



PENNSYLVANIA'S STATE SYSTEM *of* HIGHER EDUCATION

RFP #DOC1555879052

Request for Proposals

for

Online Proctoring Solutions

Issued by:

Pennsylvania's State System of Higher Education

Publication Date: May 12, 2025

Submission Date: June 17, 2025; 2:00 P.M. ET

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Section I General Information

I.1 Purpose

This Request for Proposals (RFP) provides interested offerors with sufficient information to prepare and submit proposals for consideration by Pennsylvania's State System of Higher Education (State System) to provide **Online Proctoring Solutions**.

A. National Contract

The State System, acting as the Principal Procurement Agency, has partnered with OMNIA Partners Public Sector, Inc., a Delaware corporation ([OMNIA Partners](#)) to make the resultant contract (also known as the Master Agreement in materials distributed by OMNIA Partners) from this solicitation available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary, and higher education entities, non-profit entities, and agencies for the public benefit (Public Agencies), through OMNIA Partner's cooperative purchasing program.

The State System is acting as the contracting agency for any other Public Agency that elects to utilize the resulting Master Agreement. Use of a Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners (a Participating Public Agency). By using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of a Master Intergovernmental Cooperative Purchasing Agreement, a form of which is included in **Appendix E**, or as otherwise agreed to. **Appendix E, OMNIA Partners Requirements for National Cooperative Contracts**, contains additional information about OMNIA Partners and the cooperative purchasing program.

B. OMNIA Partners

OMNIA Partners is the largest and most experienced purchasing organization for public and private sector procurement. Through the economies of scale created by OMNIA Partners public sector subsidiaries and affiliates, its participants now have access to more competitively solicited and publicly awarded cooperative agreements. For all public sector contracts, the lead agency contracting process continues to be the foundation on which OMNIA Partners was established. OMNIA Partners is proud to offer more value and resources to state and local government, higher education, K-12 education and non-profits.

OMNIA Partners provides shared services and supply chain optimization to government, education and the private sector. With corporate, pricing and sales commitments from the supplier, OMNIA Partners provides marketing and administrative support for the supplier that directly promotes the supplier's products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies on a national basis. Participating Public Agencies benefit from pricing based on aggregate spend and the convenience of a contract that has already been advertised and publicly competed. The supplier benefits from a contract that generally allows Participating Public Agencies to directly purchase goods and services without the supplier's need to respond to additional competitive solicitations. As such, the supplier **must** be able to accommodate a nationwide demand for services and to fulfill obligations as a nationwide provider and respond to the OMNIA Partners documents. See **Appendix E, OMNIA Partners Requirements for National Cooperative Contract** for additional information.

C. Multiple Contracts

This RFP is expected to result in multiple participation award contracts. Multiple awards will ensure that any ensuing master contracts fulfill current and future requirements of the diverse and large number of Participating Public Agencies. Offerors are invited to submit proposals based on the information provided in this RFP, with the intent to establish a national cooperative business alliance with Pennsylvania’s State System of Higher Education and OMNIA Partners that will maximize the resources of both organizations to most effectively meet OMNIA Partners national participating agencies and the State System’s needs.

D. Current Contracts

The current contracts with [Honorlock](#), [Meazure Learning](#), and [Proctorio](#) are expected to expire in early 2026. Usage among the State System and other Participating Public Agencies utilizing the current contracts resulted in approximately \$4.2M spend from 2021 – 2024.

I.2 Issuing Office

This RFP is being issued by the Issuing Office listed below. The Issuing Office is the sole point of contact for this RFP. Please refer all inquiries to:

Linda A. Venneri, CPSM
Strategic Collaborative Contracts Manager
Pennsylvania’s State System of Higher Education
2300 Vartan Way, Suite 207
Harrisburg, PA 17110
V 717-720-4135
lvenneri@passhe.edu

From the Publication Date of this RFP until a determination is made regarding the selection of a proposal, all contacts concerning this RFP must be made through the Issuing Office. Only information supplied by the Issuing Office, including responses to questions regarding the RFP, should be used in preparing proposals. All other contacts or information received regarding the subject prior to the release of this RFP should be disregarded in preparing responses. Any violation of this condition is cause for the State System to reject an offeror’s proposal. If it is later discovered that any violations have occurred, the State System may reject the proposal and terminate the awarded contract.

I.3 Calendar of Events

Description	Date
Publication Date	May 12, 2025
Non-mandatory Pre-proposal Conference	May 28, 2025; 1:00 p.m. ET
Deadline for Questions	June 3, 2025
Amendment Issued (Questions/Answers)	June 4, 2025
Submission Date/Time	June 17, 2025; 2:00 p.m. ET
Award	Estimated by August 1, 2025
Services Start	Upon execution of contract

I.4 Description of the Organization

- A. The [State System of Higher Education](#) was established by statute on July 1, 1983.
- B. In accordance with Title 62, Commonwealth Procurement Code, the State System facilitates a competitive bidding and contracting process and is responsible for identifying strategic contracting opportunities and establishing best value contracts in partnership with its suppliers.

I.5 Instructions for Proposal Preparation

A. Economy of Preparation

Proposals should be prepared simply and economically, providing a straightforward, concise description of the offeror's ability to meet the requirements of this RFP.

B. Proposals

Proposals must consist of a complete response to this RFP.

1. Proposals must be submitted via [SAP Ariba Discovery](#).
2. Proposals must consist of a complete response to the requirements outlined herein and shall be submitted no later than the required proposal Submission Date/Time listed above. Late proposal submissions may not be accepted.
3. Proposal contents may become contractual obligations when a contract is executed.
4. The proposal, as submitted, must remain valid during the entire solicitation, award, and contract finalization process.
5. All cost data must be submitted as a separate document using **Appendix B, Cost Submittal Response** apart from **Appendix A, Technical Submittal Response**. **Absolutely no pricing can appear anywhere in the Technical Proposal.** Failure to meet this requirement may result in automatic disqualification of the proposal.

C. Questions

Offerors may submit questions surrounding the RFP at [SAP Ariba Discovery](#). Answers to all questions will be posted as an addendum to the RFP and will become part of this RFP.

D. Addenda

If it becomes necessary to revise any part of the RFP, addenda will be posted at [SAP Ariba Discovery](#). Information contained at this website is current and accurate. It is the offeror's responsibility to check this website periodically to obtain any changes to the solicitation. Offerors must acknowledge all addenda in their proposal response. Offerors who fail to submit a current copy of the solicitation may be deemed nonresponsive.

E. Non-mandatory Preproposal Conference

A virtual non-mandatory preproposal conference will be held on 5/28/23 at 1:00 p.m. EST. If interested in attending, contact the Issuing Office at venneri@passhe.edu to obtain meeting details. The purpose of this conference is to convey the RFP's goals, objectives, and scope and to review the OMNIA Partners requirements. The preproposal conference is for information only. Answers to any questions asked during the conference will not be official until verified in writing by the Issuing Office via an amendment to the RFP.

F. Best and Final Offers

The State System is not expected to request Best and Final Offers. Offerors are expected to provide their best and final pricing in their proposals.

- G. **Response Date.** To be considered for selection, proposals must be submitted at [SAP Ariba Discovery](#) by the proposal Submission Date/Time listed above.
- H. **Rejection of Proposals.** The State System reserves the right to reject any and all responses received from offerors as a result of this RFP and to cancel this solicitation at any time prior to the execution of any contract.
- I. **RFP Protest Procedure.** The notice concerning Protest of Solicitation or Award is published at the State System's [website](#).
- J. **Incurring Costs.** The State System is not liable for and will not reimburse any costs or expenses incurred by offerors in the preparation or submission of their proposals or for attendance at any conferences or meetings related to this RFP.
- K. **News Releases.** News releases or public statements or promotions of any kind pertaining to this RFP, or any resulting contract, may not be made without the State System's prior written approval, and then only in coordination with the Issuing Office.
- L. **Contractor integrity Provisions.** As part of any resulting contract, the successful offeror will agree to abide by the Commonwealth's [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.
- M. **Contractor Responsibility Program.** Offerors must certify that they are not currently under suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government to the best of their knowledge. Additionally, offerors must certify, to the best of their knowledge, that they are not tax delinquent with either the Pennsylvania Department of Revenue or the Pennsylvania Department of Labor and Industry. Offerors must acknowledge that if they are currently under suspension or debarment, or if they owe delinquent taxes, their proposal may not be accepted or considered.

Section II Post Award

II.1 Contract Award

The State System reserves the right to (1) award a single contract for all services, (2) award multiple contracts, or (3) not award a contract. Negotiations will be pursued with a subset of responsible offerors whose proposals best meet the financial, contractual, technical, and support requirements for the State System.

National Contract

Pennsylvania's State System of Higher Education, as the Principal Procurement Agency, as defined in **Appendix E**, has partnered with OMNIA Partners, Public Sector, Inc., a Delaware corporation (OMNIA Partners) to make the resultant contract (also known as the Master Agreement in materials distributed by OMNIA Partners) from this solicitation available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit (Public Agencies), through OMNIA Partners' cooperative purchasing program. Pennsylvania's State System of Higher Education is acting as the contracting agency for any other Public Agency that elects to utilize the resulting Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners (a "Participating Public Agency") and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of a Master Intergovernmental Cooperative Purchasing Agreement, a form of which is attached hereto on Appendix E, or as otherwise agreed to.

Pennsylvania's State System of Higher Education anticipates spending approximately \$5 million over the full potential Master Agreement term for Online Proctoring Solutions. While no minimum volume is guaranteed to the Supplier, the estimated annual volume of Online Proctoring Solutions purchased under the Master Agreement through OMNIA Partners is approximately \$50 million. This projection is based on the current annual volumes among Pennsylvania's State System of Higher Education, other Participating Public Agencies anticipated to utilize the resulting Master Agreement to be made available to them through OMNIA Partners, and volume growth into other Public Agencies through a coordinated marketing approach between the Supplier and OMNIA Partners.

