



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES
HARRISBURG**

**COSTARS INVITATION FOR BIDS
SUMMARY SHEET**

Contract No.:	COSTARS-3 REBID (September 2010)
Description of Supply:	IT Hardware
Solicitation Start Date:	June 17, 2010
Bid Opening Date:	Bids will be accepted at the address below on any given Commonwealth business day. Any bid received after the Bid Opening Time will be opened on the next Commonwealth business day.
Bid Opening Time:	1:30 PM Eastern
Bid Opening Location:	BUREAU OF PROCUREMENT BID ROOM 555 WALNUT STREET, 6TH FLOOR HARRISBURG, PA 17101-1914

Dear Supplier:

The Department of General Services (DGS) invites you to submit a response to the attached INVITATION FOR BIDS (IFB). DGS will award contracts to all responsive and responsible bidders to provide IT Hardware as described in the IFB (see Section 2 of the *Special Terms and Conditions* for details) to local public procurement units and state-affiliated entities (together, "Purchasers") registered as members with the COSTARS Program. A complete list of currently registered COSTARS members, as well as more information about the program, can be found on the Suppliers' area of the DGS COSTARS web-pages at www.dgs.state.pa.us/costars.

This IFB is designed to provide purchase options and competitive pricing to COSTARS members throughout the Commonwealth who may wish to purchase IT Hardware under the Contract. Although pricing will not be a factor in contract award, pricing may be a consideration when Purchasers select a Supplier and place their orders. Consequently, each bidder should present their very best response to this IFB. Suppliers may offer pricing using any of the options stated in Section 6 of the *Special Terms and Conditions*. ONLY COSTARS member local public procurement units and state affiliated entities may purchase from any COSTARS contract resulting from this IFB. Commonwealth executive and independent agencies do not make purchases through COSTARS-exclusive contracts.

The following documents comprise this Invitation For Bids:

1. COSTARS Bid/Contract (GSPUR-15COSTARS REV 12/10/2009)
2. Instructions To Bidders for COSTARS Contracts (COSTARS ITB REV 10/6/2009)
3. COSTARS Contract Standard Terms and Conditions (COSTARS STD REV 9/28/2009)
4. COSTARS Contract Special Terms and Conditions (COSTARS SpTSCs REV 12/10/2009)
5. Bid Item Workbook and Checklist

These documents are available on the DGS COSTARS web-pages at www.dgs.state.pa.us/costars.

In addition to complying with the bid submission requirements of Section 1 of the *Instructions to Bidders*, each bidder must submit one hard (printed) copy of its bid in its bid package as stated in this IFB. In addition, the bidder is encouraged to include in its bid package an electronic submission of all offered items and pricing on a CD in Microsoft Word, Excel, or PDF Format. (Flash drive is not acceptable).

Please note that all bidders must submit with their bid a certified check or bank cashier's check or money order for the appropriate amount, payable to "Commonwealth of Pennsylvania", for contract-related administrative fees as more fully described in Section 9 of the *Instructions to Bidders*. Any bidder whose bid is rejected will receive a refund of this fee from the Commonwealth.

The bidder shall ensure that it is registered to do business with the Commonwealth of Pennsylvania and that its business information is accurate (refer to Attachment A, *Doing Business with the Commonwealth*, for guidance).

DGS will accept written questions and comments concerning this procurement via email to rmacavoy@state.pa.us.

Sincerely,

Roxann MacAvoy, Commodity Specialist
Bureau of Procurement

COSTARS BID/CONTRACT

ISSUING AGENCY	CONTRACTOR NAME AND ADDRESS	SHOW THIS CONTRACT NUMBER ON BID ENVELOPE
Commonwealth of Pennsylvania Department of General Services Bureau of Procurement COSTARS Program 555 Walnut Street, 6th Floor Harrisburg, PA 17101-1914 COMMODITY SPECIALIST: Roxann MacAvoy PHONE NO.: 717-346-2680 FAX NO.: (717) 783-6241 CONTRACTING OFFICER: Jeff Mandel Chief Procurement Officer	CONTACT PERSON:	CONTRACT NO. COSTARS-3 REBID (September 2010)
	PHONE NO.:	BID OPENING DATE:
	FAX NO.:	BID OPENING TIME: 1:30 PM EST
	BIDDER/CONTRACTOR'S FEDERAL ID NO. OR SOC. SEC. NO.	EFFECTIVE DATE:
	BIDDER/CONTRACTOR'S VENDOR NUMBER	EXPIRATION DATE:
	BIDDER/CONTRACTOR'S E-MAIL	
BIDDER/CONTRACTOR'S WEB ADDRESS		

ITEM NO.	DESCRIPTION OF ITEMS	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL LINE ITEM PRICE
N/A	IT Hardware Refer to attached <i>Special Terms and Conditions</i> Click here to download and complete Bid Item Workbook.	N/A	N/A	N/A	REFER TO BID ITEM SHEET (S)

CHECK HERE IF CONTINUED ON PAGE 2 ☐

ALL PRICES ARE F.O.B. DESTINATION

TOTAL BID ▶

REFER TO BID ITEM SHEET (S)

In addition to this document, the following contract terms, conditions, and specifications are a part of the contract:

- Instructions to Bidders for COSTARS Contracts (COSTARS ITB REV 10/6/2009)
- COSTARS Contract Standard Terms and Conditions (COSTARS STD REV 9/28/2009)
- COSTARS Contract Special Terms and Conditions (COSTARS SpTsCs REV 12/10/2009)
- Bid Item Workbook and Checklist

Form of payment of Administrative Fee provided with this bid for the appropriate amount, payable to "Commonwealth of PA", as more fully described in Section 9 of the *Instructions to Bidders for COSTARS Contracts*:

☐ Certified Check or Bank Cashier's Check

☐ Money Order

The Commonwealth of Pennsylvania, through the Department of General Services, accepts the Bid of the Bidder/Contractor for the awarded item(s) and agrees to be legally bound hereby.

▼ COMMONWEALTH SIGNATURE ▼

In compliance with the bid and contract terms, conditions, and specifications, the undersigned, on behalf of the Bidder/Contractor, intending to be legally bound hereby, offers and agrees, if the Bid is accepted, to provide the specified item(s) at the price(s) set forth above at the time(s) and point(s) specified.

▼ BIDDER/CONTRACTOR'S SIGNATURE (IN INK) ▼

PURCHASING AGENCY HEAD OR DESIGNEE DATE

PRESIDENT/VICE PRESIDENT/MANAGER OF LLC/PARTNER/OWNER* DATE
(SIGN BELOW, PRINT NAME, AND CIRCLE TITLE ABOVE)

▼ APPROVED ▼

TREASURER DATE

SECRETARY/ASSISTANT SECRETARY/TREASURER/ASSISTANT TREASURER* DATE
(SIGN BELOW, PRINT NAME, AND CIRCLE TITLE ABOVE)

*If someone other than one of these officers signs for the Bidder/Contractor, a copy of a corporate resolution or other appropriate signature authorization must be included with the bid. Failure to include a copy of the appropriate signature authorization, if required, may result in the rejection of the bid unless the Department's Bureau of Procurement has a copy on file.

COMMONWEALTH ATTORNEY APPROVALS APPROVED AS TO FORM AND LEGALITY

PURCHASING AGENCY ATTORNEY	DATE	OFFICE OF GENERAL COUNSEL (IF REQUIRED)	DATE	OFFICE OF ATTORNEY GENERAL (IF REQUIRED)	DATE
		Pre approval numbers: 8-K-15-2; 8-K-1512; 8-K-1541; 8-K-1600; 8-K-1610; 8-K-1620		Pre approval numbers: 8-K-15-2; 8-K-1512; 8-K-1541; 8-K-1600; 8-K-1610; 8-K-1620	

THIS FORM MUST BE PROPERLY COMPLETED, SIGNED AND RECEIVED PRIOR TO BID OPENING TIME AND DATE

Doing Business with the Commonwealth

a. Department of State Registration

Any person or entity doing business under a fictitious name in Pennsylvania must register that name with the Pennsylvania Department of State and any corporation that is not incorporated in Pennsylvania must register with the Department of State if it wants to do business in the Commonwealth (for more specific information on this requirement, see <http://www.dos.state.pa.us/corps/cwp/view.asp?a=1093&q=438350&corpsNav=1>). **If your firm is not incorporated or registered in Pennsylvania, you must take action to register prior to being approved for a COSTARS-exclusive contract.**

DGS is asking all bidders *other than individuals using their given names* to supply evidence with the bids to show compliance with these requirements. Specifically, DGS requests that each bidder do the following prior to submitting its bid:

1. Go to the [Searchable Corporations Database](#) link on the DOS website.
2. In the blank space, enter the first words of your business name. *Note: if the business name begins with the word "the" use the next word.* Hit "enter".
3. All businesses beginning with the words you entered are displayed on the next page(s). Find your business and click on its name.
4. Print out a copy of the page with your business information, and attach it to your bid package.

Registration information, forms, and instructions for those entities not already registered are available online from the Pennsylvania Department of State. The following links will assist you in your filing:

- ◆ [General Information](#)
- ◆ [Filing Information](#)
- ◆ [Foreign Business Corporation](#)
- ◆ [Fictitious Names](#)
- ◆ [Forms](#)
- ◆ [Fees & Payment](#)

Doing Business with the Commonwealth

b. Department of General Services – SRM Supplier Registration

Supplier Relationship Management (SRM) is a secure, web-based system that allows suppliers to view and respond to current Commonwealth bids, manage account information and access other collaborative functions. Suppliers wishing to take advantage of the features and benefits of this Commonwealth procurement tool are required to complete the electronic registration process. The Pennsylvania (PA) Supplier Portal is your gateway to electronic business with the Commonwealth.

All **Procurement Suppliers** are required to register via the PA Supplier Portal. You are considered a “Procurement Supplier” if one of the following conditions exists:

- ◆ Your company will receive payments from the Commonwealth of Pennsylvania under a contract or purchase order.
- ◆ **Your company will receive Request for Quotations, Purchase Orders, or other Procurement documents.**
- ◆ Your company is a construction contractor.

If you already have a six-digit vendor number issued by the Commonwealth, you may already be registered. Even though you may have registered before, it is IMPORTANT that the Commonwealth has the most current information for your company to ensure that you will continue to be notified of bidding opportunities, able to respond to electronic bids, and manage your company's profile. By registering as an existing supplier, you are actually validating the information we currently have on file for your company and modifying any outdated or incorrect information, if necessary.

For more information and to register, please visit the Supplier Service Center at:

http://www.portal.state.pa.us/portal/server.pt/community/supplier_service_center/5104

Registering and receiving a vendor number does not mean that you are an awarded supplier and able to sell your products to COSTARS members. To become a COSTARS supplier, you will need to respond to bidding opportunities that are published on the DGS [COSTARS](#) or PA [eMarketplace](#) web-pages. A supplier that successfully responds to a contract solicitation may be awarded a contract.

CORPORATE CERTIFICATION

As Corporate Secretary of _____ ("Corporation"),
I certify that (please check the appropriate line below):

___ (1) at a meeting held on _____, the Corporation's Board of Directors
approved a resolution authorizing the individuals named below to execute, or

___ (2) the bylaws of the Corporation authorize the following individuals to
execute,

in the name of and on behalf of the Corporation, any contract- or bid-related
documents required to supply goods or services to the Commonwealth of
Pennsylvania, its agencies, boards, commissions, and instrumentalities
(collectively, the "Commonwealth"), including, without limitation, bonds,
certifications submitted with bid proposals, and receipts in connection with any
contract between the Corporation and the Commonwealth:

Name:	Corporate Title:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I also certify that, as of the date I make this certification,

___ (1) the authorizing resolution has not been rescinded by the Board of
Directors, or

___ (2) the Corporate bylaws have not been amended to rescind the execution
authority of these individuals.

Signature:

_____ Corporate Secretary

Date

ATTACHMENT B

DEPARTMENT OF GENERAL SERVICES
SMALL BUSINESS CERTIFICATION

If the Bidder is a Qualified Small Business, the Bidder must complete, sign and submit the following certification with its Bid.

