



Purchasing Agent
West Chester University of Pennsylvania
West Chester, PA 19383
www.wcupa.edu

e-mail: kdellaringa@wcupa.edu
Phone: 610-436-2603
Fax: 610-436-2637

April 26, 2011

Dear Sir/Madam:

In accordance with the enclosed Request for Proposal, you are invited to submit a proposal for Web Scale Discovery Services, RFP Number WCU22841211K. All firms must submit six (6) hard copies of the proposal along with one (1) electronic copy of the proposal submission with the financials and one (1) electronic copy of the Proposal submission without the financials. CD form or jump drive will be acceptable.

Send to:

Karen Dell'Aringa,
West Chester University
Purchasing Department
201 Carter Dr., Suite 200, Rm. #228
West Chester, PA 19383.

Proposals are due **by 2:00 PM. on June 10, 2011**

In the event the University is officially closed on the day the responses are due for the RFP, the response date for the RFP will automatically be the next business day at the same time.

In the event the University has an official delayed opening on the day the responses are due for the RFP, the response date will be the same but the time will be delayed by as many hours of the delay.

For information about official University closings or delayed openings please call 610-436-1000. If you have any questions please contact the Issuing Officer at the contact information provided in the RFP document.

All questions should be directed, in writing, to Karen Dell'Aringa no later than the **close of business on May 27, 2011**. It is acceptable to either send the question via US Mail, fax number 610-436-2637 or e-mail kdellaringa@wcupa.edu. Firms will be provided with answers to all questions submitted by the above noted date via Addendum pursuant to Paragraph 1.2 of the Request for Proposal.

Sincerely,

Karen Dell'Aringa

Karen Dell'Aringa
Purchasing Agent
West Chester University

Enclosure:
Request for Proposal

WEST CHESTER UNIVERSITY OF PENNSYLVANIA OF
THE STATE SYSTEM OF HIGHER EDUCATION

REQUEST FOR PROPOSAL NUMBER WCU22841211K

WEB SCALE DISCOVERY SERVICE

KENNETH M. JARIN
CHAIRMAN, BOARD OF GOVERNORS

DR. JOHN C. CAVANAUGH
CHANCELLOR

DR. GREG WEISENSTEIN
PRESIDENT

WEST CHESTER UNIVERSITY
OFFICE OF PURCHASING
WEST CHESTER, PA 19383

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PART I

General Information for the Vendor

I.1. **Purpose**

This Request for Proposal (RFP) provides interested contractors with sufficient information to enable them to prepare and submit proposals for consideration by West Chester University to satisfy a need for a Web Scale Discovery Service.

I.2. **Issuing Office**

This RFP is issued for the Commonwealth by the State System of Higher Education, West Chester University. The Issuing Office is the Purchasing Office and is the sole point of contact for this RFP. The contact person for all bidding services and procurement related matters is Karen Dell'Aringa, Purchasing Agent, and can be reached at 610-436-2603 or by e-mail at kdellaringa@wcupa.edu. All questions must be in writing and directed to Karen Dell'Aringa by E-mail or fax at 610-436-2637 and be received on or before the close of business on May 27, 2011.

I.3. **Scope**

This RFP contains instructions governing the proposals to be submitted and the material to be included therein; a description of the service to be provided; requirements which must be met to be eligible for consideration; a general evaluation criteria; and other requirements to be met by each proposal.

I.4. **Problem Statement**

West Chester University of Pennsylvania requires a primary vendor to provide a Web Scale Discovery Service that will be coordinated by West Chester University's library. Requirements are specified in greater detail in the work statement part IV.

I.5. **Type of Contract**

It is proposed that if a contract is entered into as a result of this RFP, it will be a 5 year blue back contract and will contain the provisions shown in the attached standard contract. Negotiations may be undertaken with contractors whose proposals as to price and other factors show them to be qualified, responsible, and capable of performing the work.

I.6. **Rejection of Proposals**

The University reserves the right to reject any and all proposals received as a result of this request, or to negotiate separately with competing contractors.

I.7. **Incurring Costs**

The University is not liable for any cost incurred by contractors prior to issuance of a contract.

I.8. **Pre proposal conference**

Not required

I.9. **Amendment to the RFP**

If it becomes necessary to revise any part of this RFP, an amendment will be issued to all contractors who received the basic RFP.

