



Products and Solutions for the Electrical Industry

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Date: July 24th, 2023

Customer: Cranberry Township

Project Name: Pennwood Pump Station Generator Addition

Address: 29 Pennwood Place, Cranberry Twp. PA 16066

Scope of Work

Perform a turn-key sale and installation of a Cummins emergency power generator at Cranberry Township's Pennwood Place Pump Station. This turn-key install, includes subcontracting McCurley Houston Electric, Inc. for the complete installation of a Cummins 750kw Generator per the plans and specifications titled 29 Pennwood Place Pump Station Generator Addition dated 6/19/2023.

Delivery Expectations

Location: 29 Pennwood Place, Cranberry Twp. Pa 16066

Date(s): September 2024

Notes:
ESTIMATED DELIVERY BASED ON LEAD TIME OF EQUIPMENT INCLUDING ESTIMATED SUBMITTAL REVIEW AND APPROVAL TIME.

Terms of Purchase

Price: \$405,046.00 (excluding tax)

Terms: Net 30

See Schaedler Yesco standard terms & conditions

Submitted by Name: Shawn Reigh

Title: Outside Sales Representative

Email: sreigh@sydist.com

Phone: (724) 651-0613

Schaedler Yesco Contacts

Shawn Reigh
Outside Sales Representative
(724) 651-0613
sreigh@sydist.com

Customer Contacts

**Cranberry Township Director
of Engineering and
Environmental Services:**

Michael Malak
michael.malak@cranberrytow
nship.org
724-776-4806 x1150

July 24th, 2023

Cranberry Township
1000 Maintenance Building Dr.
Cranberry Township, PA 16066

Attn: Cranberry Township COSTARS Member#: 1708

Re: Cranberry Township 29 Pennwood Place Pump Station Generator
Schaedler Yesco Distribution COSTARS Contract#: 008-E22-994

Dear Cranberry Township,

On behalf of Schaedler Yesco Distribution Inc., I am pleased to provide Cranberry Township with a proposal for the 29 Pennwood Place Pump Station Generator Addition Project. Our installation partner is McCurley Houston Electric Inc., 2429 Eastbrook Road New Castle, PA 16105

Scope of Supply – Schaedler Yesco Per SYD Proposal:

Bill of material based on SYD Quote #: 24903 (attached)

Base bid material: \$279,597.00

Labor to install base bid: \$125,449.00

SYD Total Base Bid material & Labor: \$405,046.00 (excludes any additional tax)

Electrical Scope of Work – McCurley Houston Electric Inc:

- Start dates contingent on notice of award.
- Work completion date: TBD.
- Due to COSTAR contractual guidelines all supplies will be purchased through Schaedler Yesco Distribution's COSTAR Contract # 008-E22-994.
- Proposal includes: Addition of a new 750kw Cummins emergency generator to the 29 Pennwood Place Pump Station.
- Installer will provide a reasonable timeline for project completion from date of receipt of material.

Member Scope of Work – Cranberry Township

- Member will provide a single point of contact for coordination of schedules.
- Member will provide staff for assistance as needed.
- Member will communicate any safety guidelines required outside normal public jobsite regulations.
- Per COSTARS contractual guidelines invoices for material will be paid 30 days after receipt of material.
- Member will comply with Installer project timeline.

Assumptions and Exclusions:

- Excludes Any fees for required inspections.
- Excludes Maintenance agreement.
- Any additional work performed outside of the quoted proposal will require a change order and any labor charge in addition to the change order will incur a labor rate of: \$113.00 per hour.
- Itemized invoicing may occur as material ships, and installation progresses. Cost will not exceed proposed cost excluding any change orders due to unforeseen conditions or customer requested changes.
- Any work occurring outside of the agreed upon standard 8 hour shift will be subject to overtime rates. If facility schedule requires work to be completed outside of the agreed upon standard 8 hour shift, installation labor will need to be reviewed and/or renegotiated.

Cost of Supplies: \$ 279,597.00
Cost of Labor: \$ 125,449.00
Total Project Cost Base Bid: \$ 405,046.00

This project can be purchased under the Commonwealth of PA COSTAR Contract Maintenance, Repair and Operations Contract. Schaedler Yesco Distribution Inc. Contract # 008-E22-994.

Thank You for the opportunity to submit this proposal. If I can be of further assistance, please do not hesitate to contact me.

Shawn Reigh

Outside Sales Representative | Schaedler Yesco Distribution, Inc.

w: 724-651-0613



McCurley Houston Electric, Inc.