I, _____, being the _____
[title] of _____ [Contractor], ("Contractor") do hereby
certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") that:

1. Contractor is not a subsidiary of another firm. ☐ Yes ☐ No
2. Contractor is not dominant in its field of operation. ☐ Yes ☐ No
3. Contractor employs no more than 100 full-time or
full-time equivalent employees. ☐ Yes ☐ No
Total Number of Full-time or Full-time Equivalent Employees on Payroll _____
4. Contractor earned less than \$20,000,000 in gross annual revenues (\$25,000,000 in gross
annual revenues for those businesses in the information technology sales or service
business) in each of its last two fiscal years. ☐ Yes ☐ No
Gross Annual Revenues in its Last Fiscal Year \$ _____
Gross Annual Revenues in its Preceding Fiscal Year \$ _____
5. If Contractor is new business (less than 1 year), Contractor has an approved business
plan by the Small Business Development Center or by a Pennsylvania Enterprise
Center authorized by the Minority Development Agency of the United States
Department of Commerce. ☐ Yes ☐ No
6. The information and certifications provided by Contractor are material and important
and will be relied upon by the Commonwealth in awarding the contract. The
Department 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:

Corporate or Legal Entity's Name

Signature/Date

Signature/Date

Printed Name/Title

Printed Name/Title

**COSTARS CONTRACT
SPECIAL TERMS AND CONDITIONS**

These COSTARS Contract Special Terms and Conditions ("Special Terms and Conditions") shall be part of the contract for the supply and delivery of IT Hardware between the Commonwealth of Pennsylvania, acting through the Department of General Services ("DGS"), and the successful bidder ("Contractor").

1. Order of Precedence. These Special Terms and Conditions supplement the COSTARS Contract Standard Terms and Conditions ("Standard Terms and Conditions") for this procurement. Should any discrepancy occur, the order of precedence shall be that these Special Terms and Conditions shall prevail over all other Contract documents, the Standard Terms and Conditions shall prevail over the Instructions to Bidders for COSTARS Contracts ("ITB") and the bidder's bid submission, and the ITB shall prevail over the bidder's bid submission.

2. Contract Scope. For the purposes of this contract, "IT Hardware" is defined as follows:

• Desktop PCs and Monitors
• Items to Support Multimedia Communications and LANs
• Laptops/Notebooks and Personal Computing Devices
• Peripherals and Networking Gear
• Servers and Data Storage
• Telephony equipment and software to accommodate COMPUTER-TO-COMPUTER voice service. DOES NOT INCLUDE FIXED OR MOBILE TELEPHONE SYSTEMS.

This contract specifically **excludes** the following items:

- Information Technology Services (Please refer to Section 10 of the COSTARS Contract Special Terms and Conditions for additional information.)
- Wireless devices (such as BlackBerry, PDA phone, cellular telephone, and pager) requiring a cellular/data plan subscription.
- Fixed and Mobile Telephone Systems

3. Contract Award. This is a multiple award contract in accordance with Section 7 of the ITB. Because DGS deems it to be in the best interest of the Purchasers to procure additional Contractors on a continuous basis, DGS will accept bid proposals in response to this procurement on any given Commonwealth business day.

4. Contract Period. DGS will establish the Contract effective date as specified in Subsection 3.a. of the Standard Terms and Conditions. The Contract will renew automatically in accordance with Subsection 3.c. of the Standard Terms and Conditions, unless it is terminated in accordance with Section 24 of the Standard Terms and Conditions, as supplemented by this section.

5. Service Area. The bidder may offer to supply and deliver IT Hardware:

- i. Statewide, or
- ii. To any one county specifically identified in the bidder's bid by its corresponding name and number, as listed on the Service Area Sheet of the Bid Item Workbook, or
- iii. To any number of counties specifically identified in the bidder's bid by their corresponding names and numbers, as listed on the Service Area Sheet of the Bid Item Workbook

6. Pricing. The bidder shall complete the Bid Item Workbook, stating percent discount(s) to be deducted from the identified catalog or manufacturer/distributor's most recently published price list; stating "mark-up" as a percentage above the manufacturer/distributor's specified cost; or providing a customized price list of items that the bidder is offering, stating the net price and, if applicable, minimum order requirements for each item. The Bid Item Workbook does not contain a specific list of items. The bidder is free to offer any type or number of items, from any number of manufacturers, in its bid, so long as the items are within the scope of the Contract. Bidders may bid product lines from any number of manufacturers who have authorized the bidders to sell their products. The bidder shall return the completed Bid Item Workbook and all specified attachments in a sealed envelope. Failure to do so may result in DGS's rejection of the bid.

a. The bidder must identify the catalog, manufacturer/distributor's price list, manufacturer/distributor's specified cost sheet, or customized list on the Bid Item Sheet of the Bid Item Workbook, specifying the catalog, list, or cost sheet name, identification number, if applicable, and effective date. DGS may reject any bid omitting this information from the Bid Item Sheet. The bidder must submit a complete catalog, manufacturer/distributor's price list, or manufacturer/distributor's cost sheet within two working days of any DGS request. If the bidder is offering a customized list of items, the bidder shall attach and submit the customized list including net prices with its Bid Item Workbook.

b. The bidder may offer any type of discount, mark-up, or other pricing structure, such as multiple discounts for different lines of products, or different price lists, or different classes of Purchasers, or different prices for different quantities of products.

i. The bidder shall submit a separate Bid Item Sheet for each type of discount, mark-up, customized discounted list, or pricing structure offered.

ii. The bidder should offer its pricing based upon either quantity or the same "best" price regardless of order quantity in a format similar to that used in any of the templates on the Bid Item Sheets of the Bid Item Workbook included with the Invitation For Bids.

iii. The bidder may offer different discounts, mark-ups, customized lists, or prices for different classes of Purchasers. For example, if the bidder offers an educational Purchaser discount, mark-up, or pricing at a different level from other eligible Purchasers, the bidder shall submit separate Bid Item Sheets for each class of Purchaser.

iv. After Contract award, a Contractor may offer, either on its own initiative or at a Purchaser's request, additional discounts, reduced mark-ups, customized lists, or discounted prices for any purchase within the scope of the Contract, even if such discounts, mark-ups, or discounted prices were not included in the bid prices.

c. Except in the event of increased discounts or reduced mark-ups as permitted under Paragraph 6.b.iv., the bidder's percent discount(s) or mark-ups from the bid documents shall remain firm for the entire contract period, including any renewal periods. A Contractor may update its Contract pricing information (actual prices versus percent discounts or mark-ups) upon Contract award. Thereafter, the Contractor may update its pricing no more frequently than Quarterly to adjust its pricing in accordance with any increases or decreases in its manufacturer's or distributor's public price list or manufacturers' or distributors' specified cost sheet, or both. The Contractor shall submit a written request accompanied by an updated Bid Item Workbook to the DGS Commodity Specialist assigned to this procurement requesting review and approval of the update(s). Any additions to manufacturer lines shall be in accordance with paragraph 7.b. of the Instructions to Bidders pertaining to manufacturer's authorization. Approval of the update is automatic within five business days upon DGS' receipt unless notified otherwise in writing by DGS. In no event shall the Contractor increase prices for a particular purchase order following

receipt of the order from the Purchaser, nor shall the Contractor be permitted to increase prices retroactively, for any reason.

d. Notwithstanding the language in Subsection c. of this Section, if, as a result of legislation, rulemaking, rate-making, or any related act of a legislative or regulatory body subsequent to bid opening, or due to unusual market conditions, the Contractor's cost of supplying IT Hardware increases significantly during the term of this Contract, the Contractor may adjust its prices more frequently. The Contractor shall submit a letter to the DGS Commodity Specialist assigned to this procurement requesting review and approval of the adjustment(s). It is the responsibility of the Contractor to adequately justify the change(s). A letter of verification from the manufacturer must accompany all price adjustment requests showing the manufacturer has increased its prices to all suppliers. The Commodity Specialist will notify the Contractor in writing stating approval/disapproval of the request. Upon approval, the Contractor may issue new price and/or product list(s).

e. The Contractor may supplement its Bid Item Workbook at any time to provide pricing for additional Contract items within the scope of the Contract that become available after submission of the Contractor's bid or to remove items or services it no longer wishes to offer. The Contractor shall submit a written request accompanied by a revised Bid Item Workbook to the DGS Commodity Specialist assigned to this procurement requesting review and approval of the revision(s). Any additions to manufacturer lines shall be in accordance with paragraph 7.b. of the Instructions to Bidders pertaining to manufacturer's authorization. Approval of the change is automatic within five business days upon DGS' receipt unless notified otherwise in writing by DGS.

7. Leasing and Installment Purchases. Suppliers may offer leasing or installment purchases under this contract. The length of the lease or installment purchase may be twelve (12), twenty-four (24), thirty-six (36), forty-eight (48) or sixty (60) months. COSTARS members are encouraged to negotiate the price of the item, in accordance with the pricing submitted by the supplier. Only after pricing has been negotiated should leasing or an installment purchase be considered as both options will increase the price of the item. When requesting lease or installment purchase pricing, suppliers may provide commercially reasonable terms and conditions pertaining solely to the lease or installment purchase. COSTARS members review and negotiate the lease terms and conditions, lease annual percentage rate, residual and after lease provisions in accordance with good business practice. All lease or installment purchase terms shall be subject to the standard approval processes established for the COSTARS member, either by policy or statute, and shall become part of the purchase order.

8. Delivery. In addition to complying with the delivery requirements of Section 14 of the Standard Terms and Conditions, the Contractor must agree to deliver any system configuration ordered as a complete system, and each awarded COSTARS Supplier is responsible to stage the equipment delivery so that all components are delivered as a single unit, at the same time.

9. Warranties. In addition to the requirements of the Warranty section (Section 13) of the Standard Terms and Conditions, the Contractor warrants that it has the capability, either directly or through the manufacturer or a manufacturer's representative, to perform on-site or exchange warranty service for the warranty period. If a manufacturer has "Depot Service Only" products, the Contractor may exclude those products from on-site warranty service. If the Contractor provides exchange warranty service, the Contractor shall replace the product without expense to the Purchaser within one business day after phone notification from the Purchaser.

10. Ancillary Services. As provided in the Invitation for Bids (IFB), Contractor may choose to offer ancillary services in conjunction with the products it provides to the Purchaser. **However, any ancillary services offered must be: (1) expressly authorized in the original IFB/Contract, (2) directly related to the delivery, installation or normal use of the product or component parts purchased, (3) limited to the actual product or component parts purchased, and (4) initiated/ordered at the time of product purchase. Stand-alone services and services for products not purchased from this supply**

Contract, including existing equipment for which component parts from this contract are purchased, are *not* within the scope of this supply Contract. The Department of General Services reserves the right to determine which ancillary services shall be included in any contract.

Ancillary services authorized in the Invitation for Bids for this Contract may include, but are not limited to, the following:

- **Installation** – Unpacking, placement, connection, and initialization of the new system. Installation as used in this Contract is limited to delivery in place with no permanent attachment to the real property. Installation of component parts into existing equipment of the Purchaser is permitted. This Contract may not be used to purchase initial equipment for installation in new construction. However, fastening a product to an existing building floor, wall, ceiling or roof which can later be removed without damaging the building and connecting to existing electrical, plumbing and HVAC fixtures is permitted.

Installation which involves the process of building, altering, repairing, improving or demolishing a structure or building or other improvements of any kind to any real property are defined by law to be construction activities and are only permitted for this Contract if expressly provided in the Invitation for Bids.

Installation and construction activities for Purchasers that are governmental entities are subject to certain laws regarding public construction, which may include but are not limited to:

a. The Pennsylvania Prevailing Wage Act, *43 P.S. Sections 165-1 et seq.* The Secretary of Labor and Industry will determine any applicable wage rates by each craft or work classification needed to perform the Contract installation for a government unit.

b. The Steel Products Procurement Act, *73 P.S. §§ 1881-1887*, and the Trade Practices Act, *71 P. S. § 773.101 et seq.*, which place restrictions upon the source of certain steel, cast iron and aluminum products allowed to be used in the performance of public agency contracts.

c. The Separations Act of 1913, *71 P.S. § 1618 (and 53 P.S. § 1003 for municipalities)*, which requires the solicitation of separate bids and the award of separate contracts where design/specifications are developed for more than one type of electrical, plumbing or HVAC work.

d. The Public School Code of 1949, *24 P.S. §1-101 et seq.*, which generally requires school districts to competitively bid construction work.

e. Any additional laws, regulations or policies that may apply to the installation, including but not limited to performance security, payment bonding, insurance and progress/prompt payment requirements.