II.2 Contract Terms

- A. It is proposed that, if a master contract is entered into as a result of successful negotiations, the selected offeror will be required to sign a Commonwealth of Pennsylvania Standard Contract, **Appendix F, Sample Standard Contract** to this RFP. The Standard Contract includes [PASSHE-SC-6.1 – Standard Contract Terms and Conditions for IT/Software/SaaS Contract](#) and [KA-DSA-1.1 – Data Security Addendum](#). The State System reserves the right to amend its Standard Contract Terms and Conditions and will post any amendments at the State System's [website](#).
- B. The master contract will be the governing contract, and the order of precedence will be (i) the State System's Standard Contract; (ii) the State System's Standard Contract Terms and Conditions for IT/Software/SaaS Contract; (iii) the State System's Data Security Addendum; (iv) the offeror's proposal; and (v) the offeror's contract documents where applicable (subscription agreement, service level agreement, privacy policy, etc.).

- C. Each State System university may select any proctoring solution from suppliers awarded a contract. It is not expected that all universities will select one supplier. State System universities shall issue purchase orders against any executed contract to authorize delivery of the solution. Each university purchase order will incorporate the terms and conditions of the supplier's master contract and will be responsible for payment to the supplier.
- D. The term of the master contract resulting from this solicitation will be for a period of five (5) years.
- E. Contract terms and conditions are negotiated upon issuance of an intent to award a contract. Certain contract terms are prohibited based on the State System's status as an agency of the Commonwealth of Pennsylvania. Prohibited contract clauses include those related to arbitration, assignment, attorney's fees, court costs, entry of judgment, indemnity or hold-harmless provisions, law of the contract in a jurisdiction other than Pennsylvania, payment in advance, and payment of or requirement to carry insurance.

The following contract elements are required, and the State System reserves the right to refuse all requested changes to the following: Limitation of State System Liability, Hold Harmless, Nondiscrimination, Sexual Harassment, Background Checks for Minors, Mandatory Reporting Requirements, Contractor Responsibility, Contractor Integrity, Right to Offset, Right-to-Know Law, and Applicable Law.

- F. The offeror will be deemed to have accepted the standard terms and conditions, except as expressly called out in its proposal. The offeror's willingness to accept the State System's contract terms and conditions, with minor clarifications, shall be an affirmative factor in evaluating the offeror's proposal.
- G. Although the State System will consider alternate language by an offeror, the State System will not be bound by contract language received as part of a prospective provider's response. If the offeror requires that the State System be bound by any of the offeror's proposed contract language, the proposal may be considered nonresponsive and may be rejected.

II.3 **Proposer's Exceptions to Terms and Conditions**

- A. Any exceptions, deviations, or contingencies an offeror may have to the State System's contract terms and conditions must be documented.
- B. The offeror must submit a "redlined" version of the term or condition showing all proposed modifications, including an explanation as to why the modification is required.
- C. Exceptions, deviations, or contingencies stipulated in an offeror's proposal, while possibly necessary in the view of the offeror, may result in disqualification of a proposal.
- D. Should an offeror indicate exceptions to the Commonwealth's standard contract terms and conditions or should an offeror request that additional terms and conditions be included in an awarded contract, the award will be conditioned upon negotiation of a contract that is acceptable to the State System.
- E. Any exceptions to the Commonwealth's standard terms and conditions proposed by an offer should be submitted by the offeror using the RFP **Appendix D, Contract Exceptions**

to Contract Terms and Conditions. Any exceptions, additions or amendments not so included with the proposal will not be accepted for inclusion in a final contract unless approved by the State System's Issuing Office. Any additional terms and conditions proposed by an offeror should be included as a separate attachment with the proposal. Any additional terms and conditions that conflict with the Commonwealth's standard contract terms and conditions, or that would require protracted consideration or negotiation by the State System may be considered by the scoring committee and could negatively impact an offeror's likelihood for award. A proposal that takes exceptions to material requirements of the solicitation where the parties cannot reach mutually satisfactory agreement in negotiations may be rejected.

- F. Pursuant to Pennsylvania law, any awarded contract may require the approval of outside agencies prior to becoming effective. This review may include, but not be limited to, review for form and legality by the Office of General Counsel and the Office of Attorney General. This can take a significant amount of time after the contract has been signed by the State System and the awardee.
- G. Any proposal for which any part of the offering, including the cost proposal, is time limited or expires if not accepted within a certain time frame, may be deemed non-responsive by the State System and rejected.

II.4 **Prime Offeror/Subcontracting**

Eligible offerors will be considered prime suppliers with respect to any work they are awarded. Any use of subcontractors must be approved in writing by the State System. Prime suppliers (offerors) are encouraged to solicit quotes from small diverse businesses when requiring subcontractors.

II.5 **Disclosure of Proposal Contents and Open Records**

- A. All materials submitted with the proposal shall be considered the property of the State System. The State System has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any offeror's copyright designations contained in a proposal, the State System shall have the right to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- B. The proposal of successful offeror is expected to become part of the awarded master contract resulting from this RFP.
- C. The State System does not request, and does not require, confidential proprietary information or trade secrets to be included as part of any offerors' submissions to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, offerors should not label proposal submissions as confidential or proprietary or trade secret protected. An offeror who determines that it must divulge such information as part of its proposal must complete and submit **Appendix C, Trade Secret / Confidential Information Notice**. Note: Pricing is not considered confidential information.
- D. All responses to procurement opportunities and resulting contracts are subject to Pennsylvania's Right-to-Know Law, 65 P.S. §67.101 et seq. (Act 3 of 2008). The Right-to-Know Law permits requestors to inspect and/or copy any record prepared, received, or retained in connection with a transaction, business, or activity of a public office or agency that is not subject to the enumerated exemptions under the law. Should the offeror's

response become the subject of a Pennsylvania Right-to-Know Law request, the Issuing Office will notify the offeror to identify or confirm all trade secrets or confidential and proprietary information that is included in the offeror's proposal. The State System will then determine whether the claimed trade secret or confidential and proprietary information is subject to disclosure under applicable law and grant or deny the request accordingly. Should the request be denied and the requestor appeal that denial, the State System will notify the offeror of the appeal and the offeror's opportunity to request to participate in the appeal as a party of interest. The State System will not represent the interests of the offeror in any appeal, nor will the State System compensate or reimburse any expenses of the offeror in connection with a request of information under the Right-to-Know Law.

II.6 SAP Business Network (Ariba)

The State System transacts with suppliers through the SAP Ariba Business Network (SBN) to electronically exchange purchase orders, order confirmations, advanced shipping notices, invoices, and payment status for all purchases – direct goods, indirect goods, and services. The State System encourages all suppliers to be enabled on the SBN to submit electronic invoices to the State System through the SBN. Unless otherwise provided in this RFP, or by the State System in writing, the offeror agrees to conduct business transactions with the State System using the SBN. Offerors are required to understand how to use the SBN and are responsible for any additional costs that the offeror chooses to incur. There is no cost to transact using a SBN Standard Account. Additional fees may be incurred using a SBN Enterprise Account.

II.7 Debriefing Conference

Offerors whose proposals are not selected will be notified of the name of the selected offeror(s) and will be given the opportunity to be debriefed. The purpose of a debrief conference is not to compare proposals, but to provide information that may assist individual offerors in preparing future proposals. The Issuing Office will schedule the date, time, and location of the debrief conference.

Section III Work Statement

III.1 Objective

The purpose of this RFP is to solicit proposals from experienced and qualified offerors to provide **Online Proctoring Solutions**. This section provides an overview of the engagement envisioned by the State System. Interested offerors should use this part of the RFP in its technical proposal and in conjunction with **Appendix A, Technical Submittal Response**.

III.2 Scope

Offerors are expected to provide a secure and flexible Proctoring Solution for live online or automated testing. The State System seeks cost effective, convenient, and customizable solutions. The Proctoring Solution should allow the flexibility for faculty to select the level of online test security and to customize the test environment to meet desired exam specifications. It must be one that students and faculty can understand and easily use, and in which faculty have faith in as having a very high probability of detecting academic dishonesty during the examination process.

The solution is expected to be a comprehensive proctoring management system which includes:

A. Live Online Proctoring – Optional

Real-time monitoring during exams by a live proctor using video, audio, and screen-sharing. Proctoring is expected to oversee the entire exam, from authentication to test completion. Real-time on-screen support and immediate exam intervention is required.

B. Automated Online Proctoring

Use of AI technology to monitor student behavior, including facial recognition, screen recording, and analysis of student actions during exams while ensuring exam integrity.

III.3 Current Environment

The [State System](#) is a state agency of the Commonwealth of Pennsylvania that oversees 10 state-owned universities. Collectively, it is the largest provider of higher education in the commonwealth.

- Cheyney University of Pennsylvania
- Commonwealth University of Pennsylvania (Bloomsburg, Lock Haven, Mansfield)
- East Stroudsburg University of Pennsylvania
- Indiana University of Pennsylvania
- Kutztown University of Pennsylvania
- Millersville University of Pennsylvania
- Pennsylvania Western University (California, Clarion, Edinboro)
- Shippensburg University of Pennsylvania
- Slippery Rock University of Pennsylvania
- West Chester University of Pennsylvania

III.4 Organization and Resources

To be considered for an award, the following requirements must be met.

- A. The offeror must demonstrate long-term viability as a company and a long-term commitment to customers through regular product enhancements, compliance updates, and ongoing support.