COMMERCIAL * INDUSTRIAL * RESIDENTIAL

2429 Eastbrook Road, New Castle, PA 16105
Phone: 724.652.9371 * Fax: 724.654.5122
e-mail: admin@mccurleyhouston.com
Contractor #PA004905

07/21/2023

To: Schadler Yesco

ATTN: Shawn Reigh

RE: Cranberry Township: Pennwood Generator Division

McCurley Houston has prepared a price that includes labor and material based on the provided Drawings. This price includes the following:

- Feed from the Generator, 3 sets of 500 XHHW CU.
- Set Generator on new concrete pad
- 3 2" conduits from the generator to inside of the building
- Excavation and concrete per the print
- Patching of exiting asphalt
- Fuel for generator with top off/refill post load test. (Approximately 1250gal)

Exclusions/Clarifications

- Purchase of the Generator
- Maintenance agreement
- Fees for inspections

Please contact me with any questions.

-Alex Kay
McCurley Houston Electric
412-855-6226

Expiration Date: 09/08/23

Quotation

TO:
CRANBERRY TOWNSHIP
2525 ROCHESTER RD STE 400
CRANBERRY TOWNSHIP, PA 16066-6422

Project Info:
Project: CRANBERRY TOWNSHIP PENNWOOD PUMP
Job #: 24903
Bid Date: 07/25/23
Bid Time: 02:00 PM EDT
Quoter: SHAWN REIGH

Type	Quantity	Vendor	Description	Unit or Lot#	Unit Price	Ext Price
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NOTES:

1. No Transfer Switch is included with this Proposal, as it is shown on Drawing E.02 Proposed Single Line Diagram as existing, and no Transfer Switch Specification Section was provided. If this is required, please contact Cummins for pricing.
2. The equipment contained in this quotation complies with U.S. EPA emission regulations for Stationary Equipment applications.
3. Proposal is based on the provided project Specifications and Drawings.
4. Proposal is for equipment only, offloading, rigging, and installation by others.
5. All Diesel Fuel and Fuel Tank Permits, unless listed above, are not included.
6. Cummins Standard Start-up and testing is included. Additional tests, such as NETA Testing, if required, is by others.
7. Coordination Study not provided.
8. A crane will be required for delivery - unloading by others.

SUBMITTALS: An order for the equipment covered by this quotation will be accepted on a hold for release basis. Your order will not be released and scheduled for production until written approval to proceed is received by Cummins. Such submittal approval shall constitute acceptance of the terms and conditions of this quotation unless the parties otherwise agree in writing.

THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ATTACHED TO THIS QUOTATION BY CUMMINS, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN. BY ACCEPTING THIS QUOTATION, CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD AND ACCEPTED.

From:
SCHAEDLER YESCO DISTRIBUTION -BR21
Main 412-235-7506
1290 WESTERN AVENUE
PITTSBURGH, PA 15233-2028
Printed By: SHAWN REIGH

Notes

This Quotation is based on SYD's standard T&C's as detailed on www.sydist.com and one shipment unless negotiated otherwise. It is also based on our interpretation of the plans & spec's and subject to approvals. Prices quoted valid for 7 days.



Project: CRANBERRY TOWNSHIP

Expiration

09/08/23

Quotation

Type	Quantity	Vendor	Description	LOT #	Unit Price	Ext Price
750 KW Generator	1	20333	1 DQCB, Commercial Diesel Generator Set, 750kW Standby 60Hz U.S. EPA, Stationary Emergency Application 750DQCB, Diesel Genset, 60Hz, 750kW Duty Rating - Standby Power (ESP) Emission Certification, EPA, Tier 2, NSPS CI Stationary Emergency Listing - UL 2200 Voltage - 277/480, 3 Phase, Wye, 4 Wire Alternator - 60Hz, Wye, BR, 125/105C - Standby/Prime Alternator Heater, 120 Volt AC Aluminum Sound Attenuated Level 1 Enclosure, with Exhaust System Enclosure Color - Sandstone, Aluminum Wind Rating - 150 MPH, Aluminum Housing Cooling Air Outlet - Horizontal, Sound Attenuated Fuel Tank - Sub-Base, UL142 Compliant, 1,000 Gallon Capacity Compliance - 5 Gallon Fill / Spill Box Listing, ULC - 8601 - 07 Alarm - High Fuel Fill Fuel Water Separator Fuel Tank Connection - Dual Stub Up Control Mounting - Left Facing PowerCommand 2.3 Controller LCD Control Display Display, Running Time Relays - Genset Status, User Configured Stop Switch - Emergency, Externally Mounted Relay - Alarm Shutdown Control Display Language - English Circuit Breaker or Entrance Box or Terminal Box - Left Only Circuit Breaker 1200 Amp, Left, 3P, 600/415V, UL/IEC, Serv Ent, 100%UL Bottom Entry, Left Indication - Ground Fault, Terminal Box (or) Circuit Breaker Box - Left Engine Air Cleaner - Normal Duty External Battery Charger - 12 Amp, Regulated Engine Cooling - Radiator, 50C Ambient Shutdown - Low Coolant Level Coolant Heater - 208/240/480 Volts AC, Below 40F Ambient Temperature Oil Sampling Valve Cummins Certified Test Record			