At the time a quote is requested, the governmental entity Purchaser shall inform the suppliers of any applicable laws and requirements. Failure by the Purchaser to do so, however, does not eliminate or otherwise affect the applicability of the laws and requirements to the purchase. **Governmental entity Purchasers may not use this contract to avoid applicable legal requirements. It is the responsibility of each governmental entity Purchaser (and their legal counsel) to determine what legal requirements or limitations apply and whether or not the COSTARS contract is appropriate for a particular purchase.**

- **De-installation (Leased System)** - Removal of a system from the desktop and return to leasing agent.

- De-installation (Purchaser-owned System) - Removal of a system from the desktop and recycled by Purchaser.
- Asset Tagging - Affixing a Purchaser asset tag to the system.
- Image Load - Installation of a hard drive image onto a new system.
- Hard Drive Removal and Retention by the Purchaser
- Extended Warranty (only for products/component parts purchased from the contract)
- Maintenance, Parts, Service, and Consumable Supplies (only for products/component parts purchased from the contract) - (such as drums, developers, and toner) not covered under warranty. Paper, staples, and recording media (such as audio cassettes, diskettes and compact discs) are not included in the consumables that may be offered under this Contract.
- Cabling and Wiring Services
- Customization - Any modification to a Contract item to meet Purchaser-specific requirements.
- Special Delivery Arrangements - These may include, without limitation, fuel surcharges, added charges for multiple delivery locations, or staged deliveries (multiple dates). Such terms shall not alter the requirements of Subsection 10.b. of the COSTARS Contract Standard Terms and Conditions, requiring in pertinent part that the pricing include standard FOB destination delivery.
- Training

11. Limitation of Liability. Section 19 of the COSTARS Contract Standard Terms and Conditions is amended by the addition of the following at the end of the existing language:

The Contractor's liability to any Purchaser under any PO issued under the Contract shall be limited to: (i) the greater of \$1,000,000 or the value of the PO (including any amendments) for POs of \$500,000 or more or (ii) the greater of \$100,000 or two times the value of the PO for all other POs, unless otherwise specified in the PO. This limitation will apply, except as otherwise stated in this paragraph, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to damages for:

- a. Bodily injury;
- b. Damage to real property or tangible personal property for which the contractor is legally liable; or
- c. The contractor's indemnity of DGS and any Purchaser for patent, copyright, trade secret, or trademark protection.

In no event will the contractor be liable for lost profits, lost revenue or lost savings. In no event will the contractor be liable for damages due to lost records or data, except for contractor liability associated with viruses or malicious, mischievous or destructive programming. Notwithstanding the foregoing, the contractor shall provide reasonable assistance to any Purchaser in restoring such lost records or data to their most recent backup copy.

12. Software Licenses. If a product purchased through this Contract contains embedded software or is associated with standalone software to be installed on a COSTARS member's computers, the Contractor hereby agrees that it will be required to enter into a license agreement acceptable to the COSTARS member. The license agreement attached hereto as Attachment "C" is in a form that is generally acceptable to the COSTARS members. The Contractor and the COSTARS member may negotiate the terms of the license agreement as mutually agreed upon and as appropriate to the COSTARS member's use of the software. All license terms shall be subject to the standard approval processes established for the COSTARS member, either by policy or statute, and shall become part of the purchase order.

INSTRUCTIONS TO BIDDERS FOR COSTARS CONTRACTS

1. BID SUBMISSION:

The Department of General Services (DGS) requests bids for the services or item(s) described in the Invitation for Bids. The Invitation for Bids Summary Sheet, the COSTARS Bid/Contract form, these Instructions To Bidders For COSTARS Contracts, the COSTARS Contract Standard Terms and Conditions ("Standard Terms and Conditions"), the COSTARS Contract Special Terms and Conditions ("Special Terms and Conditions") and all the documents referenced on these forms will be referred to collectively as the IFB, and the COSTARS Contract that may be awarded as a result of this IFB will be referred to as the "Contract" in this document.

a. The Bidder must complete the COSTARS Bid/Contract form with the information relevant to the bid, including the Bidder's name and address; federal identification number or social security number; contact person name, telephone and fax numbers, and e-mail and web addresses; prompt payment discount (if any); and number of days required for delivery following receipt of any purchase order ("PO") issued under the Contract.

b. The individual(s) signing the Bid must be authorized to sign for and to bind the Bidder to provide the item(s) at the price(s) and in accordance with the terms and conditions set forth in the Bidder's Bid and in the IFB.

c. The Bidder must sign the Bid in ink. DGS will reject any bid priced or signed in pencil.

d. The Bidder shall submit its Bid, consisting of the completed and signed COSTARS Bid/Contract form and all other documents required by the IFB, in a sealed envelope clearly marked "Bid" on the front near the submission address. The front of the Bid envelope must also include the assigned Contract number.

e. Each Bidder is responsible to ensure that DGS receives the Bid in the DGS bid room, located off the Bureau of Procurement lobby on the sixth floor of Forum Place ("Bid Room") identified on the Invitation for Bids summary sheet, for bid opening. Any bid received after the time set for the opening of Bids ("Bid Opening Time") will be opened on the next Commonwealth business day. In the event that, due to inclement weather, natural disaster, or other cause, the DGS office where the Bid Room is located is officially closed, the Bid opening shall be automatically postponed until the next Commonwealth business day at that location, unless DGS otherwise notifies the Bidders. The Bid Opening Time shall remain the same for any opening automatically occurring on the next Commonwealth business day.

Bidders should address their bid packages to the DGS Bureau of Procurement, Bid Room, 555 Walnut Street, 6th Floor, Harrisburg, PA 17101-1914, regardless of their chosen method of delivery. A "Mailed Bid" (the term connotes any bid submitted through the United States Postal Service or any other third party carrier) will be routed through the Commonwealth's central mail processing location ("Central Processing") before arriving at the DGS Bid Room. The US Postal Service and other delivery carriers are familiar with the Commonwealth's mail processing requirements.

f. DGS will open all Bids timely received in the Bid Room publicly, in the presence of one or more witnesses, at the Bid Opening Time and in the Bid Opening Room.

g. Bids must be firm, with no qualifications. If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the IFB, DGS will reject the Bid. If the items the Bidder offers are not in conformance with the Contract specifications, as determined in the DGS's sole discretion, DGS will reject the Bid.

h. DGS strongly encourages the Bidder to submit its bids in electronic form, on CD or diskette, in addition to submitting the printed copy required in Subsection 7.e. Electronic submission will ensure that the widest range of bid information is available from the DGS COSTARS contract website. The Bidder shall ensure that any electronic bid documents it may transmit in response to this Invitation For Bids is virus-free and in a format (e.g. Microsoft Word, Excel, Adobe Acrobat) accessible by DGS.

2. BIDDER'S REPRESENTATION AND AUTHORIZATION:

a. Each Bidder, by making its Bid, understands, represents, and acknowledges all of the following terms:

1. The Bidder has read and understands the terms and conditions of the IFB and makes its Bid in accordance with those terms and conditions.

2. The items offered in the Bid will conform to the specifications in the IFB, without exceptions or qualifications.

3. The Bidder has determined its Bid prices and amounts independently, without consultation, communication, or agreement with any other contractor, bidder, or potential bidder, excepting contacts with potential subcontractors or suppliers for this Contract.

4. The Bidder has not disclosed the Bid prices or amounts to any other firm or person who is a bidder or potential bidder, nor will the Bidder disclose the Bid prices or amount to such persons before Bid Opening Time.

5. The Bidder has not attempted, and agrees it will not attempt, to induce any firm or person to refrain from bidding on the Contract, to submit a bid higher than the Bidder's price(s) or amount, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

6. The Bidder submits its Bid 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 bid.

7. To the best of the knowledge of the person signing the Bid for the Bidder, the Bidder, 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 on any public contract, except as disclosed by the Bidder in its Bid.

8. Neither the Bidder, nor any of its subcontractors or suppliers included in this Bid, is under suspension or debarment by the Commonwealth, or any governmental entity, instrumentality, or authority, and if the Bidder cannot so certify, then it shall submit with its Bid a written explanation of why it cannot make such certification.

9. To the best of the knowledge of the person signing the Bid for the Bidder, except as the Bidder has otherwise disclosed in its Bid, the Bidder 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 Bidder that is owed to the Commonwealth.

10. All of the Bidder's information and representations in the Bid are material and important and will be relied upon by the Commonwealth in awarding the Contract and by any Purchaser issuing a PO under the Contract. DGS will treat, and any Purchaser may treat, any Bidder misstatement as fraudulent concealment of the true facts relating to the Bid submission, as a punishable offense under Section 4904 of the Pennsylvania Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes.

11. In accordance with Section 6 of the Standard Terms and Conditions, the Bidder understands that it has no expectation or guarantee of any specific quantity or number of POs from prospective Purchasers.

12. Neither DGS nor any Commonwealth agency will make purchases under the Contract. Only third-party Purchasers as defined in Section 2 of the Standard Terms and Conditions may issue Contract POs.

b. Each Bidder, by making its Bid, authorizes all Commonwealth agencies to release to DGS information related to liabilities to the Commonwealth including, but not limited to, taxes, unemployment compensation, and workers' compensation liabilities.

c. If DGS awards a Contract to the Bidder, the Bidder agrees that it intends to be legally bound to the Contract, which is formed between DGS and the Bidder, and to any PO from a Purchaser under the Contract.

3. PRICES:

DGS will require each Contractor to provide the awarded items to Purchasers issuing POs under this Contract at the prices quoted in the Bid for the duration of this Contract. The Contractor may offer voluntary price reductions and provide the awarded items at prices that are lower than its Contract prices.

4. CONTRACT DELIVERABLES:

Unless otherwise specified in the Special Terms and Conditions, all products offered by Bidders must be new or remanufactured. A "new" product is one for which the Purchaser will be the first user after the product is manufactured or produced. A "remanufactured" product is one that:

- has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item;
- does not, in DGS's sole discretion, differ in appearance from a new item; and
- has the same warranty as a new product.

Unless otherwise specified in the Special Terms and Conditions, a Bidder may propose only new and remanufactured products in its Bid. This clause shall not be construed to prohibit Bidders from offering products with recycled content, provided the product itself is new or remanufactured.

5. MODIFICATION OR WITHDRAWAL OF BID:

A Bidder may withdraw or modify its Bid only in accordance with the following requirements:

a. A Bidder may modify its Bid prior to the Bid Opening Time as follows:

1. If a Bidder intends to modify its Bid by written notice, the Bidder must deliver the Bid modification in a sealed envelope with a notation on the cover identifying the assigned Contract Number, marked with the words "Bid modification" on the face of the envelope. The notice contained in the sealed envelope must identify the particular Bid to be modified, including the specific modification being made, and the Bidder must sign the notice in ink, including evidence of authorization for the individual signing to modify the Bid on the Bidder's behalf. DGS will reject any Bid modification received after the Bid Opening Time.

2. If a Bidder intends to modify its Bid in person, the individual who will modify the Bid must arrive in the Bid Room prior to the Bid Opening Time, show a photo identification, and provide evidence of his/her authorization by the Bidder to modify the Bid. If a Bidder intends to modify its Bid in person, the Bidder may do so only in the presence of a DGS employee, who will observe the Bidder representative's actions to modify the Bid without reading either the original Bid or the modification.

b. A Bidder may withdraw its bid prior to the exact Bid Opening Time as follows:

1. If a Bidder intends to withdraw its Bid by written notice, the Bidder must deliver a written withdrawal that specifically identifies the Contract number for the Bid being withdrawn. The Bidder must sign the notice in ink, including evidence of authorization for the individual signing to withdraw the bid on the Bidder's behalf. Except as provided in Subsection 5.c. of these General Conditions, DGS will reject any Bid withdrawal received after the Bid Opening Time.