I.10. **Response Date**

To be considered, proposals must arrive at the Purchasing Office on or before June 10, 2011 @ 2:00 PM. Contractors mailing proposals should allow sufficient mail delivery time to insure timely receipt of their proposals. **Late proposals will not be accepted regardless of the reason.**

In the event the University is officially closed on the day the responses are due for the RFP, the response date for the RFP will automatically be the next business day at the same time. In the event the University has an official delayed opening on the day the responses are due for the RFP, the response date will be the same but the time will be delayed by as many hours of the delay.

For information about official University closings or delayed openings please call 610-436-1000. If you have any questions please contact the Issuing Officer at the contact information provided in the RFP document.

I.11. Proposals

To be considered, contractors must submit a complete response to this RFP, using the format provided in Part II. Each proposal must be submitted in six (6) copies to the Purchasing Office on or before 2:00 PM. on June 10, 2011. Included in the package, we are requesting, one (1) electronic copy of the proposal submission with the financials and one (1) electronic copy of the Proposal submission without the financials. CD form or jump drive will be acceptable. The electronic copy with the financials should be submitted in the sealed envelope marked financials. No other distribution of proposals will be made by the contractor. Proposals must be signed by an official authorized to bind the contractor to its provisions. The proposal must remain valid for 120 days. Moreover, the contents of the proposals of the successful bidder will become contractual obligations if a contract is entered into.

Please mail your responses to: West Chester University of Pennsylvania
Purchasing Dept, 201 Carter Drive,
Suite 200, Room 228, Attn: Karen Dell'Aringa,
West Chester, PA 19383.

I.12. Economy of 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.

I.13. Oral Presentation

Contractors who submit proposals may be required to make an oral presentation of their proposal to the University. Such presentations provide an opportunity for the contractor to clarify his proposal to insure thorough mutual understanding. The Purchasing Office will schedule these presentations.

I.14. Prime Contractor Responsibilities

The selected contractor will be required to assume responsibility for all services offered in the proposal whether or not he produces them. Further, the University will consider the selected contractor to be the sole point of contact with regard to contractual matters.

I.15. Disclosure of Proposal Contents

Cost and price information provided in proposals will be held in confidence and will not be revealed or discussed with competitors. All other material submitted becomes the property of the University and may be returned only at the University's option. Proposals submitted to the University may be reviewed and evaluated by any person other than competing bidders at the discretion of the University. The University has the right to use any or all ideas presented in any reply to the RFP. Selection or rejection of the proposal does not affect this right.

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. The agency will then determine whether the claimed trade secret or confidential and proprietary information is subject to disclosure.

1.16. **Standard Contract**

The selected contractor will be expected to enter into an agreement as contained in the Sample Standard Contract attached to this RFP.

1.17. **Debriefing Conferences**

Contractors whose proposals are not selected will be notified of the name of the selected contractor and will be given the opportunity to be debriefed. The Purchasing Office will schedule the time and location of the debriefing.

1.18. **News Releases**

News releases pertaining to this project will not be made without prior University approval, and then only in coordination with the Purchasing Office.

1.19 **Contractor Responsibility Program**

Bidders must certify that they or any subcontractor(s) are not currently under suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government to the best of their knowledge. Additionally, Service Providers must certify that they or any subcontractor(s) are not tax delinquent with either the Pennsylvania Department Of Revenue or the Pennsylvania Department of Labor and Industry to the best of their knowledge. Service Providers must acknowledge that, if they or any subcontractor(s) are currently under suspension or debarment, or if they or any subcontractor(s) owe delinquent taxes, their proposal may not be accepted or considered. These statements may be included in a signed cover letter.

1.20 **Contacting Authority**

Each proposal must be signed by the individual representative of the firm who has contracting authority to contractually bind the firm. That individual or designee will be the sole point of contact with regard to contractual matters. That individual or designee must complete and sign Attachment A – Cover Page.

PART II

Information Required from the Vendor

Contractor 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. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal.

The information should be as brief as possible.

II.1. **Statement of the Problem**

State in succinct terms your understanding of the problem presented or the service required by this RFP.

II.2. **Management Summary**

Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided.