- B. The offeror must have a minimum of five years' experience in providing the services requested in this RFP to higher education institutions.
- C. The offeror must provide a solution that delivers capabilities consistent with industry practices at firm, fixed pricing.

III.5 **Technical Requirements**

To be considered for an award, offerors must clearly demonstrate their capability to meet the requirements listed herein. Responses are to be straightforward, clear, concise, and specific to the information provided in **Appendix A, Technical Submittal Response**.

A. **Monitoring Processes**

Monitoring system used during exams to ensure integrity and security of the exam process.

B. **Browser Lockdown Software**

Restricts browser and keyboard functions to ensure test takers are unable to access external materials.

C. **Record & Review**

Records each exam session with proctor review after the exam is completed.

D. **Identity Verification**

Automated ID Verification or Live ID Verification.

E. **Learning Management System (LMS)**

The LMS used by all State System's universities is Brightspace by D2L. The proposed solution must integrate with this platform.

F. **Third-party Test Proctoring**

Support of proctor exams on third-party platforms.

G. **Software / Hardware**

Software and hardware requirements; compatibility with current operating systems; and browser based.

H. **Technical and Customer Support**

- 24/7 technical assistance to students and exam administrators.
- Browser Compatibility – the platform must be compatible with major browsers (e.g., Chrome, Edge, Firefox).
- Mobile Device Support – the platform must support both desktop and mobile devices for proctoring.
- Security Features – End-to-end encryption for candidate data, video streams, and other sensitive information.
- Scalability – the platform must be able to scale to accommodate varying number of students, from small to large, high-volume exams.

I. **Reporting**

Detailed reports on proctoring events, including instances of potential violations or irregularities.

J. Performance Standards

- Accuracy Rate: Proctoring services must maintain a high degree of accuracy in detecting potential violations, such as cheating or identity fraud.
- Uptime: The proctoring platform should maintain at least 99.9% uptime during examination periods.
- Response Time: Any technical issues must be addressed by support teams within 15 minutes.
- Candidate Experience: The platform must ensure a seamless, user-friendly experience for all candidates taking the exam.

III.6 Value-Added Services

Describe in detail any value-added services that your firm can provide. This includes but is not limited to competitive advantages, efficiencies, and optional services distinct from the main technical requirements of this RFP

III.7 Cost

All cost information must be kept separate and apart from the technical portion of the proposal. Provide your Cost Proposal as per the instructions found in **Appendix B, Cost Submittal Response**. In addition to decreasing prices for the balance of the contract term due to a change in market conditions, an awarded offeror may conduct sales promotions involving price reductions for a specified lesser period. Awarded offerors may offer Participating Agencies competitive pricing which is lower than the not-to-exceed price set forth at any time during the contract term and such lower pricing shall not be applied as a global price reduction under the contract.

III.8 Supplemental Agreements for Participating Public Agencies

Although this section reflects the needs and requirements of the State System, OMNIA Partners Participating Public Agencies may have different requirements. OMNIA Partners participants will sign a supplemental or usage agreement with the awarded supplier substantially based on the terms and conditions of the State System's contract. Participants may elect to negotiate certain terms to conform to their purchasing and contracting requirements.

Section IV Information Required from Suppliers

IV.1 Technical Submittal Response Format

- A. Complete and submit **Appendix A, Technical Submittal Response**.
- B. Proposals are to be straightforward, clear, concise, and specific to the information requested.
- C. While offerors are encouraged to submit the most creative, cost-effective proposal possible, the inclusion of extraneous commercial and/or sales literature as a substitute for responses to questions included in the RFP is strongly discouraged. Attach any supplemental information as an appendix to the Technical Submittal Response.
- D. It is the responsibility of all offerors to examine the entire RFP package, to seek clarification of any item or requirement that may not be clear, and to check all responses for accuracy prior to submitting a proposal.
- E. Offerors are responsible for acknowledging all addenda to this RFP in the Technical Proposal.
- F. Proposals may include URLs that provide information related to the proposal or the proposing organization, however, that information must also be included in document format as an appendix to the proposal. URLs must not require a registration process to view the content.
- G. Include a detailed response to **Appendix E, Exhibit A, OMNIA Partners Response for National Cooperative** contract. Responses should highlight experience, demonstrate a strong national presence, describe how offeror will educate its national sales force about the contract, describe how products and services will be distributed nationwide, include a plan for marketing the products and services nationwide, and describe how volume will be tracked and reported to OMNIA Partners. The successful offeror will be required to sign Appendix E, Exhibit B, OMNIA Partners Administration Agreement. Offerors should have completed any reviews required to sign the document prior to submitting a response to this RFP. An offeror's response should include any proposed exceptions to the OMNIA Partners Administration Agreement.
- H. All proposals must be properly marked and submitted at [SAP Ariba Discovery](#) by the Submission Date/Time listed above.
- I. **Do not include cost information / pricing in your Technical Submittal Response.**

IV.2 Cost Submittal Response Format

- A. Offerors must complete and submit **Appendix B, Cost Submittal Response**. Use the Excel document to submit pricing for the base solution and any additional costs.
- B. **All cost information must be kept separate and apart from the technical portion of the proposal.** Absolutely no pricing can appear anywhere in the technical proposal, including technical proposal appendices, Service Level Agreements, sample documents, etc. Failure to follow this requirement may result in the submission being deemed nonresponsive.

- C. Prices proposed in the offeror's response will be valid for a minimum of one (1) year effective from the start date of the contract.
- D. Offerors' proposals must describe how future price increases will be minimized and capped and how both increases and decreases will be passed on to the State System.

IV.3 **Instructions for Proposal Submissions via at [SAP Ariba Discovery](#).**

A. Checklist

- 1. **Review the Sourcing Event Details.** Provides an overview and timing rules.
- 2. **Review and Accept Prerequisites.** Accepting the prerequisites permits you to participate in this procurement event.
- 3. **Submit Response.** Provides event (RFP) content.

B. Sourcing Event Content

- 1. **Technical Proposal.** Submit a completed Technical Submittal Response (**Appendix A**) and any relevant information as appendices to the Technical Response. Multiple documents must be submitted as a Zip File. Click **Attach a File* to upload the file. Identify all documents by including the company name and document name. Ex: Wilson Roofing – Technical Proposal.
- 2. **Cost Proposal.** Submit a completed Cost Submittal Response (**Appendix B**). An Excel document must be submitted. Click **Attach a File* to upload the file. Identify all documents by including the company name and document name. Ex: Wilson Roofing – Cost Proposal.
- 3. **Other Documents.** If applicable, submit any master agreements, merchant terms and conditions, etc., which the State System will be expected to incorporate into its master contract. Submit any redline edits to the Commonwealth's Contract Standard Terms and Conditions. Multiple documents must be submitted as a Zip File. Click **Attach a File* to upload the file. Identify all documents by including the company name and document name. Ex: Wilson Roofing – Other Documents.

Click the Submit Entire Response button. Click OK on the Confirmation Box. A green message will appear at the top of the page to confirm your response has been submitted. Changes may be made to your response while the event is open. Use the Revise Response button to reopen the event.

Important: All documents should not be less than 10-point font and must be renderable (able to browse, search, print, and edit). File size is limited to 100MB, however multiple files may be zipped.

3 **Technical Proposal** ▾

Submit Appendix A, Technical Response Form.

3.1 **Submit Appendix A - Technical Response Form** ▾

4 **Cost Proposal** ▾

Submit Appendix B, Cost Proposal Form.

4.1 **Please attach the Cost proposal** ▾

5 **Other Documents** ▾

If applicable, complete and submit Appendix C, Trade Secret Confidential Information
If applicable, submit any User Agreements, Service Level Agreements, Click-through
If applicable, submit any redlines to the State System's contract terms and conditions

5.1 **Attach Other Documents if applicable.** ▾

Section V
Criteria for Selection

V.1 Evaluation of Proposals

All proposals will be reviewed and evaluated by a committee of qualified State System personnel (Proposal Evaluation Committee). The Proposal Evaluation Committee will recommend for selection the proposal(s) that most closely meets the requirements of this RFP and satisfies the needs of the State System.

- A. Responses will be evaluated first for responsiveness and thereafter for content. The Issuing Office will make an award to the selected offeror(s) based on the recommendation of the Proposal Evaluation Committee.
- B. If a response does not reasonably and substantially conform to all the terms and conditions in this solicitation, or if it requests unreasonable exceptions, it may be considered nonresponsive.
- C. Recommendation of award will be based on the proposal(s) that most closely meets the requirements of the RFP and satisfies the stated objectives. A responsive Technical Proposal must achieve a minimum of 75 percent of the available technical points to be considered for an award.

V.2 Evaluation Criteria

The following areas of consideration will be used in determining award:

- A. **Demonstrated Understanding of the State System's Requirements**
Refers to the offeror's understanding of the State System's needs that generated the RFP, of the State System's objectives in asking for the services, and of the nature and scope of the work involved.
- B. **Company Qualifications/Experience**
Includes competence and experience of the offeror and its proposed resources. This includes the experience, expertise, and resources of the company and its personnel to meet the State System's objectives. This also includes references where similar services have been provided, especially to other higher education institutions.
- C. **Technical Requirements**
Responses are to be straightforward, clear, concise and specific to the information provided in Section III and the information required in **Appendix A, Technical Submittal Response**. Of equal importance is whether the approach is completely responsive to all written specifications and requirements contained in the RFP.
- D. **Value-Added Services Attributes**
Includes but is not limited to competitive advantages, efficiencies, and optional services distinct from the main technical requirements.
- E. **Cost**
The State System desires the best pricing offered for the services being requested. While this area will be weighted, it will not necessarily be the deciding factor in the selection process.