2. If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Room prior to the Bid Opening Time, show a picture

identification, and provide evidence of his/her authorization by the Bidder to withdraw the Bid.

c. A Bidder is permitted to withdraw a Bid after the Bid Opening Time only under the following conditions:

1. The Bidder submits a written request for withdrawal.
2. The Bidder presents credible evidence in its written request that the reason for a lower Bid price was a clerical or mathematical mistake as opposed to a mistake in judgment and was due to an unintentional arithmetical error/omission of a substantial quantity of work, labor, material, or services in the direct computation of the Bid amount.
3. The Bidder's request for relief with supporting documentation of the error must reach the Issuing Office within three business days after the Bid opening, and before the Contract award.
4. The Bid withdrawal cannot result in the award of the Contract on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the Bidder has a substantial interest.
5. The Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.

d. Except as provided in subsection c. of this Section 5., a Bidder may not modify, withdraw, or cancel its Bid for a minimum period of 90 days following the date of Bid opening. This award period may be extended by mutual agreement. If the Bidder withdraws its Bid (except as permitted in subsection c.) prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB, including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the Bidder shall be liable to DGS for costs and damages associated with any re-award or re-bid.

e. After the receipt of Bids, the Issuing Office shall have the right to contact any Bidder to:

1. clarify the Bid to confirm the Issuing Office's understanding of statements or information in the Bid, or
2. obtain additional information on the items offered, provided the IFB does not require the rejection of the Bid for failure to include such information.

6. REJECTION OF BIDS:

DGS reserves the right to reject any and all Bids, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid in the best interests of the Commonwealth, as determined in DGS's sole discretion. An unsigned Bid is not a waivable technical defect or informality.

7. AWARDS:

DGS is using the multiple award method of contract award as set forth in Section 517 of the Commonwealth Procurement Code, 62 Pa.C.S. § 517, to contract for the items covered by this IFB. Unless DGS rejects all Bids, and except as otherwise provided by law, DGS will award a COSTARS contract by issuing a copy of the fully-executed and approved contract documents to all responsible and responsive Bidders.

a. To be eligible for Contract award, a Bidder must be a manufacturer, wholesaler, dealer, distributor, or reseller of the offered goods. A Bidder need not offer the full spectrum of goods encompassed in this procurement, but DGS encourages the Bidder to offer the widest possible selection of goods possible within the scope of this Invitation For Bids.

b. If the Bidder is not a manufacturer, it must submit written proof from the manufacturer of the Bidder's authorization to sell the manufacturer's goods and materials, as required by this Contract (the proof need not be specific to this procurement). If the manufacturer defines the area in which

the Bidder is authorized to sell its products, the Bidder shall include the manufacturer's description of the Bidder's authorized sales territory. If the Bidder sells through a manufacturer's authorized distributor, DGS will accept the distributor's written authorization to the Bidder permitting the Bidder to sell the manufacturer's goods and materials. The manufacturer's written authorization should state that the distributor has the authority to pass the manufacturer's sales authorization through to the reseller.

c. DGS will award COSTARS contracts by issuing a copy of the fully-executed and approved contract documents to all responsible and responsive Bidders. Because DGS will award a contract to every responsive and responsible Bidder, pricing is not a determinative factor for this procurement. However, the Bidder should understand that its pricing may be a key consideration in a Purchaser's selection of a Contractor.

d. A Bidder will not be excluded from the bidding process if it is unable to provide a dedicated website for Purchasers ("COSTARS Website"). While DGS strongly encourages the Contractor to provide a COSTARS Website (see Section 9 of the Standard Terms and Conditions), it is not required and will NOT be a factor in contract award.

e. The Bidder shall include one hard (printed) copy of its bid in its bid package. In addition, the Bidder is encouraged to include in its bid package an electronic submission of all offered items and pricing, and to submit the Bid Item Workbook in an unprotected, electronic format (e.g. Microsoft Word, Excel, Adobe Acrobat) on a diskette or CD along with the hard copy.

8. APPLICABILITY:

COSTARS Contracts are solely for the use of local public procurement units and state affiliated entities, as defined in Section 2 of the COSTARS Contract Standard Terms and Conditions. Commonwealth executive and independent agencies are prohibited from procuring items through COSTARS contracts.

9. ADMINISTRATIVE FEES:

DGS will award COSTARS Contracts to Bidders for the sole benefit of the third party Purchasers. Contractors are required to pay the appropriate Administrative Fee in each contract period, including a nonexclusive license to use the COSTARS Brand as more fully described in Section 35 of the COSTARS Contract Standard Terms and Conditions, and according to the following criteria:

Bidder-Contractor Classification	Required Administrative Fee
Qualified Small Business , a business in the United States which is independently owned, is not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).	\$500
All Other Bidders-Contractors	\$1,500

a. The Bidder shall submit with its Bid a check for the appropriate amount, payable to "Commonwealth of PA". The Bidder must pay the appropriate fee to receive a Contract award. DGS may reject as nonresponsive any Bid where the fee is not included with the Bid package. If the Bidder is a Qualified Small Business, the Bidder must complete, sign and submit Attachment B, Small Business Certification, with its Bid. For any Bidder whose Bid is rejected for other reasons, where the Bidder has paid the fee, DGS will refund the payment.

b. Unless terminated in accordance with the provisions of Subsection 3.c. of the COSTARS Contract Standard Terms and Conditions, the Contract will renew automatically on the anniversary of the Effective Date, (1) provided that the Contractor has submitted a check for the renewal fee

made payable to “Commonwealth of PA” for the appropriate amount prior to the renewal date; (2) either party provides the other party with written notice that it does not intend to renew; or (3) the Contract was earlier terminated in accordance with the provisions of Section 24 of the Standard Terms and Conditions.

10. CONTRACT SECURITY:

No performance security is required for this bid.

11. ESTIMATED QUANTITIES:

As there are multiple awards and no requirement for buyers to purchase from any particular awarded vendor, there is no reliable method to predict with any level of certainty any expected Contract volume.

12. DEPARTMENT OF STATE REGISTRATION:

If the bidder is using a fictitious name on its bid documents, or if the bidder is a foreign corporation (incorporated outside of Pennsylvania), the bidder certifies that its name is recorded accurately on the bid form and that it has complied with the Department of State's registration requirements under Pennsylvania law. See Attachment A for instructions on how to confirm registration on the Department of State's website.

13. BID PROTEST PROCEDURE:

DGS's bid protest procedures are set forth on the DGS website at www.dgs.state.pa.us, and DGS will disregard any protest that is not filed in compliance with these procedures. The Bidder acknowledges that a Contractor may not file any protest, claim, or other action against DGS or the Commonwealth when such action is based upon a PO, and that it shall file any such action directly with the Purchaser.

14. QUESTIONS:

Interested parties shall direct any questions concerning Contract conditions and specifications to the attention of the DGS Commodity Specialist identified in the IFB. DGS will accept written questions and comments concerning this procurement via email to rmacavoy@state.pa.us. DGS posts the written questions and official answers on its website to give all prospective bidders equal access to the information. DGS will post all questions and official answers as addenda to the bid documents on the DGS website in the order that questions are received.

Direct all questions concerning this IFB to:

Roxann MacAvoy
rmacavoy@state.pa.us
c/o DGS Bureau of Procurement
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101-1914

COSTARS CONTRACT STANDARD TERMS AND CONDITIONS

1. PURPOSE OF CONTRACT

The Department of General Services ("DGS") is establishing this COSTARS Contract ("Contract") for the exclusive use of local public procurement units and state affiliated entities in accordance with the requirements of Act 77 of 2004, amending Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902.

2. PURCHASERS UNDER THE CONTRACT

a. The Contractor understands that it will not be providing any services or items (Collectively referred to as "Contract items") directly to DGS or any other Commonwealth agency under the Contract. DGS is acting as a facilitator for local public procurement units and state-affiliated entities (together, "Purchasers") who may wish to purchase supplies under the Contract. A "local public procurement unit" is:

- Any political subdivision;
- Any public authority;
- Any tax exempt, nonprofit educational or public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- To the extent provided by law, any other entity, including a council of governments or an area government that expends public funds for the procurement of supplies, services, and construction.

A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education.

b. DGS requires Purchasers to register as COSTARS Members to gain access to the COSTARS Members-only website. Only those entities registered with DGS may purchase from the Contract. Therefore, the Contractor agrees to make Contract sales **only** to DGS-registered COSTARS members. Currently, there are several thousand potential Purchasers registered with DGS. A list of the registered entities, updated frequently, is available on the DGS COSTARS Website at <http://www.dgsweb.state.pa.us/COSTARSReg/Supplier.aspx?costarsNav=|>.

Should the Contractor become aware of, or be contacted by, any potential purchaser not currently registered as a COSTARS member, where the potential purchaser believes it may qualify for, and wishes to participate in, the COSTARS Program, the Contractor may refer the potential purchaser to <http://www.dgsweb.state.pa.us/COSTARSReg/RegForm.aspx?costarsNav=> to complete the DGS COSTARS member online application.

c. Purchasers have the option to purchase from a Contract awarded under this Invitation For Bids (IFB), from a DGS Statewide contract with awarded contractor(s) for Commonwealth agencies' use (where the Statewide contract permits Purchasers to make use of that contract), from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements.

d. Purchasers who participate in this Contract and issue purchase orders ("POs") to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a Purchaser unless substantial interests of the Commonwealth are involved.

3. TERM OF CONTRACT

The term of the Contract shall commence on the Effective Date (as defined in this Section 3) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

a. The Effective Date shall be the date the contract is fully executed and all approvals have been obtained as required by Commonwealth contracting procedures. The Contract shall not be legally binding until after DGS sends the fully-executed Contract to the Contractor.

b. The Contractor shall not start performance under this Contract, nor shall the Contractor represent to any prospective Purchaser that the Contractor is authorized to provide supplies under this Contract, until the Effective Date has arrived and the Contractor has received a copy of the

fully-executed Contract from DGS. The Contractor understands and accepts that a Purchaser has no obligation to pay the Contractor for any supply furnished, work performed, or expenses incurred under this Contract at any time, and that only a PO from a Purchaser shall trigger any delivery under this Contract.

c. The Contract will renew automatically on the anniversary of the Effective Date unless:

1. The Contractor has failed to submit a check for the appropriate amount prior to the anniversary date for payment of the contract renewal fee, made payable to "Commonwealth of PA" according to the following criteria:

Contractor Classification	Required Administrative Renewal Fee
Qualified Small Business , a business in the United States which is independently owned, is not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).	\$500
All Other Bidders-Contractors	\$1,500

2. Either party provides the other party with written notice that it does not intend to renew; or

3. The contract was earlier terminated in accordance with the provisions of Section 24 of the Standard Terms and Conditions.

4. PURCHASE ORDERS

Purchasers may issue POs against the Contract either directly using the Contractor's dedicated website ("online orders") or any other means the Contractor may provide. Each PO will incorporate the Contract terms and conditions. The Contractor may provide a form PO for Purchaser use, or the Purchaser may use its own PO form. The Contractor shall verify the Purchaser's membership via the "List of COSTARS Members" on the COSTARS website at <http://www.dgs.state.pa.us/costars>.

Any PO delivered or transmitted to the Contractor after 4:00 p.m. may be considered as received the following business day.

For electronically-issued POs, the following terms apply:

a. Upon receipt of a PO, the Contractor shall promptly deliver or transmit an acknowledgement of the PO to the Purchaser. Both the Contractor's obligation to deliver, and the Purchaser's obligation to receive and pay for, delivered items, shall attach only when the Purchaser has received the Contractor's acknowledgement of the PO.

b. The parties agree that no writing other than the PO and Contractor's acknowledgement shall be required to make the PO legally binding, notwithstanding contrary requirements in any law. The parties agree not to contest the validity or enforceability of an electronic PO or acknowledgement under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements are required to be in writing signed by the parties. A printed record of any electronic PO or acknowledgement will be admissible as evidence in any judicial, arbitration, mediation, or administrative proceedings 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 POs or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the PO or acknowledgement were not in writing or signed by the parties. A PO or acknowledgement shall be deemed to be genuine for all purposes if it is transmitted to the location designated in these Terms and Conditions for such documents.

c. Each party shall take immediate steps to verify any document that appears to be garbled in transmission or improperly formatted, including retransmission of any such document.