Project: CRANBERRY TOWNSHIP

Expiration

09/08/23

Quotation

Type	Quantity	Vendor	Description	LOT #	Unit Price	Ext Price
			Generator Warranty - Standby Comprehensive, 5 Year / 2500 Hours Literature - English			
Spare Filters	1	20333	Set of Spare Filters (QSK23-G3&G7)			
Spare Belts	1	20333	Set of Spare Engine Belts			
Remote E-STOP	1	20333	Remote Emergency Stop Station in a NEMA 4X Enclosure			
24V Battery	1	20333	24VDC Engine Starting Batteries - 1155CCA (BE 008D-2)			
Manuals	3	20333	Manual - Operator/Maintenance and Parts			
Jobsite Delivery	1	20333	Delivery of Equipment to Jobsite			
Travel Time to Jobsite	2	20333	Travel Time and Mileage to Jobsite			
Start-Up	1	20333	Standard Emergency Generator Startup during Normal Business Hours			
Load Bank Testing	1	20333	2 Hour On-Site Load Bank Test for a 480 VAC System with 50' Hook-Up Max.			
Training	1	20333	Four Hours Personnel Training at Jobsite			

From:

SCHAEDLER YESCO DISTRIBUTION -BR21
Main 412-235-7508
1290 WESTERN AVENUE
PITTSBURGH, PA 15233-2028
Printed By: SHAWN REIGH

Total

279,597.00

Notes

This Quotation is based on SYD's standard T&C's as detailed on www.sydist.com and one shipment unless negotiated otherwise. It is also based on our interpretation of the plans & spec's and subject to approvals. Prices quoted valid for 7 days.



TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT

These Terms and Conditions for Sale of Power Generation Equipment, together with the quote ("Quote"), sales order ("Sales Order"), and/or credit application ("Credit Application") on the front side or attached hereto, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the Quote ("Customer") and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of equipment to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement. Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, specifications, agreement (whether upstream or otherwise), or any other terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. SCOPE. Cummins shall supply power generation equipment and any related parts, materials and/or services expressly identified in this Agreement (collectively, "Equipment"). No additional services, parts or materials are included in this Agreement unless mutually agreed upon by the parties in writing. A Sales Order for Equipment is accepted on a hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received from Customer. A Quote is limited to the plans and specifications section specifically referenced in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated and mutually agreed to in writing by the parties. Unless otherwise agreed by Cummins in writing, this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ("Quote Validation Period"). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

2. SHIPPING; DELIVERY; DELAYS. Unless otherwise agreed in writing by the parties, Equipment shall be delivered FOB origin, freight prepaid to first destination. For consumer and mobile products, freight will be charged to Customer. Unless otherwise agreed to in writing by the parties, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. Cummins may deliver in installments. A reasonable storage fee, as determined in Cummins' sole discretion, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. In the event Customer fails to take any or all shipments of Equipment ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall have the right, in its sole discretion to either (i) charge a minimum storage fee in the amount of one and one-half percent (1.5%) per month of the total quoted amount; or (ii) consider the Equipment abandoned and, subject to local laws, may (a) make the Equipment available for auction or sale to other customers or the public, or (b) otherwise use, destroy, or recycle the Equipment at Customer's sole cost and expense. The foregoing remedies shall be without prejudice to Cummins' right to pursue other remedies available under the law, including without limitation, recovery of costs and/or losses incurred due to the storage, auction, sale, destruction, recycling, or otherwise of the Equipment. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use commercially reasonable efforts to meet estimated dates, but shall not be liable to customer or any third party for any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or any unforeseen event, circumstance, or condition beyond Cummins' reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. *AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOR OR SERVICE.*



WHILE CUMMINS SHALL MAKE COMMERCIALY REASONABLE EFFORTS TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE. IN THE EVENT DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IS DELAYED, HOWEVER OCCASIONED, DUE TO EVENTS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE EQUIPMENT OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.

