

**Commonwealth of Pennsylvania
State System of Higher Education
Kutztown University**



KURFP-0145

Perkins Loan Billing & Service Agent Services

Issue date: JUNE 5, 2009

Proposals Due:

JUNE 30, 2009

3:00 PM

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PART 1
GENERAL INFORMATION

1.1 Purpose. The purpose of this Request for Proposal (RFP) is to solicit proposals from qualified companies to provide **Perkins Loan Billing and Servicing** for the **Bursar's Office** of Kutztown University.

1.2 Scope Of RRP. This document contains instructions governing the response to be submitted and the material to be included in the Vendor's response; a description of the service to be provided; selection criteria; and other functional, technical and contractual requirements that must be met by the Vendor to be eligible for consideration.

The System encourages responses from small firms, minority firms, women owned firms, and firms which have not previously worked for the System, and will consider joint ventures which will enable these firms to participate in System service contracts.

1.3 Issuing Office. The Purchasing Department of Kutztown University is the issuing office for this document and all subsequent addenda relating to it. The Purchasing Department is the sole point of contact with regard to all procurement and contractual matters relating to the requirements described herein. The Purchasing Department is the only office authorized to change, modify, clarify, etc., the specifications, terms and conditions of this RFP and any contract(s) awarded as a result of this RFP.

All communications regarding this RFP should be in writing and addressed to:

Kutztown University
Anise Freeman, Purchasing Agent
PO Box 730
Kutztown, PA 19530
phone: 610/683-4774 fax: 610/683-4674
e-mail: afreeman@kutztown.edu

1.4 Issue Date. This request for Proposal is being mailed electronically: **June 5, 2009**

1.5 Pre-Proposal Meeting Date

There will be a pre-proposal teleconference meeting scheduled for **June 18 2009, at 11:00AM. Call in number: 1-877-643-6951, PASSCODE: 52199862#.** Call in attendance is not mandatory, however those interested companies are encourage to participate.

1.6 Questions and Amendments to the RFP

Any questions requiring clarification prior to submission of a proposal must be received by the Issuing Office no later than **12pm on June 19, 2009**. If it becomes necessary to revise any part of this RFP, Addenda will be issued to all contractors who requested the RFP. All Addenda must be acknowledged by the Contractor in the proposal. Additionally, only submitted written questions may be addressed in Addenda; verbal questions and responses are not official and in no way change the requirements of this RFP. Amendments may only be made by the Issuing Office prior to the closing date and time for the response. Contractors are cautioned that all terms and conditions of the Request for Proposal remain unchanged unless changed by an addendum.

The University will answer informal questions orally. The University makes no warranty of any kind as to the correctness of any oral answers and uses this process solely to provide minor clarifications rapidly. Oral statements or instructions shall not constitute an amendment to this RFP. Contractors shall not rely on any verbal responses from the University. If you have formal questions about any part of this RFP which could result in a material issue or a formal amendment to this RFP, you may submit your questions via email or by facsimile. Failure to submit inquiries by the deadline may result in the inquiry not being answered.

1.7 Response Date. To be considered, the response must be received **by June 30, 2009 at 3:00 PM** in the Purchasing Office. Vendors are sole responsible for assuring that the submittal arrives prior to the required time. Late submissions will not be considered and will not be accepted after the Closing Date and Time. Vendors may use any means of delivery, but it is the responsibility of the Vendor to allow adequate time for delivery. Proposals received after the Closing Date and Time will be returned unopened.

1.8 Cancellations/Amendments. Kutztown University may cancel or withdraw a Request for Proposal in whole or in part at any time prior to award of a contract. Amendments may be made by the issuance of an addendum by the Issuing Office prior to the closing date and time for the response. In the event that it becomes necessary to revise this RFP, an addendum will be provided to all Contractor's on record of having received the original RFP.

1.9 Proposal Submission. To be considered, the Vendor must submit a complete response to this RFP providing all the information required. **An original signed copy plus an electronic copy (CD or USB drive)** of the response must be submitted to the Issuing Office. Submittals must be signed by an official authorized to bind the Vendor to the provisions in this RFP and the submitted response, Proposals, bids, and all addenda **must be signed in ink, and must remain valid for at least 90 days.** Facsimile or typewritten signatures are not acceptable. The person signing must type their name and title below the signature, and if requested, must verify their authority to bind the company in contract. All proposals and accompanying documentation/samples will become the property of the University at the time the proposals are opened. The contents of the response of the selected Vendor(s) will become contractual obligations should a contract be entered into as a result of this RFP.