5. INDEPENDENT CONTRACTOR

In performing the required Contract obligations, the Contractor agrees that it will act as an independent contractor and not as an employee or agent of the Commonwealth, DGS, or any Purchaser.

6. THIRD PARTY BENEFICIARIES

The Contractor understands and acknowledges that there is no guarantee that any prospective Purchaser will place a PO under this Contract, and that it is within the sole discretion of the Purchaser whether to procure from the Contract or to use another procurement vehicle.

a. The selection of a particular contractor to provide a Contract item to a particular Purchaser will be based upon best value or return on investment, within the sole discretion of the Purchaser. The Contractor shall have no right to protest Purchaser's selection of another contractor under this procurement or any other contract.

b. The Contractor agrees that any dispute concerning a particular PO shall be resolved between the Contractor and the Purchaser, without DGS participation.

7. COMPLIANCE WITH LAW

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

8. ENVIRONMENTAL PROVISIONS

In the performance of this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

9. CONTRACTOR DEDICATED WEBSITE

DGS strongly encourages the Contractor to provide a dedicated website for Purchasers ("COSTARS Website"), including a complete listing with Contract pricing for all items required under the Contract, product and customer support information, and the capability for COSTARS purchasers to place online orders for Contract items. If the Contractor provides a COSTARS Website, the Contractor agrees to permit DGS to provide a link from the DGS website to the COSTARS Website to facilitate access by prospective Purchasers.

10. PRICING, COMPENSATION, AND INVOICES

The Contractor shall furnish the awarded item(s) to Purchasers issuing POs under this Contract at the price(s) quoted in the Contractor's bid for the term and any and all renewals of this Contract, as further specified in this Section. After delivering the Contract item(s) to the Purchaser, the Contractor shall promptly send an invoice, including the PO number and itemized by line item, to the Purchaser's address specified in the PO. The invoice should include only those amounts due under the PO for items timely and satisfactorily delivered to the Purchaser.

a. The Contractor may offer voluntary price reductions and provide Contract items at prices lower than the Contractor's Contract prices for the items. The Contractor shall be compensated only for item(s) delivered to and accepted by the Purchaser.

b. The pricing for each Contract item shall include the cost of delivery to any destination within the Commonwealth of Pennsylvania as may be further limited by the Special Terms and Conditions, and there shall be no minimum order for shipments qualifying for F.O.B. delivered prices.

c. Because some smaller Purchasers may not have readily available Internet access, awarded Suppliers will also be required to provide hard copies of pricing information via fax or mail to any Purchaser requesting such information within five (5) working days after receipt of the Purchaser's request.

d. The Contractor's price shall include the warranty specified in Section 13 below.

11. PAYMENT

Purchasers electing to participate in the Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor. DGS shall require the Purchaser to put forth reasonable efforts to make payment by the Required Payment Date, defined as (a) the date on which payment is due under the PO terms, (b) 30 days after a Purchaser receives a completed invoice for items the Purchaser has

accepted at its "Bill To" address on the PO if no payment date is specified in the PO, or (c) any later payment date specified on the invoice.

a. The Purchaser may delay payment if the invoice amount is greater than the Contract price(s).

b. The Contractor shall not construe any payment as the Purchaser's acceptance of any Contract item(s).

c. DGS, on behalf of the Purchasers, reserves the right for any Purchaser to conduct testing and inspection after payment within a reasonable time after delivery, and for that Purchaser to reject any or all Contract item(s) if such post payment testing or inspection discloses any defect or failure to meet Contract specifications.

d. The Contractor shall specify in the Bid Item Workbook whether it will accept any Purchaser credit card(s) as a method of payment and if so, the particular type(s) of credit card(s) accepted.

12. TAXES

Certain Purchasers may be exempt from excise taxes imposed by the Internal Revenue Service, Pennsylvania state sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental taxes. A Purchaser may be registered with the Internal Revenue Service to make tax-free purchases. DGS will require each Purchaser claiming any tax exemption to complete the appropriate areas on the PO form to notify the Contractor of the applicable tax exemptions. The Pennsylvania Department of Revenue's regulations provide that exemption certificates are not required for sales made to governmental entities and no such certificates are issued.

13. WARRANTY

The Contractor warrants that all Contract item(s) it may furnish, either itself or through its agents and subcontractors, shall be free and clear of any defects in workmanship or materials.

a. The Contractor shall pass through to the Purchaser the manufacturer's warranty for all Contract Items. The Contractor shall correct any problem with the Contract Item(s) and/or replace any defective part with a part of equivalent or superior quality, without additional cost to the Purchaser.

b. The Contractor warrants that all items to be provided under the Contract meet the requirements of Section 4 of the Instructions to Bidders ("Contract Deliverables").

c. The warranty period for a Contract Item shall commence upon delivery of the Contract Item to the Purchaser at the Purchaser's specified address.

14. DELIVERY

The Contractor shall deliver all item(s) F.O.B. Destination to the address specified on the PO.

a. The Contractor shall deliver all items ordered from this Contract within time period specified in the Contract, and, if no time period is specified, within a reasonable time, not to exceed 30 calendar days after receipt of any order, unless the Contractor and the Purchaser shall otherwise agree in writing. Time is of the essence in the performance of this Contract and, in addition to any other remedies, the Purchaser may terminate any PO for failure to make delivery as specified in this Contract and the PO.

b. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to the Purchaser's receipt of the items. The Contractor also agrees that such loss, injury, or destruction shall not release the Contractor from any of its contractual obligations to the Purchaser or DGS.

15. SALES REPORTS

The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.

a. The Contractor shall submit the reports via the web-based COSTARS Suppliers' Gateway at www.dgs.state.pa.us/costars. If a Contractor does not have access to the internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US

Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place,
555 Walnut Street, Harrisburg, PA 17101-1914.

b. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the product category, sales date, and dollar volume of sales to the specific Purchaser for the reporting period.

c. Failure to provide the quarterly sales report in the specified time and format constitutes a default under Section 24 of these Standard Terms and Conditions and may result in termination of the contract.

16. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any item(s) or process covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided or used in the performance of this Contract or any PO issued under this Contract. The Contractor shall defend any suit or proceeding brought against DGS or any Purchaser on account of any alleged patent, copyright, or trademark infringement in the United States of the item(s) provided or used in the performance of this Contract or any PO, upon condition that DGS or the Purchaser shall provide prompt notification to the Contractor in writing of such suit or proceeding; full right, authorization, and opportunity to conduct the defense; and all reasonable information and cooperation required for the defense. As principles of governmental or public law may be involved, DGS or any Purchaser may participate in or choose to conduct, in its sole discretion, the defense of any such action. If DGS or any Purchaser furnishes information and assistance at the Contractor's written request, it shall be furnished at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold DGS and any Purchaser harmless from all damages, costs, and expenses, including attorney's fees that the Contractor, DGS, or the Purchaser may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any item(s) provided or used in the performance of the Contract or any PO. If any of the item(s) provided by the Contractor are held in such suit or proceeding to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement item(s), replace them with noninfringing equal performance item(s), or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which is obtained contemporaneously with the infringing item(s), or, at the option of the Purchaser, only those items of equipment or software which are held to be infringing, and to pay the Purchaser 1) any amounts the Purchaser paid towards the item(s) of the product, less straight line depreciation; 2) any license fee the Purchaser paid for the use of any software, less a reasonable amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance the Purchaser paid to the Contractor. The Contractor's obligations under this Section continue without time limit. No costs or expenses shall be incurred for the Contractor's account without its written consent.

17. OWNERSHIP RIGHTS

Each Purchaser issuing a PO under this Contract shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Purchaser as part of the performance of the PO.

18. ASSIGNMENT OF ANTITRUST CLAIMS

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

19. HOLD HARMLESS PROVISION

The Contractor shall hold the Commonwealth and each Purchaser harmless from, and indemnify them against, any and all claims, demands, and actions based upon or arising out of any activities the Contractor and its employees and agents may perform under this Contract and any PO. At the request of DGS or any Purchaser, the Contractor shall defend any and all actions brought against DGS or any Purchaser based upon any such claims or demands. The Contractor shall hold the Commonwealth and

DGS harmless from any liability whatsoever arising out of the specifics of a Purchaser-issued PO under this Contract.

20. AUDIT PROVISIONS

DGS and its designees, including without limitation any Purchaser issuing a PO under this Contract, shall have the right, at reasonable times and at a site DGS may designate, to audit the Contractor's books, documents, and records to the extent that such books, documents, and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records that will support its prices charged and costs incurred for the Contract.

The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to DGS, Purchasers who have issued Contract POs, and/or their authorized representatives.

21. INSPECTION AND REJECTION

No item(s) received by any Purchaser issuing a Contract PO shall be deemed accepted until the Purchaser has had a reasonable opportunity to inspect the item(s). The Purchaser may reject any item(s) discovered to be defective or failing to conform to the Contract specifications upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. The Contractor shall have the duty to remove rejected item(s) from the Purchaser's premises without expense to the Purchaser within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the Purchaser shall have the right to dispose of the item(s) as its own property and shall retain that portion of the proceeds of any sale that represents the Purchaser's costs and expenses for the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with other non-defective items conforming to the specifications. If the Contractor fails, neglects, or refuses to do so, the Purchaser shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies then or later due to the Contractor, the difference between the price stated in the Contract and the actual cost of the item(s) to the Purchaser.

22. DEFAULT

a. DGS or any Purchaser may, subject to the provisions of Section 23 of this Contract ("Force Majeure"), and in addition to its other rights under this Contract, declare the Contractor in default under the Contract as to DGS, or under any PO issued under the Contract as to the issuing Purchaser, by written notice to the Contractor. DGS may terminate (as provided in Section 24 of this Contract, "Termination Provisions") the whole or any part of this Contract, or in the case of any Purchaser, terminate a PO issued under this Contract, for any of the following reasons:

1. Failure to deliver the awarded item(s) within the time specified in the Contract or PO or as otherwise specified;
2. Improper delivery;
3. Failure to provide an item or items conforming with the specifications referenced in the Invitation For Bids;
4. Delivery of a defective item;
5. Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
6. Insolvency or bankruptcy;
7. Assignment made for the benefit of creditors;
8. Failure to protect, to repair, or to make good any damage or injury to property; or
9. Breach of any provision of this Contract or any PO.

b. In the event that any Purchaser terminates a PO as provided in Subsection a. of this Section 22, any Purchaser may procure, upon such terms and in such manner as it determines, on item(s) similar or identical to those in any PO so terminated, and the Contractor shall be liable to Purchaser for any reasonable excess costs for such similar or identical item(s) included within the terminated part of the Contract.

c. If the Contract is terminated in whole or in part as provided in Subsection a. above, a Purchaser, in addition to any other rights provided in this Section 22, may require the Contractor to transfer title and deliver immediately to the Purchaser in the manner and to the extent directed by the Purchaser, such partially manufactured or delivered item(s) as the Contractor has specifically produced or specifically acquired for the performance of such part of the PO as has been terminated. Except as provided below, payment for any partially manufactured or delivered item(s) accepted by the Purchaser shall be in an amount agreed upon by the Contractor and the Purchaser. The Purchaser may withhold from amounts otherwise due the Contractor for such partially manufactured or delivered item(s), such sum as the Purchaser determines to be necessary to protect the Purchaser against loss.

d. The rights and remedies of DGS and the Purchaser provided in this Section 22 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

e. Failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by DGS or the Purchaser of any 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 against DGS as set forth in Section 25 of this Contract, the Contractor's exclusive remedy against DGS shall be to seek damages in the Board of Claims.

g. In the event a Purchaser terminates a PO under this Contract, the Contractor's exclusive remedy shall be against the Purchaser and not against DGS. The Contractor shall seek remedies against any Purchaser under a PO under the laws of the Commonwealth of Pennsylvania as they relate to contract disputes against non-Commonwealth parties, unless the Purchaser is subject to the jurisdiction of the Board of Claims, in which event the Contractor's exclusive remedy shall be to seek damages against the Purchaser before the Board as provided in Title 63 Pa.C.S. Part II, Subchapter C.