3. PAYMENT TERMS; CREDIT; RETAINAGE. Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Equipment. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay Cummins' costs and expenses (including reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment. If Customer fails to make any payments to Cummins when due and payable, and such failure continues for more than sixty (60) days from the date of the invoice, or less if required by applicable law, then Cummins may, at Cummins' sole discretion and without prejudice to any other rights or remedies, either (i) terminate this Agreement; or (ii) postpone delivery of any undelivered Equipment in Cummins' possession and/or suspend its services until payment for unpaid invoices is received.

4. TAXES; EXEMPTIONS. Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

5. TITLE; RISK OF LOSS. Unless otherwise agreed in writing by the parties, title and risk of loss for the Equipment shall pass to Customer upon delivery of the Equipment by Cummins to freight carrier or to Customer at pickup at Cummins' facility.

6. INSPECTION AND ACCEPTANCE. Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's reasonable satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

7. LIEN; SECURITY AGREEMENT. Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

05.01.2023

8. CANCELLATION; CHARGES. Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. If Customer seeks to cancel all or a portion of an order placed pursuant to this Agreement, and Cummins accepts such cancellation in whole or in part, Customer shall be assessed cancellation charges as follows: (i) 10% of total order price if cancellation is received in Cummins' office after Cummins has provided submittals and prior to releasing equipment to be manufactured; (ii) 25% of total order price if cancellation is received in Cummins' office after receipt of submittal release to order, receipt of a purchase order for a generator already on order with the factory, or is asked to make any hardware changes to the equipment already on order with the factory; (iii) 50% of total order price if cancellation is received in Cummins' office sixty (60) or fewer days before the scheduled shipping date on the order; or (iv) 100% of total order price if cancellation is received in Cummins' office after the equipment has shipped from the manufacturing plant.

9. TERMINATION. Cummins may, at any time, terminate this Agreement for convenience upon sixty (60) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this



Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Equipment or services supplied under this Agreement, in accordance with the payment terms detailed in Section 3. If a notice of termination for default has been issued and is later determined, for any reason, that the Customer was not in default, the rights and obligations of the parties shall treat the termination as a termination for convenience.

10. MANUALS. Unless otherwise stated, electronic submittals and electronic operation and maintenance manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

11. TRAINING; START UP SERVICES; INSTALLATION. Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

12. MANUFACTURER'S WARRANTY. Equipment purchased hereunder is accompanied by an express written manufacturer's warranty ("Warranty") and, except as expressly provided in this Agreement, is the only warranty offered on the Equipment. A copy of the Warranty is available upon request. While this Agreement and the Warranty are intended to be read and applied in conjunction, where this Agreement and the Warranty conflict, the terms of the Warranty shall prevail.

13. WARRANTY PROCEDURE. Prior to the expiration of the Warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, 'downtime' expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

14. LIMITATIONS ON WARRANTIES.

THE REMEDIES PROVIDED IN THE WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

15. INDEMNIFY. Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Equipment supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or



contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

16. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY OR NEGLIGENCE), FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF EQUIPMENT UNDER THIS AGREEMENT OR THE USE OR PERFORMANCE OF EQUIPMENT SUPPLIED UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF EQUIPMENT SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

17. DEFAULT; REMEDIES. Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins. Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under applicable law; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

18. CUSTOMER REPRESENTATIONS; RELIANCE. Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for purpose it was designed. Even if Customer's purchase of Equipment from Cummins under this Agreement is based, in whole or in part, on specifications, technical information, drawings, or written or verbal advice of any type from third parties, Customer has sole responsibility for the accuracy, correctness and completeness of such specifications, technical information, drawings, or advice. Cummins make no warranties or representations respecting the accuracy, correctness and completeness of any specifications, technical information, drawings, advice or other information provided by Cummins. Cummins makes no warranties or representations respecting the suitability, fitness for intended use, compatibility, integration or installation of any Equipment supplied under this Agreement. Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

19. CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the



terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

20. GOVERNING LAW AND JURISDICTION. This Agreement and all matters arising hereunder shall be governed by, interpreted, and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the federal and state courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement or any related matter, and hereby waive any right to claim such forum would be inappropriate, including concepts of forum non conveniens.

21. INSURANCE. Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

22. ASSIGNMENT. This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

23. INTELLECTUAL PROPERTY. Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

24. PRICING. To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date of shipment due to economic and market conditions at the time of shipment. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input and labor cost changes and/or other unforeseen circumstances beyond Cummins' control.