V.3 **Scoring Criteria**

- A. **Technical.** The Issuing Office has established the weight for the technical criterion for this RFP as 70 percent. Evaluation will be based on selection criteria as per Part V.2, Evaluation Criteria.

- B. **Cost.** The Issuing Office has established the weight for the cost criterion for this RFP as 30 percent of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of cost points available. The remaining proposals are rated as a percentage against this maximum. Note: Cost submittals will not be opened if an offeror's technical score does not meet or exceed 75 percent of the total available technical points.



RFP #DOC1555879052

Appendix A

Technical Submittal Response

for

Online Proctoring Solutions

TECHNICAL SUBMITTAL RESPONSE

A. Proposal Cover Letter

1. Provide a Proposal Cover Letter signed by an authorized officer of your company. Include the names, physical addresses, email addresses, and telephone numbers of the following individuals:
 - a. Authorized persons to communicate with the State System regarding the proposal.
 - b. Authorized persons to conduct contract negotiations with the State System.
 - c. Authorized officers to sign a contract, if awarded. Note: If a corporation, two signatures are required, one being the President or Vice President, the second being the Secretary or Treasurer. Signatory authority of either signature can be delegated provided there is a certified Board resolution in place.
2. Include a response to the following:
 - a. A statement of your understanding of the solution being requested by the State System.
 - b. A narrative response that summarizes the key features and competitive advantages of the proposed solution that make it stand out from competing solutions.
3. Include a response to the following:
 - a. Certify that the proposal is being submitted in accordance with the terms as outlined in the RFP.
 - b. Acknowledge all RFP addenda.
 - c. Certify that your company shall honor the provisions of its proposal and warrant that the proposal shall remain valid during the entire solicitation and award process.
 - d. Certify that your company is not under suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government to the best of your knowledge.
 - e. Certify that your company is not tax delinquent with either the Pennsylvania Department of Revenue or the Pennsylvania Department of Labor & Industry to the best of your knowledge.
 - f. Acknowledge if your company is currently under suspension or debarment, or if it owes delinquent taxes, the proposal may not be accepted or considered by the State System.
4. Indicate if your firm can accommodate a nationwide demand for the services.
5. Indicate if you completed and submitted the documents found in **Appendix E, OMNIA Partners Requirements for National Cooperative Contracts**.

B. Organization and Resources

To be considered for an award, offerors must have a minimum of five (5) years' experience in providing the solution as described in this RFP.

1. Include the following:
 - a. A brief narrative introduction and company background.
 - b. A summary of the key features and competitive advantages of the proposed solution.
 - c. A statement that explains why your company is qualified to support the State System's objectives. Explain how your company / solution differentiates it from competitors.
2. Provide references from three (3) of your clients from the past five (5) years for services that are similar in scope, size and complexity to the services described in this RFP. Provide the following information for each client: client name, the period in which the work was performed, and a short description of the services provided. Client reference calls may be performed as

part of the RFP procurement process. Offerors will be notified in advance by the Issuing Office of any client reference checks.

C. Technical Requirements

Offerors must address the following items so that the State System can evaluate the functionality of the proposed solution. The State System, at its option, may require an offeror to provide additional documentation to support or clarify requested information.

A. Monitoring Processes

1. Provide a detailed description of the following processes.
 - Pre-test Authentication (verifying student identities)
 - Scheduling and Managing Exams
 - Student Registration (including exam instructions)
 - Data Security (during exams)
 - Real-time Live Proctoring
 - Automated Proctoring
 - Recording and Viewing Exams (by faculty)
 - Violations (algorithms to detect and capture aberrant behavior)
 - End-to-End Security (active restriction of students' computers)
 - Post-exam Auditing
 - Content Protection
 - ADA Assistance
 - Other Advanced Monitoring Features
2. Provide a description of the methods used to ensure integrity of exams, exam passwords, and the testing environment (both the student's location and access to online materials during the exam). These methods should include visual and auditory observation (voice detection).
3. Provide a description of your actionable plan to intervene in an exam where the integrity of the exam has been compromised.
4. Provide a description of your quality assurance processes to validate the proctor's results before submitting the results to the faculty.
5. Provide a mechanism for a faculty member to share any video evidence of cheating, either by downloading clips, streaming online, or some other similar mechanism should they need to take a student before a review board. Note: Recorded sessions should be available for five years unless they are available for download.
6. Provide a description of mechanisms for protection of faculty content.
7. Provide a description of how students are prevented from copying, pasting, and printing during exams.
8. Provide a description of exam durations being offered.
9. How are student accommodations verified, provided, and monitored?
10. Will the solution be able to be used at off-campus premises (testing centers)?

11. How is content protected?

12. Accessibility – Is your solution available in multiple languages?

13. Personally Identifiable Information PII Single Sign-On?

B. Browser Lockdown Software

Restricts browser and keyboard functions to ensure test takers are unable to access external materials.

C. Record & Review

Records each exam session with proctor review after the exam is completed.

D. Identity Verification

Provide a description of your ID Verification process including the type of information that is collected, and how that information is stored. Are AI checks performed against IDs? What is the ID verification process experience like for students? Does the software use face recognition or face detection verification?

E. Learning Management System (LMS)

The LMS used by all State System's universities is Brightspace by D2L. The proposed solution must integrate with this platform. Are instructors able to review exam reports within the LMS? Can instructors and students access support from within the LMS?

F. Third-party Test Proctoring

1. Does your proctoring solution support proctor exams on third-party platforms such as McGraw-Hill, Pearson, and College Board (ACCUPLACER Tests)?
2. How does the software work with third-party platforms?
3. Provide experience of how your solution proctors third-party exams, such as publisher exams.
4. Indicate in **only your cost proposal** if there are additional costs associated with this.

G. Software / Hardware

Proposals should specify all software and hardware requirements such as computing graphics, RAM, and storage capacity. The Proctoring Solution must be compatible with all current operating systems and must be entirely browser-based and support all current versions of popular browsers (i.e., Firefox, Chrome, and Safari). The Proctoring Solution must have been implemented in a higher education environment for more than two years, and must provide a smooth workflow process for administration, faculty and students. It must be customizable with university logos.

1. Software/Hardware – Provide a detailed description of the following features:

- Proctoring Solution Platform
- Hosting options
- LMS integrations
- Publisher Platform integrations
- Data Centers (locations)
- Third-party or subcontractor partnerships or involvement
- System scalability
- System redundancy and availability
- Backup and recovery strategy

- Disaster recovery, testing and business continuity plans
2. Data – Provide a detailed description of the following features:
- Data encryption in transit and at rest
 - Security – data access and protection
 - Data breaches
 - Ownership of data
 - Termination of services; what happens to the data?
 - Restrictions on amount of data stored on the proposed solution
3. Security – Provide a detailed description of the following features:
- Data security and privacy.
 - Student privacy.
 - Security-related policies and procedures to which the offeror's employees are required to adhere
 - Web usability and ADA compliant accessibility of the proposed solution.
 - Which data security software and technologies are being used?
 - Which data is collected and why? Who owns the data? Do you sell your data? How is the data collected and maintained? How long is the data retained?
 - Provide your VPAT – Voluntary Product Accessibility Template.
 - Restrictions on number of users accessing the proposed solution.
 - Are you FERPA compliant?
 - What is the cadence of the vendor's vulnerability and penetration testing?
 - Is the data encrypted in transit and at rest? Is the data classified?
 - Disaster planning and response – do you have a disaster recovery and business continuity plan? What is your incident response plan?
 - Do they have a Service Level Agreement?

Note: Offerors may increase their liability by creating educational records and keeping them on file permanently on external servers. If student recordings are kept on a cloud server, it may pose a higher risk of violating [FERPA](#). Offerors may not subcontract labor to a third-party as this may violate FERPA.

H. Technical and Customer Support

Provide a detailed description of the following:

- How is training provided to LMS staff, distance education services staff, faculty and students? Are ongoing training resources such as user documentation, how-to videos, and step-by-step instructions readily available in formats that allow for easy dissemination on institution's website, by e-mail, or by hard copy?
- Technical support for faculty, staff, and students
- Technologies required on devices being used by students (i.e., web cam, microphone, etc.)
- Support of devices, operating systems, and web browsers
- Third-party integrations
- Active Directory
- Customer Support Operations (assistance for users with difficulties accessing or using the solution, account manager's role)
- Available ordering methods – online ordering, order tracking, search options, order history.

- When is support available? 24/7/365 or specific days and times?
- What support is available for students and faculty? Chat, phone, or email? Where is your support team located? Can the user communicate with a live support representative, or is it only automated? Is support included or is there an additional cost? (Do not provide pricing in your technical proposal.)

III.6 **AI Algorithms**

Provide a description of student experience with your solution with emphasis on AI fairness, inclusivity, and privacy protection. How does your solution flag potential testing irregularities? Are final decisions reviewed by a trained (human) proctor to mitigate algorithmic biases? Provide a description of your testing to minimize bias related to race, gender, neurodiversity, of physical abilities.

III.7 **Reporting**

Provide a description and samples of available data reports. Do they include the length of exams, number of exams, list of students registered? Are customized reports available? Who can access reports?

III.8 **Cost**

All cost information must be kept separate and apart from the technical portion of the proposal. Provide your Cost Proposal as per the instructions found in **Appendix B, Cost Submittal Response**.

III.9 **Value-added Services Attributes**

Describe in detail any value-added services that the company can provide in addition to the services required in the RFP. Identify whether the company is part of any state, national, or global network for information sharing on information security best practices or situational awareness.

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APPENDIX B
Cost Submittal

This Excel document consists of two tabs.