23. FORCE MAJEURE

No Purchaser will incur any liability to the Contractor, and the Contractor shall not incur any liability to any Purchaser, if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without its fault or negligence. Causes beyond the control of the Contractor or Purchaser 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.

The Contractor shall notify the Purchaser and the DGS Commodity Specialist orally within five (5) days, and in writing within ten (10) days, of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (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 Purchaser and the DGS Commodity Specialist may reasonably request. After receipt of such notification, the Purchaser and the DGS Commodity Specialist may individually elect either to cancel the Contract or PO, as applicable, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Purchaser and DGS, by notice to the Contractor, may suspend all or a portion of the Contract or PO, as applicable.

24. TERMINATION PROVISIONS

DGS has the right to terminate this Contract, and any Purchaser shall have the right to terminate a PO issued under this Contract, upon written notice to the Contractor, for any of the following reasons:

a. DGS shall have the right to terminate this Contract, and any Purchaser shall have the right to terminate any PO issued under this Contract, for its convenience if DGS or the Purchaser, as applicable, determines termination to be in its best interest. The Contractor is entitled to complete any PO initiated prior to the effective date of the termination for which the Purchaser receives delivery of a satisfactory product, but in no event shall the Contractor fill any POs received after the termination date of this Contract.

b. DGS shall have the right to terminate this Contract, and any Purchaser shall be entitled to terminate any PO issued under this Contract, for Contractor default as defined in Section 22 of this Contract, or for any other cause specified in this Contract or by law upon written notice to the Contractor. If it is later determined that DGS or the Purchaser erred in terminating the Contract or PO for cause, then, at the discretion of DGS or the Purchaser, as applicable, the Contract shall be deemed to have been terminated for convenience under Subsection a. of this Section 24.

25. CONTRACT CONTROVERSIES

a. In the event of a controversy or claim arising out of this Contract (except when the claim relates to a specific PO, as specified in Subsection d. of this Section) the Contractor must, within six months after the cause of action accrues, file a written claim with the DGS contracting officer for a determination and, in the case of a claim involving a PO, with the Purchaser. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.

b. The DGS 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 fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

d. In the event of a controversy or claim arising out of a PO, the Contractor shall file a written claim directly with the Purchaser.

26. ASSIGNABILITY AND SUBCONTRACTING

a. Subject to the terms and conditions of this Section 26, the Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person without the Purchaser's prior written consent, which consent may be withheld at the Purchaser's sole and absolute discretion.

c. The Contractor may not assign, in whole or in part, this Contract or any rights, duties, obligations, or responsibilities under this Contract without DGS's prior written consent, which consent may be withheld at DGS's sole and absolute discretion.

d. Notwithstanding anything else in this Contract, the Contractor may, without DGS's consent, assign its rights to payment under this Contract or any PO issued under this Contract, provided that the Contractor provides written notice of such assignment to the DGS Commodity Specialist and the Purchaser together with a written acknowledgement from the assignee to DGS that any such payments are subject to all of the terms and conditions of this Contract.

e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor, provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

f. DGS's consent to any assignment, other than an assignment of payment as specified in subsection d. of this Section 26, 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 Contract terms and conditions and to assume the Contract duties, obligations, and responsibilities being assigned.

g. Any Contractor change of name that does not change the Contractor's federal identification number shall not be considered an assignment of this Contract. The Contractor shall give the DGS Commodity Specialist and the Purchaser written notice of any such change of name.

27. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

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

a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.

c. The Contractor and subcontractors shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Minority and Women Business Opportunities for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Minority and Women Business Opportunities.

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

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

28. CONTRACTOR INTEGRITY PROVISIONS

a. For purposes of this Section 28 only, the words "confidential information," "consent," "contractor," "financial interest," and "gratuity" shall have the following definitions.

1. **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

2. **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.

3. **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.

4. **Financial interest** means:

A. Ownership of more than a five percent interest in any business; or

B. Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

5. **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

b. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.

d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.

g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form that refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.

k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

29. CONTRACTOR RESPONSIBILITY PROVISIONS

a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of the 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, a written explanation of why such certification cannot be made.

b. The Contractor must also certify, in writing, that as of the date of its execution of the bid/contract, it has no tax liabilities or other Commonwealth obligations.

c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal

government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us> 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

30. AMERICANS WITH DISABILITIES ACT

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 it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subsection a above.

31. HAZARDOUS SUBSTANCES

The Contractor shall provide information to DGS and any Purchaser under this Contract about the identity and hazards of hazardous substances the Contractor may supply or use in the performance of this Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated at 4 Pa. Code Section 301.1 *et seq.*

a. Labeling. The Contractor shall insure that each individual product (as well as the carton, container, or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged, or marked with the information listed in Paragraphs (1) through (4):

1. Hazardous substances:

- A. The chemical name or common name,
- B. A hazard warning, and
- C. The manufacturer's name, address, and telephone number.

2. Hazardous mixtures:

- A. The common name or, if no common name exists, the trade name;
- B. The chemical or common name of special hazardous substances comprising .01% or more of the mixture;

- C. The chemical or common name of hazardous substances comprising 1.0% or more of the mixture;
- D. A hazard warning; and
- E. The manufacturer's name, address, and telephone number.

3. Single chemicals:

- A. The chemical or common name;
- B. A hazard warning, if appropriate; and
- C. The manufacturer's name, address, and telephone number.

4. Chemical Mixtures:

- A. The common name or, if no common name exists, the trade name;
- B. A hazard warning, if appropriate;
- C. The manufacturer's name, address, and telephone number; and
- D. The chemical or common name of either the top five substances by volume or those substances comprises 5.0% or more of the mixture.

A common or trade name may be used only if such a name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The Contractor shall give the hazard warning in conformity with one of the nationally recognized and accepted systems of providing such warnings, consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the hazardous substance or mixture present.

b. The Contractor shall provide Material Safety Data Sheets (MSDS) with the information required for each hazardous substance or hazardous mixture by the Act and regulations. The Contractor must provide an appropriate MSDS to the Purchaser with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Contractor shall provide an appropriate MSDS if the manufacturer, importer, or supplier produces or possesses the MSDS. The Contractor shall also notify the Purchaser when a substance or mixture is subject to the provisions of the Act. The MSDS may be attached to the carton, container, or package to be delivered to the Purchaser at the time of shipment.

32. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract on any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies the Contractor may maintain for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate this Contract without liability.

33. APPLICABLE LAW

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of

Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

34. INTEGRATION

This Contract form, along with the COSTARS Contract Special Terms and Conditions, Invitation For Bids form, and all documents referenced on the forms, as the applicable provisions of the POs issued by the Purchasers, constitute the entire agreement between the parties. No agent, representative, employee, or officer of DGS or the Contractor has authority to make, or has made, any oral or written statement, agreement, or representation which may in any way be deemed to modify, add to, detract from, or otherwise change or alter the terms and conditions of, this Contract. No negotiations between the parties, nor any custom or usage, shall modify or contradict any of the terms and conditions of this Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms, other than in a PO authorized by any individual Purchaser, shall be valid or binding unless accomplished by a written amendment signed by both parties or by a DGS- signed change order on the appropriate Commonwealth form.

35. CHANGES

DGS reserves the right to make changes at any time during the term of this Contract, including any renewals, to:

- a. add or delete materials or services within the scope of the Contract;
- b. procure additional Contractors for the materials and services;
- c. notify the Contractor that the Commonwealth is exercising Contract termination; or
- d. automatically incorporate by reference into this contract any changes to the Commonwealth's Management Directives governing the required standard contract provisions set forth in Sections 27 through 30 of this Contract that may occur at any time during the term of this Contract, provided that the Commonwealth has notified the Contractor of such change.

DGS shall make changes permitted under this Section 35 by notifying the Contractor in writing. The change shall be effective as of the date of the notification of change, unless the change specifies a later effective date. The Contractor agrees to provide Contract supplies or services to all subsequent Purchasers in accordance with the change. If the Contractor does not wish to abide by the changed terms, it may opt out of the contract on written notice to the Commonwealth, such option to be effective at the end of the then-current Contract quarter.

36. COSTARS BRAND

DGS has registered the COSTARS name and logo (together, the "COSTARS Brand") as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under this Subsection.

a. The Contractor shall pay the appropriate Contract fee as more fully described in Section 9 of the Instructions to Bidders for COSTARS Contracts covering its participation in the program, including without limitation any use of the COSTARS Brand, for each Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract year. Failure to pay the fee shall result in termination of the Contract at the end of the then-current Contract period.

b. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:

1. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.
2. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
3. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.

4. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.

5. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.

6. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims, that may otherwise be available under the law in the event of any dispute involving these terms of use.

Attachment C SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT (the "Agreement") is made on [insert date] (the "Execution Date"), by and between _____, a _____ authorized to do business in _____, with its principal offices located at _____ ("Licensor"), and [COSTARS MEMBER] ("Licensee"):

TERMS AND CONDITIONS

A. Definitions.

All capitalized terms used in this Agreement or in Attachments or Appendixes to this Agreement shall have the respective meanings ascribed to them in this Agreement or in the glossary set forth in Paragraph M. All capitalized terms used in this Agreement, unless indicated otherwise, include all derivative forms and variations of the terms.

B. Grant and Scope of License

1. *The parties agree that more than one agency of Licensee 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 the terms and conditions of this Agreement apply to any purchase of products made by Licensee, when the purchase document issued by Licensee includes a reference to this Agreement, 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 Product, terms of any click through agreement included with the Licensed Product, or any other terms purported to apply to the Licensed Product.*

2. Subject to the terms and conditions of this Agreement, Licensor hereby grants Licensee a non-exclusive, non-transferable license to (i) Run the software product(s) identified in Appendix A, (the "Product") as well as any Updates provided by Licensor on Licensee's server, and (ii) use the related documentation in connection with Licensee's authorized use of the Product. (The Product, any Updates thereto, and the related documentation are collectively referred to in this Agreement as the "Licensed Product".)

3. **Authorized Use.** In consideration of the License Fees payable hereunder, Licensee may _____.

4. As between the parties, all rights, title and interest in and to the Licensed Product (and any derivative works thereto) and all underlying Intellectual Property Rights thereto, are and at all times will be, the sole and exclusive property of Licensor or its licensors, as the case may be. The Licensed Product may not be used for the benefit of any third parties not authorized herein, including without limitation, in an outsourcing, timesharing, or Application Service Provider (ASP) arrangement, or in the operation of a service bureau.

5. Licensee may make a reasonable number of copies of the Licensed Product for bona fide back up purposes only. All such copies are subject to the terms and conditions of this Agreement.

6. Licensee shall not (and shall not permit any other party to) translate, decompile, reverse engineer, merge, adapt or modify the Licensed Product or any Updates in any way, and no derivative work may be created therefrom, unless otherwise permitted under the terms of this Agreement. In addition, Licensee shall not (and shall not permit any other party to) avoid, circumvent, or disable any security device, procedure, protocol, or mechanism that Licensor may include, require or establish with respect to the Licensed Product.

7. Licensee shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice placed by Licensor on or in the Licensed Product, and shall ensure that all such notices are reproduced on all copies of the Licensed Product.

8. All rights not expressly granted in this Agreement are reserved to Licensor.

C. Fees

1. When applicable, Licensee agrees to pay Licensor or the contractor or reseller supplying the Licensed Product the License Fees for the Licensed Product and fees for Support Services provided under Section G, below (the "Support Fees"), in the amounts and according to the schedule stated in Appendix A. All License Fees and

Support Fees for the Licensed Product are due and payable within Thirty (30) days of the date of a proper invoice. Any additional and/or subsequent License Fees and Support Fees are due and payable within thirty (30) days of the date of Licensee's receipt of a proper invoice.

2. If the Licensee is making a purchase through its agent by way of a Purchase Order (PO), the PO shall control and take precedence over this Agreement in regards to payment amounts and provisions to the extent there is any conflict. The Licensee shall pay its agent in accordance with the PO and the agent will pay Licensor the amounts set forth in the PO.