25. MISCELLANEOUS. Cummins shall be an independent contractor under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement. No amendment of this Agreement shall be valid unless it is writing and signed by an authorized representative of the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. These terms are exclusive and constitute the entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for, and Customer has agreed to purchase of the Equipment pursuant to these Terms and Conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such Terms and Conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event Cummins incurs additional charges hereunder due to the acts or omissions of Customer, the additional charges will be passed on to the Customer, as applicable. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof. The Parties' rights, remedies, and obligations under this Agreement which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the Section 16. Limitation of Liability provision contained herein, shall survive the expiration, termination, or cancellation of this Agreement.

26. COMPLIANCE. Customer shall comply with all laws applicable to its activities under this Agreement, including, without limitation, any and all applicable federal, state, and local anti-bribery, environmental, health, and safety laws and regulations then in effect. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a



government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

27. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.

Project Terms and Conditions

1. General: The Contractor shall execute the Scope of Work diligently and in good and workmanlike manner, free of defects not inherent in the type of work. This Scope of Work and corresponding price were developed in reliance upon the accuracy of the plans and specifications, if any, provided to Contractor by the Owner.

Unless otherwise stated in the Scope of Work, all work shall be performed during Contractor's normal working hours.

Unless otherwise required by the type of work, Contractor shall not move, replace, or alter any part of the building structure in the performance of this agreement.

If the Owner has a progress schedule, said progress schedule must be available prior to submittal of proposal. In the event that aforementioned progress schedule is presented after the proposal is submitted, the Contractor shall have the right to adjust proposal value. Furthermore, the Contractor shall have the right to provide the Owner with input regarding the progress schedule. Contractor's work shall be done in accordance with a mutually agreed to and beneficiary schedule.

Contractors shall coordinate its work with that of any other contractors at the job site.

2. Access: Owner shall provide Contractor free and timely access to areas and equipment.

3. Additional Costs: The cost of payments and performance bonds are not reflected in the price and shall be an additional charge unless indicated otherwise in this agreement.

Excavation, if included in the Scope of Work and price, consist of earth removal only and rock excavation shall be an extra charge. In the event aforementioned excavation creates excess materials, it shall be understood that all pricing is based on excess materials being disposed of on site. The Owner shall have the right to define a location on site for excess soils created as a direct result of this proposal.

Any alteration to, or deviation from, this agreement involving extra work, cost of materials, or labor shall become an extra charge. (Fixed price amount to the negotiated or on a time and material basis at contractor's rates then in effect) over the sum stated in this agreement. All requests for Extra Work shall be made in writing to the Contractor's office. The Owner shall not make requests or direct field personal to make changes to the scope.

Unless specified in the Scope of Work, this agreement does not include preventative maintenance, tapping fees, utility fees, temporary services, stone backfill, or service calls requested by the owner. These services, if requested by the owner and not specified in the agreement, shall be charged at contractor's rates then in effect.

Unless specified otherwise in this agreement, cost of all taxes applicable to the services and/or materials provided under this agreement have been included in the price.

4. Payment: Owner agrees to pay invoices in full within Thirty (30) days of the Invoice Date. Late payments shall be assessed interest charges at a rate of 1.5% per month. Interest shall continue to accrue until all past due amounts are paid in full. If the owner fails to pay any invoice within Sixty Days (60) Days of the Invoice date, contractor may stop all work without notice, and/or cancel this agreement. Upon such delinquency and at contractor's discretion, the entire agreement amount may become due and payable upon contractor's demand.

All materials, supplies, and/or equipment incorporated into the work shall remain contractor's property until contractor is paid in full.

5. Changes and Extra Work: The cost of any deletion from, modification of, or addition to the work covered by this agreement shall be added to or deducted from the price. In the case of extra work, payments for extra work shall be made as extra work progresses, concurrently with payments invoiced and as described in the additional costs and payment paragraphs herein. Orders for extra work shall be made in writing with the price agreed to in advance. Nevertheless, contractor is entitled to be paid for extra work, whether the extra work is reduced to writing or not. Extra work includes, but is not limited to, any increased cost in labor, including overtime or materials resulting from any change in schedule, acceleration, out of sequence work, or delay cost by others from whom contractor is not responsible.

6. Permits, Licenses, and Fees: The cost and obligation to obtain any permits or licenses required by the work, or any associated fees included as a result of contractor's performance of the work, including building permits, shall be the responsibility of the owner unless otherwise agreed in writing by the parties.

7. OSHA Regulations: Upon request, the owner shall make available to contractor's personnel, all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA's hazardous communication standard regulations.