II.3. **Work Plan**

Describe in narrative form your technical plan for accomplishing the work. Use the task descriptions in Part IV of this RFP as your point of departure. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of labor hours allocated to each task. Include a Program Evaluation and Review Technique or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

II.4. **Prior Experience**

Include experience in the Web Scale Discovery Service. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to should be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

II.5. **Financial Qualifications**

Include one copy of most recent, full year (12 month), audited financial statement with your proposal. Identify any other party or organization that primary contractor will be dependent upon to fulfill the obligations and commitments of any contract entered into with the University.

II.6. **Personnel**

Include the number of executive, management, technical personnel and other personnel who will be engaged in the administration or execution of contract work. Show where these personnel will be physically located (dispatched from) during the time they are engaged in the work. Include education and experience in providing the type of services required by this RFP. Indicate the responsibilities each will have in the contract and how long each has been with your company. Also specifically identify any subcontractors or suppliers that will be relied upon to meet the requirements of a contract.

II.7. **Cost and Price Analysis**

This item will be evaluated on the best price proposed by the vendor. While this area will be given consideration, it will not normally be the deciding factor in the selection process. Please make sure that all costs are accounted for when submitting your pricing.

This portion of the proposal must be bound and sealed separately from the remainder of the proposal.

PART III

Criteria for Selection

All proposals received from the contractors will be reviewed and evaluated by a committee of qualified University personnel. This committee will recommend for selection the proposal which most closely meets the requirements of the RFP and satisfies University needs.

The following areas of consideration will be used in making the selection:

III.1. **The Range of content included in the basic index or its equivalent**

Such content should include:

- a. Bibliographic/MARC records from WCU's Voyager Integrated Library System, and/or other MARC or MARC-like records as circumstances permit.
- b. WCU digitized content available from sources such as ContentDM, Internet Archive, Olive and/or institutional repositories/databases.
- c. WCU licensed content from vendors including Alexander Street, Chemical Abstracts, EBSCO, Elsevier, Films on Demand, JSTOR, ProQuest and Readex.
- d. Open Access content such as GPO, OAISter, ArXiv, etc.
- e. Electronic books and/or reference resources.
- f. Consortial-owned content
- g. WCU content mounted on a Docutek Electronic Reserves System.

III.2. **An integrated solution for dealing with "Blind spots" in the basic index or its equivalent.**

That is, an integrated method for discovering content which cannot be licensed by the vendor, including content from competing vendors.

III.3. **The ability to facet search results**

The ability to facet search results by subject, material type, etc., and the ability of WCU to adjust faceting priority and/or the availability of a given facet.

III.4. **The ability of the vendor to explain the depth of indexing provided for content**

That is, which WCU licensed content can be searched only by citation level information (author, title, keyword); which WCU-licensed content can be searched by citation and full text; and which WCU-licensed content can be searched by controlled vocabulary or other "deep metadata".

III.5. **The ability to adjust search relevance criteria and the method for doing so.**

For example, to move newspaper articles below peer-reviewed journal articles in search results.

III.6. **Move easily from the discovery search results to a licensed database**

For example, EBSCO Academic Search Complete, FIAF Index to Film Periodicals Plus, JSTOR, SciFinder, Web of Science, etc.

III.7. **The ability to customize searches based on WCU selected groups of resources**

Including the ability to create unique, portable search boxes for specific subject areas with varying content, coupled with the ability to put these search boxes into a variety of locations such as web pages, SpringShare Lib Guides, WCU's D2L Course Management System, etc. For example, the ability to create a custom search box which would permit a good single search for students in a course on local history, understanding that local history in West Chester includes not only events covered in books and scholarly journals, but also includes works of music by Samuel Barber, works of art by Horace Pippin, and content digitized and cataloged by the WCU Library Services (such as newspapers, post cards and three-dimensional artifacts).

III.8 **Customize and brand the search interface**

The ability of WCU to customize and brand the search interface.

III.9 **Work through a variety of local Open URL link resolvers**

The ability to work through a variety of local Open URL link resolvers (e.g. EBSCO Link Source, Serials Solutions 360 Link, SFX, etc.).

III.10 **Generate custom links**

Ability to generate custom links to associate with particular citations or resource types. For example, if an object has an ISSN, then link to ILLiad interlibrary loan system; or if an object has an ISBN, then link to the E-ZBorrow Relais interlibrary loan system.