3. It is hereby acknowledged that the Licensee is a government entity and thereby exempt from taxation.

D. Confidentiality

1. Each party agrees to secure and protect the Confidential Information of the other in a manner consistent with the maintenance of the other party's rights therein, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information of a similar nature, but in no event less than reasonable efforts. Each party agrees to hold the Confidential Information of the other party in confidence, not to disclose it to others or use it in any way, commercially or otherwise, except as authorized in writing by Licensee or in performance of its obligations under this Agreement.

2. Notwithstanding Section D(1), Confidential Information of a party shall not include information which: (i) is, as of the time of its disclosure or thereafter becomes part of the public domain through a source other than the receiving party; (ii) was rightfully known to the receiving party as of the time of its disclosure; (iii) is independently developed by the receiving party; (iv) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; (v) is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority, or (vi) disclosure of the information is required under the Freedom of Information Act or other right to know type law, whereupon the party subject to same shall provide prompt written notice to the other party prior to such disclosure, so that such party may seek a protective order or other appropriate remedy.

E. Term and Termination

1. The term of this Agreement shall be deemed to have commenced on the Effective Date and shall continue from thereon until terminated by lawful means.

2. In accordance with applicable regulations, either party may terminate this Agreement with written notice if the other party fails to comply with any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of receipt of notice of such breach, provided, however, that Licensor may not terminate this agreement for reasons of nonpayment.

3. In addition to the foregoing, Licensee may terminate this Agreement if Licensor makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy law, or has liquidated its business voluntarily or otherwise, and the same has not been discharged or terminated within forty-five (45) days.

4. Notwithstanding any contrary provision in this Agreement, this Agreement may be terminated at the option of Licensee upon written notice to Licensor if Licensee determines that it is in the best interest of Licensee to terminate the Agreement. If Licensee elects to terminate this Agreement, Licensor shall be entitled to payment for satisfactory services rendered under the Agreement up to the effective date of termination.

5. Any payment obligation or portion thereof of Licensee created by this Agreement is conditioned upon the availability of funds which are appropriated or allocated for the payment of such an obligation or portion thereof; provided, however, that Licensee will request such funds each year during the Term. If such funds are not allocated and available, this Agreement may be terminated by Licensee at the end of the period for which

funds are available. No penalty shall accrue to Licensee in the event this provision is exercised, and Licensee shall not be obligated or liable for any future payments due for any damages as a result of termination under this Article.

6. Immediately upon termination of this Agreement, Licensee shall: (i) pay all amounts owed to Licensur, or; (ii) cease all use of the Licensed Product and; (iii) return to Licensur all copies of the Licensed Product and any other Confidential Information or proprietary materials of Licensur in its possession or in Escrow; and (iv) certify in writing Licensee's compliance with (ii) and (iii), above.

F. Warranties and Disclaimer; Limitation of Liability; Indemnification

1. Licensur warrants that it has the full authority to grant the rights granted to Licensee herein. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, AND EXCEPT AS MAY BE OTHERWISE SET OUT IN THIS AGREEMENT, LICENSOR DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE LICENSED PRODUCTS AND UPDATES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, THE LICENSED PRODUCTS AND UPDATES ARE PROVIDED "AS IS" AND WITH ALL FAULTS, AND LICENSEE UNDERSTANDS THAT IT ASSUMES ALL RISKS OF THEIR USE, QUALITY, AND PERFORMANCE.

2. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, LICENSOR'S TOTAL LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT FOR ANY REASON SHALL BE LIMITED TO DIRECT DAMAGES UP TO THE TOTAL AMOUNT OF FEES PAID HEREUNDER DURING THE INITIAL TERM OR THE THEN-CURRENT RENEWAL TERM, AS APPLICABLE. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS.

3. Licensur agrees to indemnify and defend Licensee and its elected and appointed officers, officials, employees and agents from and against any action, claim, demand, or liability, including reasonable attorney's fees and costs, arising from or relating to a claim the Licensed Product infringes upon any United States or foreign patents, copyrights, or trademarks of a third party and in any such suit or proceeding will satisfy any final award for such infringement, including costs. Licensee agrees to give Licensur prompt notice of any such claim of which it learns. No settlement which imposes any liability or damages of any kind on Licensee shall be made without Licensee's prior written consent, which shall not be unreasonably withheld or delayed. In all events, Licensee 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 Licensur that, in the event it requests that Licensee provide support to Licensur in defending any such claim, Licensur shall reimburse Licensee for all expenses (including attorneys' fees, if such are made necessary by Licensur's request) incurred by Licensee for such support. Licensur shall pay all damages and costs awarded therein against Licensee arising from Licensur's indemnification obligation under this paragraph. If information and assistance are furnished by Licensee at Licensur's written request, it shall be at Licensur's expense, but the responsibility for such expense shall be only that within Licensur's written authorization.

If, in Licensur's opinion, the Licensed Product, is likely to or does become subject to a claim of infringement, then without diminishing Licensur's obligation to satisfy any final award, Licensur may, at its option, substitute functional equivalents for the Licensed Product or, at Licensur's option and expense, obtain the rights for Licensee to continue the use of the Licensed Product. If the Licensed Product is in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, Licensur shall, at its own expense and at its option, either procure the right to publish or continue use of the Licensed Product, replace the Licensed Product with non-infringing items, or modify the Licensed Product so that it is no longer infringing.

If neither alternative (i) nor (ii) is reasonably available, then Licensee may terminate the license for the infringing Licensed Product and no further payment obligations shall be due from Licensee therefor, and Licensur agrees to pay Licensee: (1) any amounts paid by Licensee for any future period under this Agreement less a reasonable amount based on the acceptance and use of the Licensed Product; (2) any license fee less an amount for the period of usage of any software; and (3) the prorated portion of any prepaid service fees representing the time remaining for any future period under this Agreement..

The obligation to indemnify Licensee, under the terms of this Section F(4), shall be Licensur's sole and exclusive obligation and Licensee's exclusive remedy for the infringement or misappropriation of intellectual property. The obligations of Licensur under this Section continue without time limit and survive the termination of this Agreement.

4. Licensur shall have no liability or obligation under Section F(4) above, arising from or related to: (i) modification of the Licensed Product by Licensee; any material provided by Licensee to Licensur and incorporated into, or used to prepare, the Licensed Product; (ii) use of the Licensed Product in other than its specified operating environment; (iii) the combination, operation, or use of the Licensed Product with other products, services, or deliverables not provided by Licensur as a system or the combination, operation, or use of the Licensed Product with any products, data, or apparatus that Licensur did not provide; (iv) infringement of a non-Licensur product alone; (v) Licensee's distribution, marketing or use beyond the scope contemplated by this Agreement; (vi) Licensee's failure to use corrections or enhancements made available to Licensee by Licensur; (vii) the Running of the Licensed Product after Licensur has notified Licensee to discontinue Running due to an infringement claim (existing or prospective); or (viii) the use of a version of the Licensed Product that has been superseded by a newer version, if the infringement would have been avoided by use of a current version which Licensur has provided or made available to Licensee.

Licensee assumes all risks and liabilities for injury to or death of any person or damage to any property, in any manner arising out of possession, use, or operation of the Licensed Product by Licensee whether such injury or death be with respect to agents or employees of Licensee or of third parties, and whether such property damage be to Licensee's property or the property of others; provided, however that said damage or injury results from the negligence of Licensee, its agents or employees, and provided that judgment has been obtained against the Licensee in a court of competent jurisdiction. This provision shall not be construed to limit the sovereign immunity of the Licensee.

G. Maintenance and Support

1. During the Term of this Agreement, Licensur agrees to provide the maintenance and support services as set forth in Appendix A (collectively, the "Support Services") for the Licensed Product. The parties agree that Licensur shall have no obligations to provide any maintenance or support-related services under this Agreement except as expressly set forth herein.

2. Licensee will designate, in writing, no more than two persons who will be Licensee's primary support contacts for Support Services (the "Support Contacts") related to each PO. Licensee agrees that all Support Services inquiries from Licensee's individual users will be directed to a Support Contact and Licensee's communications with Licensur for Support Services will be through the Support Contacts.

3. All Updates and all other deliverables and work product hereunder provided to Licensee shall be subject to the terms and conditions of this Agreement, unless otherwise expressly agreed in writing by Licensur. Support Services extend only to the Licensed Product free of any additions or modifications that have not been made or sold by Licensur or its agents.

4. Licensee acknowledges and agrees that the Support Services, Updates, and all other results of Support Services hereunder, and all work product and deliverables thereof (collectively, the "Licensur Materials"), are the sole and exclusive property of Licensur, including all worldwide Intellectual Property Rights embodied in, related to, or represented by, the Licensur Materials.

H. Virus, Malicious, Mischievous or Destructive Programming

Notwithstanding any other provision in this Agreement to the contrary, Licensur shall be liable for any damage to any data and/or software owned or licensed by Licensee if Licensur or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into Licensee's software or computer networks and has failed to comply with Licensee's software security standards. Licensee must demonstrate that Licensur or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. Licensur's liability shall cease if Licensee has not fully complied with its own software security standards.

Licensur shall be liable for any damages incurred by Licensee including, but not limited to, the expenditure of Licensee funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from Licensur's failure to take proactive measures to keep virus or malicious, mischievous or destructive

programming from originating from Licensor 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.).

In the event of destruction or modification of software, Licensor shall eliminate the virus, malicious, mischievous or destructive programming, restore Licensee's software, and be liable to the Licensee for any resulting damages.

Licensor shall be responsible for reviewing Licensee software security standards and complying with those standards.

Licensee may, at any time, audit, by a means deemed appropriate by Licensee, any computing devices being used by representatives of Licensor to provide services to Licensee 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 Licensee's network until the proper installations have been made.

Licensor may use the anti-virus software used by Licensee to protect Licensor's computing devices used in the course of providing services to Licensee. It is understood that Licensor may not install the software on any computing device not being used to provide services to Licensee, and that all copies of the software will be removed from all devices upon termination of this Agreement.

Licensee will not be responsible for any damages to Licensor's computers, data, software, etc. caused as a result of the installation of Licensee's anti-virus software or monitoring software on Licensor's computers.

I. Background Checks

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 access to Licensee's IT facilities, either through on site or remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psplib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access by an IT employee and annually thereafter.

Before Licensee will permit an IT Employee access to Licensee'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 IT 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 Licensee facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Licensee 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 Licensee.

J. Incorporation of Exhibits and Appendices

The following Appendices and Exhibits are attached hereto and incorporated into this Agreement by this reference:

Appendix A – List of Licensed Product and Fees

Appendix B – Maintenance and Support Services (this Appendix may be modified during the term of the Agreement, by including the modified Appendix with the purchase document. No amendment of the Agreement will be required.)

Appendix C – Hardware Specifications

Appendix D – Service Level Agreements

Appendix E – Pricing Tables

K. Purchase Orders

1. The Licensee may issue this Agreement, and any subsequent changes to it, electronically as a Purchase Order (hereinafter Document).

2. The Document will not include an "ink" signature by the Licensee. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Licensee, to authorize Licensor to proceed.

3. Documents may be issued electronically or through facsimile equipment. The electronic transmission of a Document shall require acknowledgement of receipt of the transmission by Licensor.

4. Receipt of the electronic or facsimile transmission of the Document shall constitute receipt of an order.

5. The Licensee and Licensor specifically agree as follows:

i. No handwritten signature by Licensee shall be required in order for the Document to be legally enforceable.

ii. Upon receipt of a Document, Licensor shall promptly and properly transmit an acknowledgement in return. Any order which is issued electronically shall not be considered accepted by Licensor, nor give rise to any obligation to deliver on the part of Licensor, or give rise to any obligation to receive and pay for delivered products on the part of the Licensee, unless and until the electronic order has been acknowledged.

iii. The parties agree that no writing shall be required in order to make the order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Document 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 Document or acknowledgement 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 genuine Documents or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement were not in writing or signed by the parties. A Document or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

L. General

The failure of either party to require performance of any part of this Agreement shall not be deemed a waiver of any present or future right. Modifications of this Agreement shall be binding only if in writing and signed by authorized representatives of both parties. This Agreement, the Licensee's PO, if any, and Licensor's Invoices contain the parties' entire agreement and understanding and they supersede all prior oral and written agreements and understandings. If any provision of this Agreement is held invalid, illegal or unenforceable, all other provisions contained in this Agreement will remain in effect. Neither party may not assign this Agreement without the other party's prior written consent. All notices required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by registered or certified mail, postage prepaid to the address set forth in this Agreement or to such other address as each party may designate from time to time. Licensor acknowledges that mail handling security procedures may delay actual delivery of such notices to the Licensee. The following Sections shall survive the termination or expiration of this Agreement: B(4), D, E, F, and H. 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.