8. Hazardous Material and Air Quality: Contractor shall not have the duty or responsibility to identify, abate, or remove asbestos or any other toxic or hazardous materials, substances or wastes, any fungus (es) or spore (s), gas (es), substances (s), and/or vapor (s), arising from or otherwise produced or caused by a fungus (es) or spore (s), or any material, product, or structure, whether or not a fixture in the building, that contains, fosters, holds, or otherwise acts as a conduit for any fungus (es) or spore (s) (collectively "hazards").

Should any hazards be encountered or suspected, contractor's only duty shall be to notify the owner as to the existence of the hazards.

Until the hazards and their resulting byproducts are removed, contractor shall have a right to suspend its work. To the extent the suspension caused the delay in completion of the work, time for completion shall be suspended and the contract price shall be equitably adjusted to account for any additional costs, damages, and/or fees incurred by contractor as a result of the delay.

Under no circumstances shall contractor be responsible or liable for the indoor air quality at or in the owner's facility, including, but not limited to, any type of bodily harm or illness to the owner's employees or the facility's occupants, licensees, or other third party, or any damage caused to the owner's facility, any or all of which arise from, out of, or are otherwise caused by or connected to the contractor's work, including, but not limited to, any damage, illness, or injury that is in any way caused by or results from any hazards.

9. Risk of Loss: Until completion of work and final acceptance by the owners, contractor shall bear the risk of loss or destruction of or damage to the work performed under this agreement or any material, equipment, or other items incorporated or to be incorporated therein arising from any cause other than a cause against which the owner carries insurance and protects this work, the work of contractor and other sub-contractor's from damage or deterioration, or a cause resulting from the owner's negligence.

10. Limitation of Liability: Unless otherwise provided for in this agreement, UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, SHALL CONTRACTOR BE RESPONSIBLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM OR IN CONNECTION WITH THE WORK, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFIT, OR INCREASED OPERATION OR MAINTENANCE EXPENSES. CONTRACTOR SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES OF OWNERS, TENANTS, OR CUSTOMERS. Furthermore, contractor shall not be liable for delay, loss, damage or detention caused by unavailability of machinery, equipment, or materials, delay of carriers, strikes, including those by contractor employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, terrorist attack, or by any cause beyond contractor's control.

11. Clean Up: At all times during the progress of the work, and upon completion of the work, contractor shall clean up and remove materials and debris resulting from contractor's work. Contractor will keep its work area in a neat and broom clean condition.

12. Insurance: Contractor will provide Commercial General Liability Insurance with a limit of liability with a least \$1,000,000 per occurrence and in the aggregate. Contractor will also provide automobile liability insurance, workers compensation insurance, and excess liability coverage of at least \$2,000,000. Owner shall purchase and maintain all risk insurance, including coverage for contractors' interest, upon the full value of the work performed and/or materials delivered to the job site. Per project insurance limits are not a part of this agreement.

13. Warranty: Contractor warrants that the workmanship hereunder shall be free from defects for one (1) year from the date of substantial completion of contractor's work. If any replacement part or item of equipment proves defective, contractor shall expend to the owner of any warranty the contractor has received from the manufacturer. Removal and installation of any equipment and material repaired and replaced under a manufacturer's warranty shall be an owner's expense and at the rates then in effect. Owner accepts the obligation to maintain all parts and equipment in accordance with the manufacturers' recommendation. FAILURE TO MAINTAIN PARTS AND EQUIPMENT SHALL VOID ALL WARRANTIES PROVIDED HEREIN, at contractor's option. Other than those listed, CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, and INCLUDING WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

14. Construction, Jurisdiction, and Waiver: This agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania, without consideration to its conflict of laws provisions.

Should any provisions in this agreement be found to be unenforceable by a Court of competent jurisdiction, all remaining provisions, to the greatest extent possible, shall remain in full force effect.

One or more waivers of any right, obligation, or default of this agreement shall not be construed as a waiver of any subsequent or other right, obligation, or default.

15. Changes to Terms: IF THE OWNER CHANGES ANY OF THE TERMS CONTAINED IN THIS PROPOSAL, OWNER'S SIGNATURE SHALL CONSTITUTE A COUNTEROFFER, WHICH CONTRACTOR MAY ACCEPT OR REJECT.

ANY PURCHASE OR ORDER ISSUED BY THE OWNER PERTAINING TO THE WORK IS INTENDED ONLY TO ESTABLISH PAYMENT AUTHORITY FOR OWNER'S INTERNAL ACCOUNTING PURPOSES. NO TERM OR CONDITION INCLUDED IN THE OWNER'S PURCHASE ORDER WILL HAVE ANY FORCE OR EFFECT. A purchase order issued under this or any other agreement shall not be considered to be a counteroffer, amendment, modification, or other revision to the terms of this agreement.