**Plainly mark KURFP-0145 due June 30, 2009 on the outside left of your submission package.
Proposals must be submitted to:**

**Anise Freeman, Purchasing
Kutztown University
PO Box 730
Kutztown, PA 19530**

If hand carried or mailed via next day delivery service:

**Kutztown University, Attention: Anise Freeman
15200 Kutztown Rd, Stratton Administration Bldg, Room 223
Kutztown PA 19530**

1.10 Cost Data. All costs required to perform these services must be included in your proposal. **It should be noted that costs may not necessarily be the sole determining factor in the contractor selection or contract award..** Separately enclosed with your proposal must be a sealed envelope indicating all

costs related to the proposal as indicated. **THIS MUST BE IN YOUR PROPOSAL PACKET AS A SEPARATE ITEM, SEALED IN A SEPARATE ENVELOPE WITH THE PROPOSAL SUBMITTED. IT WILL NOT BE REVIEWED UNTIL THE TECHNICAL EVALUATION IS COMPLETE.**

1.11 Proposal Preparation. Proposals should be prepared simply and economically, providing a straightforward, concise description of the contractor's ability to meet the requirements of the RFP. The University is not liable for any costs incurred by the vendor prior to issuance of a contract.

1.12 Discussions for Clarification. Contractors who submit proposals may be required to make an oral or written clarification of their proposals to the University to ensure thorough mutual understanding and contractor responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification.

1.13 Rejection Of Proposals. The University reserves the right to reject any and all responses received as a result of this RFP, or to negotiate with any or all responding vendors.

1.14 Amendment Or Withdrawal Of Proposals A proposal may be amended and/or withdrawn by a vendor if the Issuing Office receives such a request in writing before the closing date and time. The request must be signed by a person authorized to represent the vendor that submitted the proposal. Submission of a subsequent proposal shall normally constitute the withdrawal of any prior proposal submitted by the same vendor.

1.15 Disclosure Of Proposal Contents All responses and materials submitted with proposals become the property of Kutztown University and may be returned only at the University's discretion. Proposals will be held in confidence and will not be revealed or discussed with competitors, unless disclosure is required to be made (a) under the provisions of any Commonwealth or United States statute or regulation; or (b) by rule or order of any court of competent jurisdiction. Proposals submitted to the University may be reviewed and evaluated by any person other than competing contractors at the discretion of the University. The University has the right to use any or all ideas presented in any proposal. Selection or rejection of the proposal does not affect this right. However, material of a proprietary nature will not be disclosed beyond University and System representatives, unless required by law. Pricing information cannot be considered proprietary.

Please be advised that effective January 1, 2009, all responses to this procurement opportunity are subject to the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 et seq., (Act 3 of 2008). The Right-to-Know Law permits any requestor to inspect and/or copy any record prepared and maintained or received in the course of the operation of a public office or agency that is not subject to the enumerated exceptions under the law. **If your response to the procurement opportunity contains a trade secret or confidential proprietary information, you should include with your response a separate signed written statement to that effect.** Should your response become the subject of a Pennsylvania Right-to-Know Law request, you will be notified by the procurement office to identify all trade secrets or confidential and proprietary information that is included in your response. This information may be exempt from disclosure in the agency response to a request.

1.16 Type Of Contract And Obligations.

- a. If a contract is entered into as a result of this RFP, it will be a standard Pennsylvania State System of Higher Education Service Purchase Contract, and will contain the Standard Contract Terms and Conditions shown in Appendix II . The University, may in its sole discretion undertake negotiations with contractors whose proposals as to price and other factors show them to be qualified, responsible, and capable of performing the work.
- b. University may wish to enter into a contract with a Contractor to provide these services for a three to five year period The decision of the initial contract term length shall be at University's sole discretion. In the event that the initial contract term The RFP, addenda, other agreed upon modifications, and the proposal submitted by the successful Contractor shall be incorporated into the contract agreements signed by the successful contractor, Kutztown University, and legal representatives of the State System of Higher Education, and the Commonwealth of Pennsylvania.
- c. Contractor will identify which, if any, of the terms and conditions contained in Appendix II it objects to, and must state specific paragraph terms and conditions to which the Contractor takes exception. The Contractor must also provide reason for the exception, and propose alternative terms or conditions, as appropriate. However, proposals that are contingent upon any changes to these optional terms and conditions may be at a competitive disadvantage in the proposal evaluation process. Contractor's failure to object or to request additions will result in its waiving its right to do so later, but the University may consider late objections and addition requests if it is in the best interest of the University to do so.
- d. Estimated time frame in which the University completes evaluations and issues an award letter is approximately 15 to 20 days after the closing date for receipt of proposals. It will be necessary for the awarded Contractor to sign and return their contract in a timely manner, as an additional thirty days (30) days is necessary for PASSHE and legal approvals on the award after the agreement is signed by the Contractor and returned to the University. A Notice to Proceed will be issued after approval signatures are received from the Pennsylvania State System of Higher Education (PASSHE) and legal representatives.