III.11 **Associate additional information**

Ability to associate additional information about identified content without overt user interaction. Examples include book reviews for books, ISI impact factor for appropriate articles, times cited, etc.

III.12 **Pricing**

This item will be evaluated on the best price proposed by the vendor. While this area will be given consideration, it will not normally be the deciding factor in the selection process.

Make sure that you include the pricing for all related components necessary to make the product work. Include pricing if that component must be licensed from them. For example: Given that WCU currently uses the Serials Solutions Open URL resolver, is it necessary to buy another Open URL resolver to make the proposed discovery service Work? If so, what is the cost? Given that WCU currently subscribes to EBSCO's ERM service (which includes EBSCO A-to-Z) would WCU need to purchase another or a different license for EBSCO A-to-Z in order to run the EBSCO Discovery Service? If so, what is the cost? Is a particular subscription or license to WorldCat required to make WorldCat Local operational for all holders of a current WCU ID? If so, what is the cost? The price quote should clearly distinguish which purchases are required and which are optional. All prices must be included in a sealed envelope to be considered. Failure to do so will result in disqualification.

PART IV

Work Statement

IV.1. **Objectives.**

- A. General: Web Scale Discovery Service.
- B. Specific: Web Scale Discovery Service: A unifying search mechanism that will provide the greatest possible access to content owned, digitized and licensed by West Chester University (WCU) and to content freely available on the Internet.

IV.2. **Nature and Scope of the Project**

Describe what the project is to include, what geographical area is to be covered, etc.

IV.3. **Requirements**

- A. Must be able to provide a hosted service.
- B. The Discovery service basic index or its equivalent must include the following content:
 - 1. Bibliographic/MARC records from WCU's Voyager integrated library system
 - 2. WCU-licensed content from multiple vendors
 - 3. WCU-digitized content
- C. WCU cannot currently provide XML web services version of its Bibliographic/MARC records. The successful vendor must be able to include Bibliographic/MARC records from WCU's Voyager Integrated Library System using available methods such as Z39.50 or by provision of a file of Voyager Bib/Holdings records.

IV.4. **Tasks**

- A. Provide a Web Scale Discovery Service: A unifying search mechanism that will provide the greatest possible access to content owned, digitized and licensed by West Chester University (WCU) and to content freely available on the Internet.

B. WCU's Current Library Technology Environment

- 1. Ex Libris Voyager Integrated Library System administered by the Keystone Library Network (KLN) <http://www.passhe.edu/inside/asa/library/Pages/default.aspx>, and hosted on the KLN Hub at Shippensburg University, <http://pilot.ship.edu/>. West Chester uses the classic version of WebVoyage, therefore WCU has no XML web services installed.
- 2. Authentication, Z39.50, and other services through the KLN Hub.
- 3. ContentDM Collection hosted at the KLN Hub.

4. EBSCO ERM Essentials, electronic resources management system.
5. Serials Solutions 360Core, Basic e-resource access and management service (including a-to-z list and knowledge base).
6. Serials Solutions 360Link, OpenURL link resolver service.
7. Serials Solutions 360Search, federated search service.
8. SirsiDynix Docutek Electronic Reserves System on an onsite server managed by WCU Information Services.
9. Andromeda streaming media onsite server, managed by WCU Information Services. Media on this server is made available to the public through the Docutek E-Reserves system.
10. ILLiad Interlibrary Loan System on an onsite server, connected to Ariel and Odyssey ILL services, managed by WCU Information Services.
11. Participation in RapidILL interlibrary loan service, <http://rapidill.org/>.
12. Participation in PALCI E-ZBorrow interlibrary loan service, <http://www.palci.org/>, which is moving in spring 2011 to new software owned and hosted by Relais International, <http://www.relais-intl.com>.
13. Digitized collections in several locations: ContentDM server at the KLN Hub, <http://digital.klnpa.org/>; on the Internet Archive, http://www.archive.org/details/westchester_u; and (within the year) hosted by Olive Software, <http://www.olivesoftware.com/solutions/newspapers.asp>.