M. Glossary

1. "Run" means to copy, install, use, access, display, run, and otherwise interact with, in its intended manner.

2. "Delivery Date" shall mean the day agreed upon by the parties for Licensor to present the Licensed Product to Licensee for delivery and installation, provided Licensor makes a reasonable attempt to do so on that day.

3. "Effective Date" shall mean the Execution Date, whichever occurs first.

4. "Source Code" shall mean the human-readable version of the Licensed Product supplied to Licensee hereunder.

5. "Intellectual Property Rights" means, collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, including, without limitation, moral rights and similar rights.

6. "Updates" means any update, patch, bug fix or minor modification to the Licensed Products that Licensor provides to Licensee. Once provided, each Update shall be deemed to be included within the Licensed Product.

7. "Confidential Information" means information that the other party considers to be confidential, business and technical information, marketing plans,

research, designs, plans, methods, techniques, processes and know-how, whether tangible or intangible and whether or not stored, compiled or memorialized physically, electronically, graphically or in writing, provided that the other party has notified the party receiving the confidential information that the information is confidential.

8. "Travel Expenses" means any costs incurred by Licensor associated with the transportation, storage or lodging of equipment, supplies, Licensor employees and other items necessary for business use from Licensor headquarters to Licensee's facilities. Travel expenses may include, but are not limited to airfare, hotel costs, and meals if applicable. Any travel expenses paid by the Licensee shall be paid at allowable government travel rates consistent with Management Directive 230.10, unless otherwise first approved by the Licensee's authorized representative.

9. "Travel Time" means the hours and minutes elapsing during transportation of Licensor personnel from Licensor headquarters to Licensee's facilities. Travel time shall not include the first hour of transportation from Licensor headquarters to Licensee's facilities or from Licensee's facilities to Licensor headquarters.

BOTH PARTIES HAVE READ AND AGREE TO BE LEGALLY BOUND BY ALL OF THE FOLLOWING TERMS AND CONDITIONS, ALL OF WHICH ARE INCORPORATED FULLY INTO THIS AGREEMENT.

LICENSOR

By: _____

Name: _____

Title: _____

Date: _____

[COSTARS MEMBER]

By: _____

Name: _____

Title: _____

Date: _____

Appendix A

A. Licensed Product:

The Licensed Product includes _____.

B. Installation Fees:

Licensor will assist Licensee with all installations and configurations, the costs of which are included in the License Fees and consist of Technical and Project Management support in the amount specified below. Additional hours may be purchased in accordance with Licensor's current Commercial Price List for such services.

Project Management/Technical Implementation Hours	[Fill in hours]
---	-----------------

C. License and Other Fees:

Licensor acknowledges the License Fee will be paid to Licensor by Licensee as set forth in Table 1 or Table 2 of Appendix F of the Agreement. The License Fee includes _____ as outlined in Section D, below.

D. Support Fees and Services:

Support Fees for the Licensed Product are included in the License Fees are set forth in Section C of this Appendix A and consist of _____ for a period of [insert years.] years following the Effective Date ("*Initial Support Term*"). The Support Services shall be renewable beyond the Initial Support Term according to the provisions set forth in Section E of this Appendix.

Subject to Licensee's payment of any outstanding License Fees, Licensor will make the following Support Services available to the Licensee:

Standard Maintenance and Support Services

The Licensee shall receive [Insert Hours] hours of Licensee support by phone, email, or if necessary, site visits free-of-charge per year. Time shall be debited in quarter-hour increments. Requests due to failure of or defect in the Licensed Product shall not be charged. Except for defects in the Licensed Product, requests over the allocated hour limit shall be charged on a time and materials basis at the then current rate published in Licensor's Commercial Price List, currently a rate of [insert current rate] per hour in quarter-hour increments plus travel expenses. A request shall only be billable or count towards the allocated free-of-charge hours if Licensor is able to resolve the problem.

Standard updates are included in the Service Fee and will be delivered to the Licensee electronically, in a manner agreed upon by the parties (e.g., email attachment, web download,) or by sending a CD-Rom. Licensee may request that a Licensor technician install the Updates, either on-site, or remotely, in which case, such support shall be offered to Licensee on a time and materials basis at the then current rate published in Licensor's Commercial Price List, currently a rate of [insert current rate] per hour in quarter-hour increments plus travel expenses as described in Attachment 1.

Licensee may at its option allow Licensor technical staff to log into the Licensee's system remotely in order to install Updates or to resolve technical problems.

Enhanced Maintenance and Support Services

The terms of the Enhanced Maintenance and Support Services are set forth in Appendix B of this Agreement.

E. Renewal of Support Services

The Licensee may renew the Support Services set forth in Section D of this Appendix, including Standard Maintenance and Support and Enhanced Maintenance and Support (if applicable), by paying an Annual Support Services Renewal Fee each year subsequent to the Initial Support Term. The Annual Support Services Renewal Fee shall be due within thirty (30) days of the Annual Support Services Renewal Date and Licensee's receipt of a proper invoice. The Annual Support Services Renewal Date shall be the same day each year, beginning the day one (1) year following the Effective Date.

The Support Services Renewal Fee for the first year following the Initial Support Term shall be as follows:

Standard Maintenance and Support: [\$\$\$\$] Enhanced Maintenance and Support: [\$\$\$\$]

The cost for renewals of Standard Maintenance and Support Services and Enhanced Maintenance and Support Services, if applicable, beyond the first year following the Initial Support Term shall be at the prevailing price at the time of purchase, provided, however, that it may not exceed the previous year cost for renewal by more than 3%.

Appendix B

Enhanced Maintenance and Support Services

NOTE: Enhanced Maintenance and Support Services applicable only if elected by Licensee in accordance with Appendix A, Section D of the Contract.

SECTION 1: Statement of Work

The Licensee has requested additional support services related to the Licensed Product. Appendix A, Section D of the Contract provides for certain support fees and support services, and additional services.

As part of the Enhanced Maintenance and Support Services, Licensor shall make several contacts available to the Licensee in three ways, as follows:

Primary Technical Contact:

Primary Number:

Secondary Number:

Primary email:

Secondary Technical Contact:

Primary Number:

Secondary Number:

Primary email:

Lead Account Contact:

Primary Number:

Secondary Number:

Primary email:

Secondary Account Contact:

Primary Number:

Secondary Number (pager):

Primary email:

During normal business hours, Monday through Friday from 8:30 AM EST to 5:30 PM EST Licensee shall use the primary email address to contact an individual, and/or the primary number. For after hour, weekend and holiday support, Licensee shall call _____ or e-mail _____

In order to deal efficiently with multiple problems reported to Licensor by the Licensee, a problem ticket will be created for each problem and one of 3 priority codes will be allocated.

- Level 1: Major Impact - Directly causing a total loss of the Licensee's ability to Use the Licensed Product
- Level 2: Significant Impact - Directly reducing a number of features of the Licensed Product
- Level 3: No Immediate Impact - causing only inconvenience to Licensee, and may include scheduled network changes to Licensee's network architecture

The target maximum times for response for each level are:

Level 1: as soon as possible, targeting a response time of 1 hour (during normal business hours) or 3 hours (during non-business hours) from initial notification to Licensor by the Licensee

Level 2: 24 hours

Level 3: 3 days

SECTION 2. Summary of Enhanced Maintenance and Support:

Licensor has used its experience and best estimates available to provide a summary of various enhanced maintenance and support services as follows:

This appendix B shall remain valid until superseded by a revised addendum mutually endorsed by both parties. It shall be reviewed every six months.

Appendix C

Hardware Specifications (if any)

Service Level Agreement

THE OBLIGATIONS OF LICENSOR UNDER THIS SECTION ARE MATERIAL. LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Service Levels

Provided Licensee maintains and supplies remote access capability to Licensor's system, Licensor will use commercially reasonable efforts to correct and/or provide a work-around for any Software error, or hardware error if Licensor-provided hardware, reported by Licensee in accordance with the priority level reasonably assigned to such error by Licensee and the associated response obligations set forth below:

Priority 1**Urgent**

Defined as a product Error that renders Licensor's system inoperative or causes the system to fail. Licensor promptly initiates the following procedures: (1) initial response to Licensee within thirty (30) minutes; (2) performs escalation procedures as reasonably determined by Licensor's support team (3) provides a work-around solution and/or Error correction within twenty-four (24) hours from initial response.

Priority 2**Minor – system remains operative**

Defined as a product Error that causes only minor impact on the use of Licensor's system. Licensor promptly initiates the following procedures: (1) initial response to Licensee within thirty (30) minutes; (2) performs escalation procedures as reasonably determined by Licensor's support team (3) provides a fix for the Error no later than the next scheduled major release of Licensor's products.

If Licensee experiences a Priority 1 Error and Licensor's products remain inoperative for more than the amount of time specified in the table below during a single calendar month, Supplier will credit the applicable percentage of any prepaid support fees ("SLA Credit") for that calendar month to Licensee's account.

Unavailable Hours	SLA Credit
	0%
	25%
	50%
	100%

The notification of an Error to Licensor (or by Licensor) shall represent the start time for measuring unavailable hours. Service outage end time is based on Licensor's delivery of an acceptable work-around solution and/or Error correction or by Licensor's determination and communication to Licensee that the reported Error qualifies as a Priority 2 error as defined above.

If Licensee experiences a Priority 2 error and Licensor does not resolve the error for more than the amount of time specified in the table below during a single calendar month, Supplier will credit the applicable percentage of any prepaid support fees ("SLA Credit") for that calendar month to Licensee's account.

Unavailable Hours	SLA Credit
	0%
	25%
	50%
	100%

Appendix E
Pricing Tables

Attachment D

Contract Provisions - Right to Know Law

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract.
- b. Unless the Contractor provides the Commonwealth, in writing, with the name and contact information of another person, the agency shall notify the Contractor using the Contractor information provided by the Contractor in SRM [**or** “the legal contact information provided in this Contract”] if the agency needs the Contractor’s assistance in any matter arising out of the Right to Know Law. The Contractor shall notify the agency in writing of any change in the name or the contact information within a reasonable time prior to the change.
- c. Upon notification to the Contractor that the Commonwealth has received a request for records under the RTKL, the Contractor shall fully assist the Commonwealth in responding to the request. Such assistance shall include providing the Commonwealth within three (3) days, access to, and copies of, any document or information arising out of the Contract in the Contractor’s possession that the Commonwealth deems a Public Record (“Requested Information”) and providing such other assistance as the Commonwealth may request in order to comply with the RTKL. If the Contractor is unable to provide the Requested Information within three (3) days for one of the reasons specified in the RTKL, the Contractor must immediately notify the Commonwealth that it will need up to an additional twenty-five (25) days, and must provide in writing the reason the additional time is needed. If the Contractor fails to provide the Requested Information to the Commonwealth within the period specified in this provision, the failure shall be considered an event of default and the Contractor shall pay, indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure. If the Office of Open Records or the Pennsylvania Courts determines that a record in the possession of the Contractor is a public record, liquidated damages of \$500 per day will be assessed for each calendar day beyond the date the Contractor was required to provide the record.
- d. The Commonwealth’s determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. Contractor agrees not to challenge the Commonwealth’s decision to deem the Requested Information a Public Record. If the Contractor considers the Requested Information to be a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the Contractor will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL within five (5) days. If, upon review of the Contractor’s written statement, the Commonwealth still decides to provide the Requested Information, Contractor will not challenge or in any way hold liable the Commonwealth for such a decision.
- e. The Commonwealth will reimburse the Contractor for any costs associated with complying with this provision only to the extent allowed under the fee schedule

Attachment D

established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

f. Contractor agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania Courts. The Contractor agrees to waive 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. 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.