1.17 Negotiation Of Fees Negotiation of fees will be required only from vendor(s) chosen by the Selection Committee, based on the selection criteria cited in this RFP. Should negotiations fail with the selected vendor(s), the University shall move to the next selected vendor. The University reserves the right to conduct discussions with vendors, and to accept revisions of proposals, and to negotiate price changes. During this discussion period, the University will not disclose and information derived from proposals submitted, or from discussions with other vendors.

1.18 News Releases. News releases pertaining to the selection of the vendor shall not be made without prior written permission of the Issuing Office.

1.19 Debriefing On Unsuccessful Proposals. If a selection letter is not received within 120 days of the RFP closing date (or any written extension thereof), the vendor may assume that they were not awarded a contract. Upon written request, the vendor will be debriefed (verbally) as to the basis for their non-selection. Requests for verbal debriefing must be made in writing to the attention of the "point of contact" person within 150 days after the closing date cited for receipt of responses to the RFP. The University will set the time and location of the debriefing.

1.20 Best And Final Offers. To obtain best and final offers from contractors whose proposals are determined by the University, in its sole discretion, to be reasonably susceptible of being selected for award, the University may (a) enter into discussions; (b) schedule oral presentations; and (c) request revised proposals.

1.21 Prime Contractor Responsibilities. The selected contractor will be required to assume responsibility for all services offered in its proposal. Further, the University will consider the selected contractor to be the sole point of contact with regard to contractual matters.

1.22 Contractor's Representations And Authorizations. Each contractor by submitting its proposal understands, represents, and acknowledges that:

- a. All information provided by, and representations made by, the contractor in the proposal are material and important and will be relied upon by the Issuing Office in awarding the contract(s). Any misstatement shall be treated as fraudulent concealment from the Issuing Office of the true facts relating to the submission of this proposal. A misrepresentation shall be punishable under 18 Pa. C.S. 4904.
- b. The price(s) and amount of this proposal have been arrived at independently and without consultation, communication or agreement with any other contractor or potential contractor.
- c. Neither the price(s) nor the amount of the proposal, and neither the approximate price(s) nor the approximate amount of this proposal, have been disclosed to any other firm or person who is a contractor, and they will not be disclosed on or before the proposal submission deadline specified in this RFP.
- d. No attempt has been made or will be made to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- e. The proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- f. To the best knowledge of the person signing the proposal for the contractor, the contractor, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as disclosed by the contractor in its proposal.
- g. To the best of the knowledge of the person signing the proposal for the contractor and except as otherwise disclosed by the contractor in its proposal, the contractor has no outstanding, delinquent obligations to the Commonwealth of Pennsylvania including, but not limited to, any state tax liability not being contested on appeal or other obligation of the contractor that is owed to the Commonwealth of Pennsylvania.
- h. The contractor is not currently under suspension or debarment by the Commonwealth of Pennsylvania, or any other state, or the federal government, and if the contractor cannot certify, then it shall submit along with the proposal a written explanation of why such certification cannot be made.
- i. The contractor has not, under separate contract with the Issuing Office, made any recommendations to the Issuing Office concerning the need for the services described in the proposal or the specifications for the services described in the proposal.

- j. Each contractor, by submitting its proposal, authorizes all Commonwealth agencies to release to the Commonwealth information related to liabilities to the Commonwealth including, but not limited to, taxes, unemployment compensation, and workers' compensation liabilities.