16. Paragraph/Article Headings: All paragraphs/article headings are used herein for convenience and shall not be utilized in construing or interpreting the intent of the parties hereto.

17. Singular and Plural: Any reference herein made in the singular shall also be construed to mean the plural and vice versa.

18. Entire Agreement: This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties with regard to the subject matter of this agreement.

19. Pennsylvania Prevailing Wage Act: The owner (public body) has the responsibility of obtaining Pennsylvania prevailing wage rates from the Commonwealth, Department of Labor & Industry for a project. The public body must also include Pennsylvania prevailing wage rates in the contracts, notices for bids and advertisements. The Owner is responsible for submitting prevailing Construction projects (construction, reconstruction, demolition, alteration and or repair work other than maintenance work) financed by a public body where the estimated cost is at least \$25,000 require Pennsylvania prevailing wages under the Pennsylvania Prevailing Wage Act (43 P.S. §§ 165-1 through 165-17). 43 P.S. § 154-4;

**34 Pa. Code § 9.104. Pennsylvania prevailing wage rates and information may be obtained from the following:
Bureau of Labor Law Compliance**

**Web site: www.dli.state.pa.us
[Prevailing Wage Determination Request](#)**

**COSTARS CONTRACT
STANDARD TERMS AND CONDITIONS**

1. PURPOSE OF CONTRACT

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

2. PURCHASERS UNDER THE CONTRACT

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

- Any political subdivision;
- Any public authority;
- Any tax exempt, nonprofit educational or public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- To the extent provided by law, any other entity, including a council of governments

or an area government that expends public funds for the procurement of supplies, services, and construction.

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

b. DGS requires Purchasers to register as COSTARS Members, and only those entities registered with DGS may purchase from the Contract. Therefore, the Contractor agrees to make Contract sales only to DGS-registered COSTARS members. Currently, there are several thousand potential Purchasers registered with DGS. A list of the registered entities, updated frequently, is available on the DGS COSTARS Website at <http://www.costars.state.pa.us/SearchCOMember.aspx>.

Should the Contractor become aware of, or be contacted by, any potential purchaser not currently registered as a COSTARS member, where the potential purchaser believes it may qualify for, and wishes to participate in, the COSTARS Program, the Contractor may refer the potential purchaser to www.costars.state.pa.us to complete the DGS COSTARS member online application.

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

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

3. TERM OF CONTRACT

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

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

b. The Contractor shall not start performance under this Contract, nor shall the Contractor represent to any prospective Purchaser that the Contractor is authorized to provide supplies under this Contract, until the Effective Date has arrived and the Contractor has received a copy of the fully-executed Contract from DGS. The Contractor understands and accepts that a Purchaser has no obligation to pay the Contractor for any supply furnished, work performed, or expenses incurred

under this Contract at any time, and that only a PO from a Purchaser shall trigger any delivery under this Contract.

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

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

Contractor Classification	Required Administrative Renewal Fee
Department of General Services Verified Small Diverse Business Bidder	\$166
Department of General Services Self-Certified Small Business Bidder	\$500
All Other Bidders-Contractors	\$1,500

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

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

4. PURCHASE ORDERS

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

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

For electronically-issued POs, the following terms apply:

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

b. The parties agree that no writing other than the PO and Contractor's acknowledgement shall be required to make the PO legally binding, notwithstanding contrary requirements in any law. The parties agree not to contest the validity or enforceability of an electronic PO or acknowledgement under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements are required to be in writing signed by the parties. A printed record of any electronic PO or acknowledgement will be admissible as evidence in any judicial, arbitration, mediation, or administrative proceedings to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of POs or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the PO or acknowledgement were not in writing or signed by the parties. A PO or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated in these Terms and Conditions for such documents.

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

5. INDEPENDENT CONTRACTOR

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

6. THIRD PARTY BENEFICIARIES

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

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

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

7. COMPLIANCE WITH LAW

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

8. ENVIRONMENTAL PROVISIONS

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

9. CONTRACTOR DEDICATED WEBSITE

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

10. PRICING, COMPENSATION, AND INVOICES

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

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

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

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

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

11. PAYMENT

Purchasers electing to participate in the Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor. DGS shall require the Purchaser to put forth reasonable efforts to make payment by the Required Payment Date, defined as (a) the date on which payment is due under the PO terms, (b) 30 days after a Purchaser receives a completed invoice for items the Purchaser has accepted at its "Bill To" address on the PO if no payment date is specified in the PO, or (c) any later payment date specified on the invoice.