Tab #	This workbook contains the following worksheets:
1	Instructions
2	Price
<p>The purpose of the requested information in this workbook is to assist the State System in the review and evaluation of the Cost Proposals submitted by offerors. Offerors are reminded that the responsibility for providing adequate supporting data and attachments lies solely with them. Further, offerors must also bear the burden of proof in establishing reasonableness of their proposed costs; therefore, it is in the offeror's best interest to submit a fully supportable and well-prepared cost proposal. The basis and rationale for all proposed costs should be provided as part of the proposal so that the State System evaluation team can place reliance on the information as current, complete, and accurate.</p>	
<p>As per Section V of the RFP, Criteria for Selection, all proposals will be reviewed and evaluated by a Proposal Evaluation Committee which will recommend for selection proposals that most closely meet the requirements of this RFP and satisfies the State System's needs.</p>	
<p>The worksheets contained in this workbook constitute the Cost Submittal. Completion of this workbook is a requirement of this RFP.</p>	
1	<p>Pennsylvania's State System of Higher Education (State System or Principal Procurement Agency) has partnered with OMNIA Partners to make the resultant contracts from this solicitation available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary, and higher education entities, non-profit entities, and agencies for the public benefit (Public Agencies), through OMNIA Partner's cooperative purchasing program. The State System is acting as the lead contracting agency for any other Public Agency that elects to utilize the resulting contracts.</p>
2	<p>This RFP is expected to result in multiple participation award contracts. Multiple awards will ensure that any ensuing master contracts fulfill current and future requirements of the diverse and large number of Participating Public Agencies.</p>
3	<p>The contract term will be for five years with no annual renewal options.</p>
4	<p>Prices proposed in the offeror's response must be valid for a minimum of one year effective from the start of the contract.</p>
5	<p>In addition to decreasing prices for the balance of the contract term due to a change in market conditions, an awarded offeror may conduct sales promotions involving price reductions for a specified lesser period. Awarded offerors may offer Participating Agencies competitive pricing which is lower than the not-to-exceed price set forth at any time during the contract term and such lower pricing shall not be applied as a global price reduction under the contract.</p>
<p>DIRECTIONS</p>	
1	<p>On Tab 2, Enter pricing per product/service being offered. Insert additional rows as needed.</p>

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APPENDIX B
Cost Submittal

Enter Company Information:

COMPANY NAME:	
CONTACT:	
TITLE:	
EMAIL:	
PHONE:	

INSTRUCTIONS:
 Insert additional rows for each product/service being offered. Provide a Price and Product Description for each line item listed below where applicable. Insert additional rows or tabs for volume or tiered pricing.

Product/Service	Price	Product/Service Description
Live Online Proctoring		Cost per exam for live online proctoring services.
Automated Proctoring		Cost per exam for automated online proctoring services.
Implementation		Any costs associated with setting up the proctoring platform, integration, and training.
Lockdown Browser		Cost per-seat or per-user basis.
Webcam Recordings		Cost per exam.
Screen Recordings		Cost per exam.
Volume Pricing		Volume cost incentive.
Value-Added Offering		Example: Bundle extra features.
Additional Costs		Any additional fees for reporting, technical support, or other services.

INSTRUCTIONS:
 Describe how future price increases will be minimized and capped and provide any applicable renewal price escalators for Years 2 - 5. Explain the proposed process to implement price changes.

TRADE SECRET/CONFIDENTIAL PROPRIETARY INFORMATION NOTICE

Pennsylvania's State System of Higher Education may not assert, on behalf of a third party, an exception to the public release of materials that contain trade secrets or confidential proprietary information unless the materials are accompanied, at the time they are submitted, by this form or a document containing similar information. It is the responsibility of the party submitting this form to ensure all statements and assertions made below are legally defensible and accurate.

Contact information for submitting party:

Overview of the materials being submitted (e.g., bid, proposal, grant application, technical schematics):

Reason the materials are being submitted (e.g., response to RFP or IFB):

Explain which portions of the material being submitted constitute a trade secret or confidential proprietary information and why the materials constitute a trade secret or confidential proprietary information. Mark the submitted material in such a manner that allows a reviewer to easily distinguish between the parts referenced below.

Note: The following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of an offeror's cost proposal.
- Information submitted as part of an offeror's technical response that does not pertain to specific business practices or product specification.
- Information submitted as part of an offeror's technical or small diverse business response that is otherwise publicly available or otherwise easily obtained.
- Information detailing the name, quantity, and price paid for any product or service being purchased by the State System.

Page #	Description	Explanation

Acknowledgment

The undersigned hereby agrees that it has read and completed this form and has referenced the material being submitted in accordance with the instructions above. The undersigned acknowledges that the State System is not liable for the use or disclosure of trade secret data or confidential proprietary information that has not been clearly marked as such, and which was not accompanied by a specific explanation included with this form.

The undersigned agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, and indemnify and hold harmless the State System, its agents and employees, from any judgments awarded against the State System in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives so long as the State System has possession of the submitted material and will apply to all costs unless and until the undersigned provides a written statement or similar notice to the State System stating that it no longer wishes to exempt the submitted material from public disclosure.

The undersigned acknowledges that the State System is required to keep all records for at least as long as specified in its published records retention schedule.

The undersigned acknowledges that the State System reserves the right to reject the undersigned's claim of trade secret/confidential proprietary information if the State System determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret or is confidential. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret or is confidential, the remainder of the submitted material will become public; only the protected information will be removed and remain nonpublic.

Supplier Name:
Solicitation No.:

Signature

Title

Date

Offeror's Exceptions to Contract Terms and Conditions

Contract terms and conditions are negotiated upon issuance of an intent to award a contract by the State System. Certain contract terms are prohibited based on the State System's status as an agency of the Commonwealth of Pennsylvania. Prohibited contract clauses include those related to arbitration, assignment, attorney's fees, court costs, entry of judgment, indemnity or hold-harmless provisions, law of the contract in a jurisdiction other than Pennsylvania, payment in advance, and payment of or requirement to carry insurance.

The following contract elements are required, and the State System reserves the right to refuse all requested changes to the following: Limitation of State System Liability, Hold Harmless, Nondiscrimination, Sexual Harassment, Background Checks for Minors, Mandatory Reporting Requirements, Contractor Responsibility, Contractor Integrity, Right to Offset, Right-to-Know Law, and Applicable Law.

The offeror will be deemed to have accepted the standard contract terms and conditions, except as expressly called out in its proposal.

Although the State System will consider alternate language proposed by an offeror, the State System will not be bound by contract language received as part of a prospective provider's response. If the offeror requires that the State System be bound by some or all of the offeror's proposed contract language, the proposal may be considered nonresponsive and may be rejected.

Provide the following information:

Name of Offeror's Company	
Address of Offeror's Principal Place of Business	
Contact Name, Title, Email and Telephone Number of Undersigned	
Solicitation Number	
Solicitation Title	

Document any exceptions, deviations, or contingencies to the State System's contract terms and conditions. Include proposed modifications, including an explanation as to why the modification is required.

Section #	Section Title	Proposed Modification	Reason for Modification

STANDARD CONTRACT

ISSUING OFFICE	CONTRACTOR'S NAME & ADDRESS	Contract #
Pennsylvania State System of Higher Education 2300 Vartan Way, Suite 207 Harrisburg, PA 17110 Issuing Officer: Linda Venneri CPSM Phone: 717-720-4135 E-mail: lvenneri@passhe.edu	Contractor Name: Address: Contact: Phone: E-mail: Contractor's Federal ID or Soc. Sec. No.	Upon execution of this contract, State System universities may procure the specified services by issuing a purchase order to the Contractor which will provide invoicing and payment instructions for the specified services.
TERM: Sixty (60) Months		CONTRACT NOT TO EXCEED UNLIMITED

SPECIFICATIONS

ONLINE PROCTORING SOLUTIONS

The State System has partnered separately with OMNIA Partners to make this Contract available to the State System universities and other public agencies nationally, including state and local governmental entities, public and private primary, secondary, and higher education entities, non-profit entities, and agencies for the public benefit (Public Agencies), through OMNIA Partner's cooperative purchasing program. The State System is acting as the lead contracting agency for any other Public Agency that elects to utilize this Contract. Use of this Contract by any Public Agency is preceded by registration with Omnia Partners (a Participating Public Agency).