1.23 RFP Protest Procedure.

- a. A bidder or offeror, a prospective bidder or offeror, or a prospective contractor, that is aggrieved in connection with the solicitation or award of a contract under the *Commonwealth Procurement Code*, except as provided in 62 Pa.C.S.A 521 (relating to cancellation of invitations for bids or requests for proposals) may file a protest with the Office of the Chancellor, State System of Higher Education, 2986 North Second Street, Harrisburg, Pennsylvania, 17110. A copy of any protest must also be simultaneously mailed to the Office of the President of Kutztown University, P.O. Box 730, Kutztown, PA, 19530.
- b. If the protestant is a bidder or offeror or a prospective contractor, the protest must be filed with the Office of the Chancellor at the aforementioned address within seven (7) days after the aggrieved bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest. In no event may a protest be filed later than seven (7) days after the date the contract was awarded.
- c. If the protestant is a prospective bidder or offeror, a protest must be filed with the Office of the Chancellor at the aforementioned address prior to the bid opening time or the proposal receipt date.
- d. If a bidder or offeror, a prospective bidder or offeror, or a prospective contractor fails to file a protest, or files an untimely protest, the bidder or offeror, the prospective bidder or offeror, or the prospective contractor will have waived its right to protest the solicitation or award of the contract in any forum. The State System of Higher Education shall disregard protests that are untimely filed.
- e. A protest must state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.
- f. Upon receipt of the protest, the Office of the Chancellor will render a decision in accordance with the procedures outlined within the *Commonwealth Procurement Code*, 62 Pa.C.S.A 1711.1 et seq.

PART 2
INFORMATION REQUIRED

The Contractor's proposals must be submitted in the format outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. The Contractor should provide any other information thought to be relevant. Each proposal must consist of two (2) separately sealed submittals: (a) Technical Submittal, and (b) Cost Submittal.

2.1 Letter Of Transmittal And Management Summary. The letter of transmittal should include an introduction of the Contractor's company, the name, address, Federal EIN or SSN, telephone number, fax number, and e-mail address of the person to be contacted along with others who are authorized to

represent the company in dealing with this RFP. The letter should reflect the Contractor's understanding of the services desired and its ability to meet the requirements of this RFP, describe the Contractor's approach to the proposal and clearly indicate any options or alternatives. It should also indicate any major requirements that cannot be met by the Contractor

2.2 University Requirements. The Contractor should describe in narrative form their ability and specific service offerings for accomplishing the requirements of this program. Use the descriptions in the Requirements Section (Part IV) of this RFP as your reference point, and provide a plan of action as to how your company would administer a project of this size.

2.3 Prior Experience. The Contractor should describe their experience in providing the service as specified and provide a complete list of educational institutions or corporations that receive their services. Particular attention should be given to other Pennsylvania State System of Higher Education Universities.

2.4 References. The Contractor shall provide a list of at least three different clients for whom the agency has provided similar services. References should be identified with the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer who may be contacted. This information may be completed on Appendix I (Supplier Information and Reference Sheet).

2.5 Cost Proposal. Contractor's cost proposal shall include all related costs for undertaking this service.

2.6 Attachments. The following attachments are to be completed and included with the proposal:

- a. **Vendor Information and Authorization Checks (Appendix I).**

PART 3 **CRITERIA FOR SELECTION**

3.1 Mandatory Responsiveness Requirements. To be eligible for selection, a proposal must be (a) timely received from the Contractor; (b) properly signed by the Contractor; and (c) provide all required information as outlined in Parts II, IV and V. Also, remember that all cost data must be submitted in a separate sealed envelope and is not to be included as part of the Technical Submittal.

3.2 Selection and Evaluation Process. Proposals will be reviewed and evaluated by a committee of qualified personnel selected by the University. This committee will recommend for selection the proposal which most closely meets the requirements of the RFP and satisfies University needs.

Proposals will be evaluated on the basis of the criteria outlined in the RFP. The proposal evaluation process involves the review of a proposals received in response to the RFP to ensure that each proposal meets the mandatory requirements. Proposals which have been determined to have not met the mandatory requirements, are excluded from any further consideration. The selected proposals will then be reviewed further to determine the vendor which best fits the University's needs. Negotiations will be undertaken with the Vendor whose proposal shows that they are qualified, responsible, and capable of performing the work.

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

The University may make such investigations as deemed necessary to determine the ability of the contractor to perform the work, and the contractor shall furnish to the University all such information and data for this purpose as requested by the University. The University reserves the right to reject any proposal if the evidence submitted by, or investigation of, such contractor fails to satisfy the University that such contractor is properly qualified to carry out the obligations of the agreement and to complete the work specified.