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

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

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

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

12. TAXES

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

13. WARRANTY

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

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

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

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

14. DELIVERY

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

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

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

15. SALES REPORTS

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

a. The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/iri/portal/anonymous>, Enterprise Applications. If a Contractor does not have access to the internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

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

c. Failure to provide the quarterly sales report in the specified time and format constitutes a default under Section 22 of these Standard Terms and Conditions and may result in termination of the contract.

16. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

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

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

17. OWNERSHIP RIGHTS

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

18. ASSIGNMENT OF ANTITRUST CLAIMS

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

19. HOLD HARMLESS PROVISION

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

20. AUDIT PROVISIONS

DGS and its designees, including without limitation any Purchaser issuing a PO under this Contract, shall have the right, at reasonable times and at a site DGS may designate, to audit the Contractor's books,

documents, and records to the extent that such books, documents, and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records that will support its prices charged and costs incurred for the Contract.

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

21. INSPECTION AND REJECTION

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

22. DEFAULT

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

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

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

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

Purchaser. The Purchaser may withhold from amounts otherwise due the Contractor for such partially manufactured or delivered item(s), such sum as the Purchaser determines to be necessary to protect the Purchaser against loss.

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

e. Failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by DGS or the Purchaser of any rights and remedies in regard to the event of default or any succeeding event of default.

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

23. FORCE MAJEURE

No Purchaser will incur any liability to the Contractor, and the Contractor shall not incur any liability to any Purchaser, if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without its fault or negligence. Causes beyond the control of the Contractor or Purchaser may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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

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

24. TERMINATION PROVISIONS

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

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

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

25. ASSIGNABILITY AND SUBCONTRACTING

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

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

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

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

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

f. DGS's consent to any assignment, other than an assignment of payment as specified in subsection d. of this Section 26, shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all Contract terms and conditions and to assume the Contract duties, obligations, and responsibilities being assigned.

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

26. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

c. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

d. The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

e. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small

Business Opportunities (BBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

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

g. The Contractor's and each subcontractor'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 and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

h. 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.

27. CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

- a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- b. "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 the execution of this contract.
- c. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
- d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- e. "Financial Interest" means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- f. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the 4 Pa. Code §7.153(b), shall apply.
- g. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements

applicable to Contractor or that govern contracting or procurement with the Commonwealth.

- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lit places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - (3) had any business license or professional license suspended or revoked;
 - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.

- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use 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.

28. CONTRACTOR RESPONSIBILITY PROVISIONS

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

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

b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

c. 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, to the best knowledge of the Contractor, 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 that 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 www.dgs.pa.gov 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

29. AMERICANS WITH DISABILITIES ACT

a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

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

30. HAZARDOUS SUBSTANCES

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

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

1. Hazardous substances:

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

2. Hazardous mixtures:

- A. The common name or, if no common name exists, the trade name;
- B. The chemical or common name of special hazardous substances comprising .01% or more of the mixture;
- C. The chemical or common name of hazardous substances comprising 1.0% or more of the mixture;
- D. A hazard warning; and
- E. The manufacturer's name, address, and telephone number.

3. Single chemicals:

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

4. Chemical Mixtures:

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

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

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

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

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

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

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

31. COVENANT AGAINST CONTINGENT FEES

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

32. 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.

33. INTEGRATION

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

34. CHANGES

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

- a. add or delete materials or services within the scope of the Contract;
- b. procure additional Contractors for the materials and services;
- c. notify the Contractor that the Commonwealth is exercising Contract termination; or
- d. automatically incorporate by reference into this contract any changes to the Commonwealth's Management Directives governing the required standard contract provisions set forth in Sections 28 through 29 of this Contract that may occur at any time during the term of this Contract, provided that the Commonwealth has notified the Contractor of such change.

DGS shall make changes permitted under this Section 34 by notifying the Contractor in writing. The change shall be effective as of the date of the notification of change, unless the change specifies a later effective date. The Contractor agrees to provide Contract supplies or services to all subsequent Purchasers in accordance with the change. If the Contractor does not wish to abide by the changed terms, it may opt out of the contract on written notice to the Commonwealth, such option to be effective at the end of the then-current Contract quarter.

35. COSTARS BRAND

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

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

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

1. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.

2. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.

3. The Contractor is permitted to use the COSTARS Brand in broadcast, or internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.

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

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

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

36. RIGHT-TO-KNOW LAW

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.

b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:

1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the

Commonwealth's determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.