[INSERT SPECIFICATIONS AND PRICING]

In compliance with the contract terms, conditions, and specifications, the undersigned, on behalf of the Contractor, which intends to be legally bound hereby, offers and agrees to provide the specified goods/services at the price(s) set forth above at the time(s) and point(s) specified. In addition to this document, the following contract terms, conditions, and specifications are a part of the contract:

PASSHE-SC-6.1 Terms for IT/Software/SaaS located at <https://www.passhe.edu/shared-services/procurement/documents/PASSHE-SC-6.1.pdf>
 KA-DSA-1.1 Data Security Addendum located at <https://www.passhe.edu/shared-services/procurement/documents/KA-DSA-1.1.pdf>

COMMONWEALTH SIGNATURE	CONTRACTOR'S SIGNATURE
PURCHASING AGENCY HEAD OR DESIGNEE DATE APPROVED AS TO FISCAL RESPONSIBILITY, BUDGETARY APPROPRIATENESS AND AVAILABILITY OF FUNDS COMPTROLLER DATE	PRESIDENT/VICE PRESIDENT/MANAGER/PARTNER/OWNER DATE SECRETARY/ASSISTANT SECRETARY/TREASURER/ASSISTANT TREASURER DATE

COMMONWEALTH ATTORNEY APPROVALS APPROVED AS TO FORM AND LEGALITY

PURCHASING AGENCY ATTORNEY DATE	OFFICE OF GENERAL COUNSEL (IF REQUIRED) DATE	OFFICE OF ATTORNEY GENERAL (IF REQUIRED) DATE
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STANDARD CONTRACT TERMS AND CONDITIONS FOR IT/SOFTWARE/SAAS CONTRACT

1. TERM OF CONTRACT

- a. The term of this Contract shall commence and become legally binding on the Effective Date (as defined below) and shall end on the Expiration Date identified in this Contract, subject to the other provisions of this Contract. The Effective Date shall be a) the date this Contract has been fully executed by the Contractor and by the University and all approvals required by University contracting procedures have been obtained; or b) the date referenced in this Contract, whichever is later.
- b. The fully executed Contract may not contain "ink" signatures by the University. The Contractor understands and agrees that the receipt of an electronically printed Contract with the printed name of the University purchasing agent constitutes a valid, binding contract with the University. The printed name of the purchasing agent on this Contract represents the signature of that individual who is authorized to bind the University to the obligations contained in this Contract.
- c. The Contractor shall not start performance until one of the following has occurred: a) the Effective Date has arrived, and the Contractor has received a copy of the fully executed Contract or b) the Contractor has received a Notice to Proceed or Purchase Order (as defined below) directing the Contractor to start performance on a date that is on or after the Effective Date. The University shall not be liable to pay the Contractor for any supply furnished or work performed, or expenses incurred before the Effective Date, or the date set forth in the Notice to Proceed or Purchase Order. No University employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract.
- d. The University reserves the right, upon notice to the Contractor, to extend the term of this Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary to enter into a new contract.

2. INDEPENDENT CONTRACTOR

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

3. COMPLIANCE WITH LAW

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

4. COMPENSATION/EXPENSES

The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated in accordance with contract terms. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

5. PAYMENT

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

6. CONTRACTOR REPRESENTATIONS, WARRANTIES AND COVENANTS

- a. **WARRANTY:** The Contractor warrants that all services or goods to be provided by the Contractor, its agents and subcontractors shall perform in material conformance with all specifications, standards, and service level agreements set forth in this contract and its attachments, or as set forth in any bid or proposal submitted with regard to the goods, services, or work to be performed under this contract.
- b. **PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY:** The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the

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

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

7. EXPORT CONTROL LAW COMPLIANCE

To the extent Contractor is providing devices/technology or data under this Contract, Contractor acknowledges that a foreign national(s) may use the device/technology/and or data at the University. Contractor shall comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Contract. In the absence of available license exemptions/exceptions, Contractor shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions. Prior to disclosing or transferring to a University any hardware, technical data, software, or product utilizing any such data which is subject to export controls under federal law, Contractor shall notify the University in writing of the nature and extent of the export control. The University shall have the right to decline any such technical data or product utilizing such data. In the event Contractor sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the University has the right to immediately terminate this Contract.

8. INTELLECTUAL PROPERTY

Except where otherwise provided by this Contract or its attachments, the Parties agree that each party shall retain ownership of its intellectual property. In particular: the University, the State System of Higher Education and the Commonwealth of Pennsylvania shall retain ownership over their respective intellectual property, including, but not limited to, any data or information supplied pursuant to this agreement, any copyrights or

trademarks, and all associated names, trademarks, or logos. For the purposes of this section, "Data" shall be defined as: any recorded information, regardless of the form, the media on which it is recorded or the method of recording.

9. TAXES

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

10. ASSIGNMENT OF ANTITRUST CLAIMS

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

11. LIMITATION OF LIABILITY

IN NO EVENT SHALL THE EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR OTHER DAMAGES ARISING OUT OF THIS CONTRACT. THE UNIVERSITY'S TOTAL OBLIGATION UNDER THIS CONTRACT SHALL NOT EXCEED THE COST FOR ALL GOODS AND SERVICES UNDER THIS CONTRACT WITHOUT REGARD TO THE THEORY OF RECOVERY OR THE NATURE OF THE CAUSE OF ACTION. THIS PROVISION SHALL NOT BE CONSTRUED TO LIMIT THE SOVEREIGN IMMUNITY OF THE COMMONWEALTH OR OF THE STATE SYSTEM OF HIGHER EDUCATION OR THE UNIVERSITY.

12. HOLD HARMLESS PROVISION

The Contractor shall hold the University harmless from and indemnify the University, the State System of Higher Education and the Commonwealth of Pennsylvania against any and all third-party claims, demands and actions based upon or arising out of any negligent, intentional, or unlawful acts performed by the Contractor and its employees and agents under this Contract, provided the University gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the University in actions brought against the University. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the University will cooperate with all reasonable requests of Contractor made in the defense of such suits. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The University may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

13. AUDIT PROVISIONS

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

14. DEFAULT

Excluding reasons of force majeure or breach by the Commonwealth, the Commonwealth may in addition to its other rights under the Contract declare Contractor is in default if contractor fails to perform any of its material obligations under the contract and contractor has failed to cure such default within reasonable time upon written notice to contractor.

15. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its reasonable control and without the fault or negligence of either

party. Causes beyond a party's control may include, but aren't 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, rendering performance impossible, infeasible, or unsafe.

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and contractor's obligations shall be deemed waived.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract.

16. TERMINATION PROVISIONS

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

- a. **TERMINATION FOR CONVENIENCE:** The University shall have the right to terminate this Contract for its convenience without penalty or recourse if the University determines termination to be in its best interest. Upon receipt of the written notice, the Contractor shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to the University. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, and this shall be the Contractor's sole remedy against the University in the event of termination under this provision. In no event shall the Contractor be entitled to recover loss of profits, loss of use of money, or administrative or overhead costs.
- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds for this engagement. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the contract. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this contract. Such reimbursement shall not include loss of profit, loss of use of money. The reimbursement amount may be paid for any appropriations available for that purpose.
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract for Contractor default under Paragraph 12, Default, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law.

17. CONTRACT CONTROVERSIES

- a. To the extent required by law in the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- b. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the University.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

18. ASSIGNABILITY AND SUBCONTRACTING

- a. Subject to the terms and conditions of this Paragraph 16, this Contract shall be binding upon the parties and their respective successors and assigns.

- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent maybe withheld at the sole and absolute discretion of the Contracting Officer.
- c. For the purposes of this provision, "subcontract" shall not include the engagement of third-party data processors that are otherwise regularly engaged by the Contractor to provide such services, or the incorporation of third-party software or hardware components that are regularly incorporated into the Contractor's product offering (collectively, "third-party integrations"). Provided, however, that the Contractor agrees: 1) that Contractor will be responsible for any third-party performance, as if that performance were Contractor's own, to include any warranty or indemnification obligation the Contractor would otherwise have under this Contract; 2) Where any party providing any third-party integration will have access to, or control over, any University data, Contractor has a contractual agreement with that entity, with terms and conditions regarding data security and data integrity that are no less restrictive than the terms and conditions set forth in this Contract.
- d. The Parties may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the other.
- e. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- f. 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 (collectively, "Transfer of Control") provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- g. In connection with a Transfer of Control, Contractor may assign this Contract to Contractor's successor in interest without prior notice to the University. Provided, however, that Contractor shall provide written notice to the University within 30 days of the Assignment. The University shall have 10 days in which to accept or reject the assignment, which shall not be unreasonably withheld. In the event that the Contracting Officer rejects the assignment, the University shall have the right to terminate this agreement without penalty or recourse. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, and this shall be the Contractor's sole remedy against the University in the event of termination under this provision. In no event shall the Contractor be entitled to recover loss of profits, loss of use of money, or administrative or overhead costs. In no event shall payment be made to the entity acquiring Contractor's interest in connection with the Transfer of Control until the requirements of this paragraph have been satisfied.
- h. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- i. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

19. USE OF CONFIDENTIAL INFORMATION

- a. As Used in this Section "the PA Data Breach Notification Act" shall refer to the Pennsylvania Breach of Personal Information and Notification Act, 71 Pa.C.S. § 2031, *et. seq.*, as amended by Act No. 151 of 2022, and any subsequent amendments through the term of this Contract.
- b. The following words or phrases, as used in this Section, shall be given the same definition as they are given in the PA Data Breach Act: "Breach of the security of the system," "Determination," "Discovery," and "Personal Information."
- c. Covered Data and Information ("CDI") includes, Personal Information, paper and electronic financial information, student education records, as well as any other data marked as confidential provided by the University or its students to the Contractor to perform the services under this Contract.
- d. Disclosure of CDI: Contractor shall not copy, report or release CDI or information concerning the University or its students, employees or customers to third parties except when essential for authorized use under this Contract and then only with University's prior written approval and only where the third parties sign agreements containing substantially the same provisions as contained in this section. Any

such report or release of information shall, at a minimum, comply with those requirements enumerated in the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.), the Family and Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232g), and applicable University or Board of Governors policies or standards for safeguarding such information, and all other applicable laws regarding consumer privacy and confidential information. The Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