3.4 Selection Criteria. Proposals will be evaluated by the Selection Committee using the following criteria, the order of which is not indicative of their weight or importance:

a. Understanding University Requirements: This refers to the contractor's understanding of the University needs that generated the RFP, of the agency's objectives in asking for the services or undertaking the study, and of the nature and scope of the work involved.

b. Contractor Qualifications and Experience: This refers to the ability of the contractor to meet the terms of the RFP, and the quality, and relevancy of similar services provided by completed by the contractor, including the contractor's financial ability to undertake a project of this size.

c. Ability to service contract: this refers to the quality of the proposal presented and the quality of the services that may be anticipated from the Vendor.

d. References: Include relevant previous experience of providing services rendered in the last two years. Supply at least three (3) references of customers that you currently are providing similar services. Customers referred to should include the name of the client, the name of the contact person(s), with address and their telephone number.

f. Fee structure or costs: fee structure and or costs for the appropriate services will also be considered in the evaluation, but is not the sole determining factor.

PART 4 **SCOPE OF ACTIVITIES AND REQUIREMENTS**

Kutztown University requires a Perkins Loan Program billing processing and support service from a qualified service provider. Such service provider must provide the following services outlined below, in addition to any other reasonable services that a full service processing company may provide.

4.1 DETAILED ITEMS OF INTEREST AND REQUIREMENTS:

Status of Accounts

As of 4/30/09

Approximate # of Accounts

Paid In Full / W-O / zero balance	9,752
In-School	571
Grace	80
Grace with Deferment	149
Repayment	1,000

4.2 Perkins Processor is required to provide the following services and/or compliances:

1. Federal Regulations Compliance

- a. Remain compliant with all federal regulations and updates.
- b. Red Flag Rules documentation.
- c. PCI Compliant.

2. Entrance / Exit Interviews / Promissory Notes

- a. Provide online or paper versions to students.

3. Billing and Payment

- a. Provide billing to students as needed either via snail mail or electronically.
- b. Provide students various methods of payment such as credit card, ACH debit, mailing of check / money order / cashier check.
- c. Provide 1098-E statements as required by law for all interest payments received.

4. Delinquent Accounts

- a. Provide regular notifications on delinquency status and all reasonable attempts to obtain payment or payment arrangements.
 - i. Reasonable payment arrangements are to be determined by processor as long as the loan is satisfied in a "normal" acceptable time frame.
- b. Accelerate all loans that reach 120 days delinquent.

5. Deferments

- a. Offer the standard deferment opportunities to students and discuss options with them at their request.
- b. Mail or electronic distribution based on students need.

6. Department of Education (DOE) placements

- a. Provide the ability to place uncollected accounts with the DOE as mandated by federal regulations.

7. Online access to accounts

- a. Provide to students with secure access.
- b. Provide to KU with additional ability to update student accounts as needed.

8. Reports

- a. Allow KU access to run reports either with defined self chosen parameters or defined monthly reports.
- b. Provide necessary reports for the completion of the FISAP.
- c. Monthly general ledger summary reports.
- d. Transmitted data to NSLDS.

9. Collection agency placement

- a. Provide automatic placement either by alternating method or random placement method depending on how many collection agencies KU has contracted.
- b. Sort process may be changed based on performance totals for a company after a period of 1 year, as the recovery rate per agency will be a judgment factor in making referrals.

10. Training

- a. Provide annual training on-site to update KU with system changes and updates for re-training purposes, as well as train any new employees.

- b. Additional training sessions on-site will be required when KU converts to a new Student Information System (SIS).
 - c. On-site visits should be covered by the processor including reasonable costs for travel, accommodations and meals.
11. **Loan Consolidations** -Provide an overview of the loan consolidation process including LVC completion, payment posting and communication with collection agencies.
 12. **Data Transfer**-must provide ability to automate file transfers between our SIS and the processors system. These include but are not limited to, graduation lists, entrance and exit interview lists, advance/disbursement files, restrictions on accounts at least one month delinquent and releases of restrictions based on account brought to current status, and more.
 13. **Credit bureau** -Explain method of placement and removal.
 14. **Transfer of Perkins loan information:** Processor chosen will be required to render assistance in transferring data to a successor in the event contract is terminated or not renewed for whatever reason.
 15. **Conversion Process** : Please describe the process you anticipate to follow in converting the hardware and software products necessary to utilize your company. Include timeframe, support, additional costs, and a brief procedure to be followed.