C. Specify the range of content included in the basic index or its equivalent. How will this content be gathered and made operational for WCU users? The goal is that the widest possible variety be made available to WCU users with the least amount of effort from WCU library staff. Respond to each of the items below and add any others as appropriate:

1. Bibliographic/MARC records from WCU's Voyager Integrated Library System, and/or other MARC or MARC-like records as circumstances permit.
2. WCU-digitized content available from sources such as ContentDM, Internet Archive, Olive and/or institutional repositories/databases.
3. WCU-licensed content from vendors including Alexander Street, Chemical Abstracts, EBSCO, Elsevier, Films on Demand, JSTOR, ProQuest, and Readex.
4. OpenAccess content such as GPO, OAISter, ArXiv, etc.
5. Electronic books and/or reference resources.
6. Consortial-owned content
7. WCU content mounted on a Docutek Electronic Reserves System.

- D. Explain if your product has the ability to provide an integrated solution for dealing with "blind spots" in the basic index or its equivalent. That is, an integrated method for discovering content which cannot be licensed by the vendor, including content from competing vendors.
- E. Explain if your product has the ability to facet search results by subject, material type, etc., and the ability of WCU to adjust faceting priority and/or the availability of a given facet.
- F. Explain the depth of indexing provided for content. That is, which WCU-licensed content can be searched only by citation level information (author, title, keyword); which WCU-licensed content can be searched by citation and full text; and which WCU-licensed content can be searched by controlled vocabulary or other "deep metadata."
- G. Explain if your product has the ability to adjust search relevance criteria and the method for doing so. For example, to move newspaper articles below peer-reviewed journal articles in search results.
- H. Explain if your product will move from the discovery search results to a licensed database such as EBSCO Academic Search Complete, FIAF Index to Film Periodicals Plus, JSTOR, SciFinder, Web of Science, etc.
- I. Explain if your product will customize searches based on WCU-selected groups of resources, including the ability to create unique, portable search boxes for specific subject areas with varying content, coupled with the ability to put these search boxes into a variety of locations such as web pages, SpringShare LibGuides, WCU's D2L Course Management System, etc. For example, the ability to create a custom search box which would permit a good single search for students in a course on local history, understanding that local history in West Chester includes not only events covered in books and scholarly journals, but also includes works of music by Samuel Barber, works of art by Horace Pippin, and content digitized and cataloged by the WCU Library Services (such as newspapers, post cards and three-dimensional artifacts).
- J. Will WCU have the ability to customize and brand the search interface?
- K. Does your product have the ability to work through a variety of local OpenURL link resolvers (e.g. EBSCO LinkSource, Serials Solutions 360 Link, SFX, etc.)?
- L. Does your product have the ability to generate custom links to associate with particular citations or resource types? For example, if an object has an ISSN, then link to ILLiad interlibrary loan system; or if an object has an ISBN, then link to the E-ZBorrow Relais interlibrary loan system?
- M. Does your product have the ability to associate additional information about identified content without overt user interaction. Examples include book reviews for books, ISI impact factor for appropriate articles, times cited, etc.

West Chester University of Pennsylvania
RFP WCU22841211K

Attachment A – Cover Page

On behalf of the firm listed below, the undersigned binds the firm to the provisions in its proposal and warrants that its proposal shall remain valid during the entire solicitation and award process.

Name of Firm

Contact Person Title

Address

Telephone #

Fax #

E-mail

Website

Federal ID#

Minority Business Enterprise: Yes ___ No ___ Type: _____

Certification # _____

Authorized Official Signature
(Please Include Title)

Date

ATTACHMENT B

SAMPLE COPY OF THE 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
_____ University of Pennsylvania of the State System of Higher Education (address), (hereinafter
"University," "Commonwealth," or "Agency"),

and

(Contractor's full name which must be in its legally recognized form, *i.e.*, corporate registration, full legal name if an individual and must be the same throughout this Contract. Deviations must be satisfactorily explained, except that the Contractor may be referred to as "Contractor" within this document from this point forward) at (address) 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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2005 WC 843	

SECTION 35. 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 the Expiration Date identified in the Contract, 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=5053> 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.

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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

President or Designee

Is an individual or partnership)

APPROVED AS TO FISCAL RESPONSIBILITY,

BUDGETARY APPROPRIATENESS AND

AVAILABILITY OF FUNDS

Title

President or Vice President of

Comptroller

Corporate Contractor

(Circle Title)

APPROVED AS TO FORM AND LEGALITY

University Legal Counsel

Secretary or Treasurer of Corporate

Deputy Attorney General

Contractor

(Circle Title)

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.