- e. Maintenance of CDI: The Contractor shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted CDI received from or on behalf of the University or its students. The Contractor will extend these measures by contract to all subcontractors used by the Contractor. At a minimum, the Contractor agrees to guard the confidentiality of the University's confidential information with the same diligence with which it guards its own proprietary information.
- f. Destruction or Return of CDI: Upon termination, cancellation, expiration or other conclusion of this Contract or any license granted hereunder, the Contractor will return to the University all copies of CDI in the Contractor's possession, unless the Contracting Officer consents in writing to the preservation of a copy of the CDI for archival purposes. The Contractor shall provide a certificate to the University confirming the date of destruction of the CDI.
- g. Reporting of Unauthorized Disclosures Misuse of CDI, or Breach of the security of the system: The Contractor shall, as soon as reasonably practicable upon Discovery, and in accordance with all applicable state and federal statutes and regulations, and in no event more than 24-hours following Determination of the Breach of the security of the system, report to the University any Breach of the security of the system, use or disclosure of CDI not authorized by this Contract, by Contractor or any party to whom Contractor has given access or control of CDI. The Contractor's report shall identify: (i) the nature of the unauthorized Breach of the security, use or disclosure, (ii) any CDI used or disclosed, (iii) the identity of any known party who perpetrated the Breach of the security of the system, made the unauthorized use or received the unauthorized disclosure, (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the Beach of the security of the system, unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar Breach of the security of the system, unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the University.
- h. Notification following Breach of the Security of the System: Upon Determination that a Breach of the security of the system has occurred, Contractor shall, in addition to the above requirement regarding notification of the State System, comply with all relevant state and federal laws and regulations regarding notification of data breach, including, but not limited to, the PA Data Breach Notification Act.
- i. Remedies: If the University reasonably determines in good faith that the Contractor has materially breached any of its obligations under this provision, the University, in its sole discretion, shall have the right to require the Contractor to submit to a plan of monitoring and reporting; provide the Contractor with a thirty (30) day period to cure the breach; or terminate this Contract immediately if cure is not possible. Before exercising any of these options, the University shall provide written notice to the Contractor describing the violation and the action it intends to take. If the Office of the Chief Privacy Office ("OCPO") of the U.S. Department of Education determines that the Contractor improperly disclosed personally identifiable information obtained from the University's education records, the University may not allow the Contractor access to education records for at least five (5) years.
- j. The obligations stated in this section do not apply to information:
 - 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
 - 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
 - 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - 4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

- k. Indemnity: The Contractor shall defend and hold the University harmless from all claims, liabilities, damages, or judgments brought by a third party, including the University's costs and attorney fees, to the extent arising as a result of the Contractor's negligent or willful failure to meet any of its obligations under this section.

20. RIGHT TO KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract.
- b. If the University 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 University.
- c. Upon written notification from the University 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 University, within ten (10) 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 University reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2) Provide such other assistance as the University 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 University and provide, within seven (7) 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 University will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the University determines that the Requested Information is clearly not protected from disclosure under the RTKL in which case the Contractor shall provide the Requested Information within five (5) days of receipt of written notification of the University'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 University harmless for any damages, penalties, costs, detriment or harm that the University may incur as a result of the Contractor's failure, including any statutory damages assessed against the University.
- g. The University will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by university, or if none, by the Office of Open Records or as otherwise provided by the RTKL if a fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any University decision to release a record to the public with the Office of Open Records, or in an appropriate Pennsylvania Court; however, the Contractor shall indemnify the University for any legal expenses incurred as a result of such a challenge and shall hold the University harmless for any damages, penalties, costs, detriment or harm that the University may incur as a result of the Contractor's failure, including any statutory damages assessed against the University, 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 University's disclosure of Requested Information pursuant to the RTKL.

21. NONDISCRIMINATION/SEXUAL HARASSMENT

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

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.

- c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. To the extent required by the Governor's Management Directives 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 University may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

22. CONTRACTOR STANDARDS; ETHICS; DEBARMENT

- a. Contractor Standards. Contractor shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with The University or the Commonwealth.
- b. Ethics. Contractor shall not, in connection with this Agreement, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the University. Nor shall Contractor, directly or indirectly, offer, give, or agree to promise to give to any person, any gratuity for the benefit of or at the direction or request of any officer or employee of the University. Except with the consent of the University, neither Contractor nor any of its subcontractors who perform work under this Agreement shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement. Contractor, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these provisions. Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the University in writing.

23. CONTRACTOR RESPONSIBILITY/DEBARMENT

- a. Contractor represents warrants and certifies that, as of the date of this Agreement, it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.
- b. If Contractor is subsequently suspended or debarred by the Commonwealth, any other state, or the federal government, during the term of this Agreement or any extensions or renewals thereof, Contractor shall provide prompt written notice thereof to the University, and the University shall have the right to terminate this Agreement.
- c. If Contractor enters into any subcontract under this Agreement with any subcontractor(s) and, at any point during subcontractor's performance of work under this agreement, Contractor becomes aware that the subcontractor is currently suspended or debarred by the Commonwealth, any other state, or the federal government, or becomes suspended or debarred by the Commonwealth, any other state, or the federal government, Contractor shall immediately notify the University. The University shall have the right to require Contractor to cease its engagement of subcontractor for work under this agreement and terminate any subcontracts specific to the work under this agreement. If Contractor does not, or cannot, terminate the subcontractor as specified above, the University shall have the right to terminate this Agreement.

24. BACKGROUND CHECKS FOR SECURE OR SENSITIVE AREAS

- a. At the direction of the University, the Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will

have access to secure or sensitive areas on the University's campus, either through on-site access or through remote access, as determined by the University. Before the University will permit an employee or subcontractor of the Contractor to have access to secure or sensitive areas on the University's campus, the Contractor may be required provide written confirmation that appropriate background checks have been conducted.

- b. Access to certain University buildings may be controlled by means of card readers and secured visitors' entrances. University contracted personnel who have regular and routine business in University worksites may be issued a photo identification or access badge, at the discretion of the University, subject to University policy or direction. The Contractor shall be responsible for all fees in connection with issuance of photo identification or access badges.
- c. The University may provide Contractor employees who work on a University campus with a designated email or other network access for use by the employee for performance under this Contract. Any such access must be in accordance with all applicable laws and University policies.
- d. If it is discovered at any time that an individual has access to a secure or sensitive area on campus has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, breach of trust/fiduciary responsibility or that raises concerns about building, system or personal security, or is otherwise job-related, the Contractor shall not assign that employee to any University facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the University consents to the access, in writing, prior to the access.
- e. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the University may result in the Contractor being deemed in default of its Contract

25. AMERICANS WITH DISABILITIES ACT

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.

26. 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 law provisions).

27. MISCELLANEOUS

- a. **NONEXCLUSIVITY:** Unless otherwise specified in the provisions of this Contract, the University reserves the right to purchase goods and services covered under this Contract through a separate procurement procedure whenever University deems it to be in its best interest.
- b. **PUBLICITY:** Contractor shall not reference or use the name of the Commonwealth of Pennsylvania, the State System of Higher Education, the University or, any official, employee, unit or department or any logo, trademark or symbol associated with any of the above for commercial promotion. News releases or other publicity pertaining to this Contract shall not be made without the prior written approval of the University.
- c. **INTEGRATION:** This Contract, including all referenced documents and any issued Purchase Order, constitute the entire agreement between the parties. No agent, representative, employee or officer of either the University or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Contract. No modifications, alterations, changes, or waiver to this Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate University form.
- d. **CONTROLLING TERMS AND CONDITIONS:** The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the University. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's

quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the University unless specifically referenced as being incorporated into this Contract. In the event attachments containing additional terms are incorporated as part of this Contract, the terms and conditions herein shall control and prevail over any such attachments, regardless of any language contained therein to the contrary.

- e. SEVERABILITY: If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law or rendered unlawful by a legislative act, such provision shall be interpreted to be modified so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Contract shall remain in full force and effect.
- f. SURVIVAL: The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

Data Security Addendum

Contractor acknowledges that the Contract between the Parties allows the Contractor access to Covered Data and Information (“CDI”), as defined below. This Data Security Addendum adds additional obligations concerning the use of CDI to the Contract between the parties.

1. Definitions

- a. The following words or phrases, as used in this Section, shall be given the same definition as they are given in the Pennsylvania Breach of Personal Information Notification Act, 73 P.S. § 2301 et seq., as may be amended: “**Breach of the security of the system,**” “**Determination,**” “**Discovery,**” and “**Personal Information.**”
- b. **Covered Data and Information (“CDI”)** - includes (1) paper and electronic financial information that is marked as confidential; (2) Personal Information; (3) personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act (“FERPA”), 20 USC 1232g; (4) "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act (“HIPAA”), 45 CFR Part 160.103; (5) nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999 (“GLB”), 15 USC 6809; (6) credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; (7) other financial account numbers, access codes, driver's license numbers; state- or federal-identification numbers such as passport, visa or state identity card numbers; (8) and any other data marked as non-public that is provided by the University, its students or a third party to the Contractor to perform the services under this Contract.
- c. **Covered Parties** - The following are considered a “Covered Party” subject to the restrictions on the use of CDI: Contractor; employees or agents of Contractor who actually and legitimately need to access or use CDI in the performance of Contractor’s duties to University; and such third parties, such as but not limited to subcontractors, who have an actual and legitimate need to access or use CDI.
- d. **System** - An assembly of components that supports an operational role or accomplishes a specific objective including a discrete set of information resources (network, server, computer, software, application, operating system or storage devices) organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
- e. **Notice** - In addition to all other Notice requirements provided for pursuant to any agreement into which this Data Security Addendum is incorporated, any notice required of Contractor pursuant to this Data Security Addendum shall be made by email directed to: ContractorCyberIncident@passhe.edu.

2. Use of, Disclosure of, Storage of, or Access to CDI

- a. Contractor and Covered Parties shall only use, disclose, store, or access CDI in accordance with, and only to the extent permissible or necessary to fulfill obligations under the Contract, this Addendum and any other agreement between the parties and will not share CDI with or disclose it to any third party without the prior written consent of the University, except as required by the Contract or as otherwise required by applicable law.
- b. Contractor and Covered Parties shall only use, disclose, store, or access CDI in full compliance with any and all applicable laws and regulations, only to the extent applicable to Contractor, including but not limited to: FERPA, HIPAA, GLB, Federal Trade Commission Red Flags Rule, the Social Security Act, Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), U.S. export control laws, the European Union General Data Protection Regulation (GDPR), and personnel and data breach laws of the Commonwealth of Pennsylvania.