SECTION 5

COST PROPOSAL INFORMATION

5.1 GENERAL INFORMATION.

Vendors will not only be evaluated on the overall cost of providing the requested service, but also on their ability to meet the needs of the University. Vendor should prepare their Cost Information based upon a three to five year arrangement. As noted in the previous section, University at its discretion, will decide on the actual length on the contract. Costs are expected to remain firm for at least an initial three year period, with any proposed increases for the subsequent remaining term and/or renewal subject to the then current 12 months' changes in the Cost Price Index Urban (CPI-U), or other mutually agreed upon indices.

The cost submittal must be placed in a separate sealed envelope within the sealed proposal and kept separate from the technical submittal, however, we are requesting that an election excel version be provided on the CD or USB drive as well.

5.2 COST PROPOSAL INSTRUCTIONS

Costs must be based on the status of the loan. Provide the rate for each account status, and the general charges per month for the following categories:

1. Credit Bureau reporting
2. NSLDS reporting
3. Skip Trace
4. Red Flag Services

5. Daily Updates
6. Web Exit – electronic and paper
7. Letter costs
8. Phone call costs
9. LVC Costs
10. Refund Costs
11. DRAP
12. Co-hort Communications
13. 1098-E processing
14. Accounts enrolled with coupon book like payment option based on frequency of payment
15. Accounts enrolled with ACH – Direct Debit payment option based on frequency of payment
16. Data link costs for internet web action / system if any

For ease of input, we have provided these same cost categories on an excel sheet (**Attachment A**), which has also been provided electronically. Insert your cost information directly in this Attachment excel sheet. If you have any additional costs not listed, you must provide this information on the attached sheet, with a description/ explanation for these costs. Please provide the completed excel Attachment A sheet in the electronic copy of your proposal (CD or USB Drive), as instructed in Part 1.9 and Part 5.1.

ATTACHMENT A TO KURFP-0145
COST INFORMATION SHEET

<u>Item</u>	<u>Cost</u>	<u>Unit</u> (Ea/monthly/annual)	<u>Frequency (if app.)</u>
1. Credit Bureau reporting			
2. NSLDS reporting			
3. Skip Trace			
4. Red Flag Services			
5. Daily Updates			
6. Web Exit – electronic and paper			
7. Letter costs			
8. Phone call costs			
9. LVC Costs			
10. Refund Costs			
11. DRAP			
12. Co-hort Communications			
13. 1098-E processing			
14. Accounts enrolled with coupon book like payment option			
a. Based on frequency of payment			
15. Accounts enrolled with ACH – Direct Debit payment option			
a. Based on frequency of payment			
16. Data link costs for internet web action / system if any			

**APPENDIX I
VENDOR INFORMATION**

VENDOR NAME: _____

VENDOR ADDRESS: _____

VENDOR TELEPHONE: _____ VENDOR FAX: _____

VENDOR CONTACT PERSON: _____

EMAIL ADDRESS: _____

ORGANIZATION:

1. How many years has your company been in business?
2. Total number of Employees?
3. If your company is a corporation or individually owned ?
Date of incorporation or organization:
4. Please indicate if your company is a Minority Business Enterprise or a Women Business Enterprise. (51% or more owned/operated by) If so, please include a copy of any certification that your company may hold.

AUTHORIZATION FOR REFERENCE CHECKS

Kutztown University is hereby authorized to make any and all reference checks and background inquiries concerning either the company, or key personnel, or subcontractors or consultants proposed for use by the company, to verify qualifications, experience and capabilities as Kutztown University may deem necessary or advisable in connection with the evaluation and negotiation of matters related to the proposal submitted herewith.

This authorization is granted on behalf of the company, key personnel and all subcontractors and consultants proposed for use by the company without any restriction.

(Below list at least 3 business references, providing company name, address, contact person and phone number.

1. _____

2. _____

3. _____

Contractor Signature: _____ **Date:** _____

APPENDIX II

STANDARD BLUEBACK CONTRACT

COMMONWEALTH OF PENNSYLVANIA
STATE SYSTEM OF HIGHER EDUCATION
CONTRACT FOR

(3 to 10 word statement of nature of the Contract)

Contract Inquiry No. _____
THIS AGREEMENT, made and entered into this _____ day of _____, between Kutztown University of Pennsylvania of the State System of Higher Education, Kutztown, PA 19530, (hereinafter "University," "Commonwealth," or "Agency"), and

Contractor Name
123 Any Street
Anytown, PA 19000

acting through its proper officials, (hereinafter referred to as "Contractor") (Federal I.D. # _____ or if an individual, Social Security Number).

