactions related to the rights granted under this agreement. PennDOT or its duly authorized representatives may, upon five days' prior written notice and during normal business hours, inspect and audit the Licensee's accounts and records involving use of the Commonwealth IP.

18. **Term.** This agreement will become effective when it is fully executed by the parties and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature.
19. **Termination.** Subject to reasonable cause, either party may terminate this agreement by giving 24 hours' written notice to the other party of the intent to terminate.
20. **Commonwealth Standard Provisions.** The Licensee shall comply with the Commonwealth provisions attached as Exhibit A. As used in Exhibit A the term "Contractor" refers to the Licensee.
21. **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.
22. **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.
23. **No 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.



24. **Force Majeure.** Neither party will be liable for failure to perform under this agreement if a failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision will become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays. This provision will not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

25. **Notices.** All notices and reports required under the provisions of this agreement must be in writing and given to the parties at the address provided under this agreement, either by regular mail, e-mail, or delivery in person:

If to PennDOT:

Brandy Warner, Project Manager – Video and TIM Data Management  
PA Department of Transportation, Bureau of Operations  
1310 Elmerton Avenue  
Harrisburg, PA 17110  
717-409-3462  
[bwarner@pa.gov](mailto:bwarner@pa.gov)

If to the Licensee:

Chief Michelle Kott  
City of Bethlehem  
Police Department  
10 East Church Street  
Bethlehem, PA 18018  
610-865-7150  
[mkott@bethlehem-pa.gov](mailto:mkott@bethlehem-pa.gov)

with a copy to:

City of Bethlehem  
Legal Bureau  
10 East Church Street  
Bethlehem, PA 18018  
610-865-7011  
[cbartera@bethlehem-pa.gov](mailto:cbartera@bethlehem-pa.gov)

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

**26. 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.

**27. 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.

**28. 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 intentionally left blank.]

The parties have executed this agreement to be effective as of the date of the last signature affixed below.

LICENSEE City of Bethlehem

BY \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

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**DO NOT WRITE BELOW THIS LINE - FOR DEPARTMENT USE ONLY**

APPROVED AS TO LEGALITY  
AND FORM

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY \_\_\_\_\_  
Office of Chief Counsel      Date

BY \_\_\_\_\_  
Deputy Secretary or designee      Date

BY \_\_\_\_\_  
Office of General Counsel      Date

BY \_\_\_\_\_  
Office of Attorney General      Date

18-AT-15.5

# 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.

[Intentionally Omitted.]

### 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.]