- c. Contractor will ensure all internal Covered Parties have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Contract and this Addendum.
- d. Contractor shall require all third party Covered Parties to agree in writing and in advance of any disclosure, to be bound by confidentiality terms at least as stringent as the terms of this Addendum.
- e. Any transmission, transportation, or storage of CDI outside the United States is prohibited except on prior written authorization by the University.
- f. Contractor and Covered Parties may store CDI on servers housed in datacenters owned and operated by third parties, provided the third parties have executed confidentiality agreements with Contractor that are consistent with the Contract and this Addendum.
- g. For CDI subject to FERPA, Contractor will be considered a "school official" with a "legitimate educational interest" as those terms are used in FERPA and its implementing regulations. Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use the education records only for the purpose of fulfilling its duties under the Contract for University's and its end user's benefit and will not share such data with or disclose it to any third party except as provided for in the Contract, required by law, or authorized in writing by the University.
- h. The parties agree that as between them, all rights including all intellectual property rights in and to CDI shall remain the exclusive property of the University, and Contractor has a limited, nonexclusive license to use the data as provided in the Contract solely for the purpose of performing its obligations under the Contract. The Contract does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Contract.

3. Safeguarding CDI

- a. Contractor shall ensure that its employees have undergone appropriate background screening and possess all needed qualifications to comply with the terms of the Contract and this Addendum, including but not limited to all terms relating to data and intellectual property protection.
- b. Contractor agrees that use, storage, and access to CDI shall be performed with that degree of skill, care, and judgment customarily accepted as sound, quality, and professional practices designed and implemented in such a manner to ensure the confidentiality, availability, and integrity of CDI and to avoid or prevent compromises, attacks and potential Data Breaches.
- c. Contractor will implement the controls reasonably necessary to protect any System owned or operated by Contractor that contains CDI: (1) using secure protocols and encryption to safeguard CDI in transit; (2) adding a host-based or external firewall to protect the System (or allowing the University to add a host-based or external firewall); (3) limiting administrative and remote access to the System; (4) limiting account access and privileges to the least necessary for the proper functioning of the System; (5) removing or disabling applications and services that are not necessary for the proper functioning of the System; (6) utilizing named user accounts and not generic or shared accounts; (7) utilizing Federated Single Sign On, Kerberos, or other industry compliant services for authentication and authorization; (8) avoidance of default passwords and capabilities that allow the changing of System and user passwords; (9) enabling an appropriate level of auditing and logging for the operating system and applications; and (10) take reasonable measures to protect CDI against deterioration or degradation of data quality and authenticity.
- d. The University reserves the right to request security information reasonably necessary to ascertain University's own compliance with state and federal data privacy laws. Upon the University's request, Contractor shall provide a copy of its most recent SOC 2 report, and that of any data center in which CDI is stored. The University may also require the Contractor to complete a Higher

Education Cloud Vendor Assessment Tool (HECVAT) to ensure the services to be provided are appropriately assessed for security and privacy needs. Contractor agrees to cooperate with the University to ensure data is handled and systems are operated in compliance with applicable University policy and adopted standards.

- e. If the Contractor maintains or stores computerized data on behalf of the University that constitutes Personal Information the Contractor shall:
 - i. Utilize encryption, or other appropriate security measures, to reasonably protect the transmission of personal information from being viewed or modified by an unauthorized third party. The Contractor shall develop and maintain (or continue to maintain if such a policy already exists) a policy to govern the proper encryption or other appropriate security measures and transmission of data to the University. In developing the policy, the Contractor shall reasonably consider similar existing Federal policies and other policies, best practices identified by other states and relevant studies and other sources as appropriate in accordance with best practices as established by the Federal Government and the Commonwealth of Pennsylvania. The policy shall be reviewed at least annually and updated as necessary.
 - ii. Develop (or continue to maintain if such a policy already exists) a policy to govern reasonably proper storage of the Personal Information. A goal of the policy shall be to reduce the risk of future breaches of the security of the system. In developing the policy, the Contractor shall reasonably consider similar existing Federal policies and other policies, best practices identified by other states and relevant studies and other sources as appropriate in accordance with best practices as established by the Federal Government and the Commonwealth of Pennsylvania. The policy shall be reviewed at least annually and updated as necessary.

4. Product Maintenance and Support

- a. Contractor shall have a process for the timely review, testing, and installation of patches essential for safeguarding the confidentiality, integrity, or availability of the System or CDI.
- b. Contractor will implement best practices for change management procedures, including a formal process to ensure that changes to a System are introduced in a controlled and coordinated manner to avoid or reduce the possibility that unnecessary changes, faults or vulnerabilities are introduced to the System, or that changes made by other users are undone.
- c. Contractor shall ensure that all products under subscription are remotely supported via a secure connection method that includes an audit log of events. Remote access shall be limited to an as needed or as requested basis. Contractor shall provide University with notice 12 months before the product becomes unsupported.

5. Contractor Access to University Systems

- a. In accordance with applicable policies, University login credentials may be given to contractors for the purposes of scheduled troubleshooting, maintenance, or updates to software provided or supplied by Contractor and installed on University-owned computer equipment. In such a case, the University will provide the Contractor with credentials for logging in locally or through a secured Virtual Private Network (VPN), if required. Credentials will be issued by the University through a help desk ticket and issued for a specified time and disabled once that time has expired.
- b. As a condition of the Contractor's access to University computing equipment the Contractor represents that they will not attempt to access any system(s) other than the one(s) designated in the help desk ticket.
- c. All work performed by the Contractor while connected to University computing equipment may be monitored or verified by the University.

6. Data or Security Incident

- a. Upon Contractor's Discovery that a Breach of the security of the system has occurred, or that CDI may otherwise have been accessed, disclosed, or acquired without proper authorization, Contractor shall immediately, and in no event more than 24-hours following Determination of the Breach of the security of the system, provide Notice to the University. Contractor shall immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the incident. Contractor shall give highest priority to immediately correcting any incident and shall devote such resources as may be required to accomplish that goal. Contractor shall fully investigate the incident, and cooperate fully with the University's investigation of and response to the incident.
- b. Contractor shall promptly provide the University information necessary to enable the University to fully understand the nature and scope of the incident so that it can take appropriate action, including notice to individuals impacted and, if need be, notice to consumer reporting agencies as required by the Commonwealth's Breach of Personal Information Notification Act, 73 P.S. §§ 2301 et seq.
- c. In addition to any other remedies available to the University under law or equity, Contractor will reimburse the University in full for all costs incurred by the University in investigation and remediation of any incident, including but not limited to providing notification to individuals whose CDI was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the CDI exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the incident.
- d. Upon request, Contractor shall provide University information about what Contractor has done or plans to do to mitigate any deleterious effect of the unauthorized use or disclosure of, or access to CDI. In the event that an incident requires Contractor's assistance in reinstalling software, such assistance shall be provided at no cost to the University. The University may discontinue any services or products provided by Contractor until the University, in its sole discretion, determines that the cause of the incident has been sufficiently mitigated.
- e. The Contractor shall coordinate all outbound communications regarding an incident with the University.
- f. Notification following Breach of the Security of the System: Upon Determination that a Breach of the security of the system has occurred, Contractor shall, in addition to the above requirement regarding notification of the State System, comply with all relevant state and federal laws and regulations regarding notification of data breach, including, but not limited to, the Pennsylvania Breach of Personal Information and Notification Act, 71 Pa.C.S. § 2031, *et. seq.*

7. Compelled Disclosure of CDI

- a. Contractor shall promptly notify the University in writing of any subpoena, discovery request, court order, or other legal request or command to disclose CDI and provide the University sufficient time to obtain a court order or take any other action the University deems necessary to prevent disclosure or otherwise protect CDI. Contractor shall provide prompt and full cooperation in University's efforts to protect CDI. Upon request, Contractor will provide the University with a copy of its response.
- b. If the University receives a subpoena, discovery request, court order, or other legal request or command (including a request pursuant to the Pennsylvania Right to Know Law) or request seeking CDI maintained by Contractor, the University will promptly provide a copy to Contractor. Contractor will promptly supply the University with copies of data required for the University to respond and will cooperate with the University's reasonable requests in connection with its response.

8. Data Transfer or Destruction Procedures

- a. Upon expiration or termination of the Contract, Contractor shall follow the University's instructions as to the preservation, transfer, or destruction of CDI. Any transfer to the University or a designated third party shall occur within a reasonable period of time and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to CDI during the transition.
- b. In the event the University requests destruction of CDI, Contractor agrees to destroy all data in its possession and in the possession of any subcontractors or agents to which the Contractor might have transferred CDI in accordance with standards that meet or exceed [National Institute of Standards and Technology \(NIST\) Special Publication 800-88r1 guidelines](#) pertaining to data sanitization using "purge" or "destroy" methods. Contractor agrees to provide documentation of data destruction.
- c. Contractor will notify the University of an impending cessation of its business and any contingency plans, immediately transfer any previously escrowed assets and CDI and provide the University access to facilities to remove and destroy University-owned assets and CDI. Contractor shall take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. Contractor will also provide a full inventory and configuration of all hardware and software involved in service delivery. Contractor will work closely with its successor to ensure a successful transition in advance of the final transition date, with minimal downtime and effect on the University. Upon request by the University, Contractor shall certify in writing to University that return or destruction of data has been completed. Prior to such return or destruction, Contractor shall continue to protect CDI in accordance with the terms of the Contract and this Addendum.
- d. The Contractor's obligations under this section shall survive termination of the Contract until all CDI has been returned or securely destroyed.