Both the University and Contractor, when used together, are hereinafter referred to as Parties. The University is an instrumentality of the Commonwealth of Pennsylvania, established by and existing pursuant to Article XX-A of the Public School Code of 1949, as amended, 24 P.S. § 20-2001-A, et seq., and is authorized thereby to enter into this Contract.

The University desires to obtain _____ (Short description of the goods and/or services to be provided) _____ from the Contractor.

NOW THEREFORE, for and in consideration of the foregoing and the mutual promises hereinafter expressed and intending to be legally bound hereby, the Parties agree as follows:

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SECTION 30.	COMPLIANCE WITH LAW
SECTION 31.	INTEGRATION

SECTION 32. PATENT, COPYRIGHT AND TRADEMARK INDEMNITY
SECTION 33. COVENANT AGAINST CONTINGENT FEES
SECTION 34. CHANGE ORDERS

1. CONTRACTOR DUTIES. The Contractor, subject to the terms and conditions set forth below, shall perform the following specified duties: _____.

2. TERM OF CONTRACT. The term of the Contract shall commence on the Effective Date (as defined below) and shall end on _____, subject to the other provisions of the Contract. The Effective Date shall be fixed by the Contracting Officer after the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the Effective Date is affixed and the fully executed Contract has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Commonwealth shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract. The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

3. RENEWALS. _____.

4. COST OF AGREEMENT. It is understood that the cost of this Agreement to the University shall not exceed _____.

5. COMPENSATION/EXPENSES. The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed **within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.**

6. INVOICES. Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an itemized invoice to the agency at the address referenced on the purchase order promptly after services are satisfactorily completed. The invoice should include only amounts due under the Contract/purchase order. The purchase order number must be included on all invoices. In addition, the Commonwealth shall have the right to require the Contractor to prepare and submit a "Work In Progress" sheet that contains, at a minimum, the tasks performed, number of hours, hourly rate, and the purchase order or task order to which it refers.

7. PAYMENT.

a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Provide Service and Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or purchase order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or purchase order.

8. TAXES. The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 2374001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these

taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

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

10. OWNERSHIP RIGHTS. The Commonwealth 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 Commonwealth as part of the performance of the Contract.

11. TERMINATION OF AGREEMENT. The Commonwealth has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor:

a. Termination for Convenience. The Commonwealth shall have the right to terminate the Contract for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover lost profits.

b. Non-appropriation. The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

c. Termination for Cause. The Commonwealth shall have the right to terminate the Contract for Contractor default under paragraph 19, Default, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under subparagraph (a).

12. AUDIT PROVISIONS. The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

13. CONTRACTOR RESPONSIBILITY.

a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.

b. The Contractor also certifies, that as of the date of its execution of this 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/dgs/cwp/view.asp?a=353&Q=115573&dgsNav=15053> 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

All Contractors (if a corporate entity both signatories to this Contract must execute) with the State System shall sign the certification below:

Contractor Responsibility Certification

I certify that I, the Contractor identified herein, am not currently debarred or suspended by the Commonwealth of Pennsylvania, and am eligible to contract with the Commonwealth of Pennsylvania for the goods and/or services contained in this contract.

Contractor/Vendor

Title

Date

Contractor/Vendor

Title

Date

ALL PARTIES WHO SIGN THIS CONTRACT ON BEHALF OF THE CONTRACTOR MUST SIGN THE STATEMENT ABOVE.

14. CONTRACTOR INTEGRITY.

a. For purposes of this clause 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 5% interest.

- 4) *Financial Interest* means:

- (a) Ownership of more than a 5% 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 to 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 which 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.

15. 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 subparagraph (a) above.

16. ASSIGNABILITY AND SUBCONTRACTING.

a. Subject to the terms and conditions of Paragraph 21, this Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

c. The Contractor may not assign, in whole or in part, this Contract or its

rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

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. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.

g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

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

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

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

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

g. 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.

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

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Contract is prevented or delayed, and (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 Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect either to cancel the Contract 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 Commonwealth, by notice to the Contractor, may suspend all or a portion of the Contract.

19. DEFAULT.

a. The Commonwealth may, subject to the provisions of Paragraph 18, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Paragraph 11, Termination of Agreement) the whole or any part of this Contract for any of the following reasons:

- 1) Failure to begin work within the time specified in the Contract or as otherwise specified;
- 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract terms;
- 3) Unsatisfactory performance of the work;
- 4) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
- 5) Discontinuance of work without approval;
- 6) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- 7) Insolvency or bankruptcy;
- 8) Assignment made for the benefit of creditors;
- 9) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
- 10) Failure to protect, to repair, or to make good any damage or injury to property; or
- 11) Breach of any provision of this Contract.

b. In the event that the Commonwealth terminates this Contract in whole or in part as provided in Subparagraph (a) above, the Commonwealth may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.

c. If the Contract is terminated as provided in Subparagraph (a) above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Issuing Office, such partially completed work, including, where applicable, reports, working papers, and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due to the Contractor for such completed or partially completed works, such sums as the Contractor Officer determines to be necessary to protect the Commonwealth against loss.

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

e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

f. Following exhaustion of the Contractor's administrative remedies as set forth in Paragraph 21, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

20. HOLD HARMLESS PROVISION. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

21. CONTRACT CONTROVERSIES.

a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written notice of controversy or claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.

b. The contracting officer shall review timely filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the 120 days (unless extended by consent of the Parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the 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.

22. AMENDMENTS. This Agreement represents the complete agreement between the parties, superceding any other prior or contemporaneous written or oral agreements. Any changes, corrections or additions to this Agreement shall be in writing in the form of a supplemental agreement signed by all necessary parties and setting forth therein the proposed change, correction or addition.

23. SEVERABILITY. Should any term of this Contract be rendered unlawful by a court of competent jurisdiction or any legislative act, then the parties shall give effect to the balance of the agreement to the extent possible.

24. 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.

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

26. POST-CONSUMER RECYCLED CONTENT. Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for the total recycled content as specified in Exhibits A-1 through A-8 to this Contract.

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

28. HAZARDOUS SUBSTANCES. The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the 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 pursuant thereto at 4 Pa. Code § 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 Paragraph (1) through (4) below:

1) Hazardous substances:

- a) The chemical name or common name,
- b) A hazard warning, and
- c) The name, address, and telephone number of the manufacturer.

- 2) Hazardous mixtures:
 - a) The common name, but if none exists, then 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 consisting of 1.0% or more of the mixture,
 - d) A hazard warning, and
 - e) The name, address, and telephone number of the manufacturer.
- 3) Single Chemicals:
 - a) The chemical name or the common name,
 - b) A hazard warning, if appropriate, and
 - c) The name, address and telephone number of the manufacturer.
- 4) Chemical Mixtures:
 - a) The common name, but if none exists, then the trade name,
 - b) A hazard warning, if appropriate,
 - c) The name, address, and telephone number of the manufacturer, and
 - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the 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 hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be 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 substance or mixture present therein.

b. **Material Safety Data Sheet.** The Contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS 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 Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

29. **WARRANTY.** The Contractor warrants that all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all services and parts are warranted for a period of one year following completion of performance by the Contractor and acceptance by the Commonwealth. The Contractor shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the Commonwealth.

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

31. **INTEGRATION.** The Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has the authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No

negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments shall be made using the appropriate Commonwealth form.

32. PATENT, COPYRIGHT AND TRADEMARK INDEMNITY. The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the commonwealth under the contract. The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

33. COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

34. CHANGE ORDERS. The Commonwealth reserves the right to issue change orders at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change order shall be in writing signed by the Contracting Officer. The change order shall be effective as of the date appearing on the change order, unless the change order specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required under any change order shall be handled through Paragraph 21, "Contract Controversies". For purposes of this Contract, "change order" is defined as a written order signed by the Contracting Officer directing the Contractor to make changes authorized under this clause.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due and legal action authorizing the same to be done the date first written above.

FOR THE CONTRACTOR:

FOR THE UNIVERSITY:

Individual or Partner (if Contractor
Is an individual or partnership)

President or Designee

APPROVED AS TO FISCAL RESPONSIBILITY,
BUDGETARY APPROPRIATENESS AND
AVAILABILITY OF FUNDS

Title

President or Vice President of
Corporate Contractor
(Circle Title)

Comptroller

APPROVED AS TO FORM AND LEGALITY

University Legal Counsel

Secretary or Treasurer of Corporate
Contractor
(Circle Title)

Deputy Attorney General

*Note regarding signatures above. If a corporation, two
signatures are required, one being the President or Vice
President, the second being the Secretary or Treasurer.
Signatory authority of either signatures can be delegated
provided there is a certified Board resolution presented
with this contract.*

ALL SIGNATORIES ON BEHALF OF CONTRACTOR MUST EXECUTE CONTRACTOR RESPONSIBILITY
CERTIFICATION IN PARAGRAPH 13(f) OF THIS CONTRACT.