

REQUEST FOR PROPOSALS FOR

Supplemental Debt Collection Services 2020 RFP No. 20-02

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PART I
GENERAL INFORMATION TO OFFERORS

SUMMARY

When: Proposals must be submitted no later than 2:00 PM, **Friday, March 6, 2020.**

Where: Philadelphia Parking Authority
Attention: Mary Wheeler, Manager Contract Administration
701 Market Street, Suite 5400
Philadelphia, PA 19106

How: Proposals must be delivered in a sealed package via mail, certified mail, return receipt requested (to include commercial delivery services) or by hand-delivery. Whether mailed or hand-delivered, all envelopes must display the vendor name and must be boldly and clearly **handwritten** (*not* typewritten) "RFP No. 20-02 Supplemental Debt Collection Services 2020". All proposals must be presented with one (1) original and eight (8) copies, individually numbered, and an electronic version consisting of one PDF file.

Mandatory Pre-Proposal Meeting A mandatory Pre-Proposal Meeting will be held in the offices of the Authority, 701 Market Street, Suite 5400, Philadelphia, PA 19106 on **Tuesday, February 18, 2020** at 11:00 AM. Offerors must be in attendance at this meeting or participate via telephone call to be considered eligible to participate in this solicitation.

Conference Call Number: 215-383-1625 Passcode: 139494

I-1. Introduction.

This Request for Proposals ("RFP") is being issued by the Philadelphia Parking Authority, ("Authority"), a body corporate and politic created under the laws of the Commonwealth of Pennsylvania in accordance with the Act of June 19, 2001, P.L. 287, No. 22, as amended, known as the "Parking Authority Law". The Authority is seeking written proposals from qualified debt collectors to provide debt collection services under a contract with the Philadelphia Parking Authority. As a Request for Proposals, this is not an invitation to bid and although price is important, other pertinent factors will be taken into consideration.

I-2. Background.

The mission of the Philadelphia Parking Authority is to contribute to the economic vitality of Philadelphia and the surrounding region by effectively managing and providing convenient parking on the street, at the airport, and in garages and lots; effectively operating a system of red-light camera enforcement; regulating taxicabs, limousines and transportation network companies; and other transportation-related activities.

A number of customer-focused actions flow from the PPA mission:

- Improving cooperation and planning with PPA stakeholders, including state and local transportation partners,

- Implementing cutting-edge technology to improve the customer experience and enhance overall management and agency efficiency,
- Emphasizing employee training on industry best practices,
- Maximizing transparency in hiring and procurement,
- Implementing on-street parking management policies that address neighborhood needs throughout the City,
- Encouraging reasonably priced off-street parking through rate setting policies at seven PPA Center City facilities,
- Maintaining and improving neighborhood parking lots to address both residential and commercial demand,
- Providing leadership in partnering with private and public hospitality and tourism entities to enhance the visitor experience,
- Applying the latest technology for a superior customer experience at the parking facilities at Philadelphia International Airport in support of this important regional economic engine,
- Encouraging safe, clean, reliable taxicab, limousine and transportation network company service through sound regulations and consistent enforcement,
- Improving vehicle and pedestrian safety at targeted intersections through automated red light enforcement,
- Applying latest technology and continuing staff development to provide the highest quality public service with maximum efficiency.

I-3. Procurement Questions.

Prospective Offerors are encouraged to submit questions concerning the RFP in writing no later than 2:00 PM, Tuesday, February 25, 2020. Questions concerning this RFP are to be submitted via email to Mary Wheeler at mwheeler@philapark.org with “RFP No. 20-02 Supplemental Debt Collection Services 2020 – Re-Issue” listed in the subject line. Only questions submitted in writing will be addressed. The Authority will answer all questions in writing to all qualified Offerors. Any furnished answers will not be official until they have been verified, in writing, by the Authority. The Authority shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Authority. The Authority does not consider questions to be a protest of the work statement or of the solicitation.

I-4. Clarification of Instructions.

Should the prospective Offeror find a discrepancy in or an omission from the Work Statement or General Information, or should she or he be in doubt as to the meaning of any term contained therein, the Offeror shall notify Mary Wheeler, Manager of Contract Administration via email at mwheeler@philapark.org prior to the question deadline. All questions and clarification requests will be responded to via written addendum that will be emailed to all prospective Offerors. Addenda will also be posted to the Authority’s website, www.philapark.org.

I-5. Restrictions of Contract.

From the issue date of this RFP until the Authority’s Board approves the awarding of the contract, **Mary Wheeler is the sole point of contact concerning this RFP.** Any violation of this condition may be cause for the Authority to reject the offending Offeror’s proposal. If the Authority later discovers that the Offeror has engaged in any violations of this condition, the Authority may reject the offending Offeror’s proposal or rescind its award. Offerors must agree not to distribute any part of their proposals beyond the Authority. An Offeror who shares information contained in its proposal with other Authority personnel and/or competing Offeror personnel may be disqualified.

I-6. Proposal Conditions.

Sealed proposals must be received in the office of the Philadelphia Parking Authority, addressed to Mary Wheeler, 701 Market Street, Suite 5400, Philadelphia, PA 19106, no later than 2:00 PM, , **Friday, March 6, 2020.** Each eligible Offeror must submit to the Authority the information and forms required, which forms and information will become the property of the Authority and will not be returned to Offerors, unless a written request to withdraw is received prior to the opening of proposals.

I-7. Small and Small Diverse Business Requirements.

The Authority is continually looking for opportunities available for growth and advancement among small and small diverse businesses through contracts to provide products, services or construction to the Authority. Offerors shall identify their status as a small or small diverse business by completing the Small and Small Diverse Business Participation Submittal Form included in the Proposal Form along with a copy of their Small Business Procurement Initiative certificate issued from the Pennsylvania Department of General Services. Offerors may self-certify at:

<http://www.dgs.pa.gov/Businesses/Small%20Business%20Contracting%20Program/Pages/default.aspx>,

<http://www.dgs.pa.gov/Businesses/Small%20Diverse%20Business%20Program/Small-Diverse-Business-Verification/Pages/default.aspx>.

I-8. Signatures Required.

The proposals *must* be signed in all spaces where signatures are required by a principal or officer authorized to execute contracts.

I-9. Instructions for Affidavit of Non-Collusion.

1. The Non-Collusion Affidavit is material to any contract awarded through a public solicitation.
2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the offeror who makes the final decision on terms and prices identified in the proposal.
3. Bid rigging or collusion and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit below should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the offeror with responsibilities for the preparation, approval or submission of the proposal.
4. In the case of a proposal submitted by a joint venture, each party to the venture must be identified in the proposal documents, and an Affidavit must be submitted separately on behalf of each party.
5. The term "complementary proposal" as used in the Affidavit has the meaning commonly associated with that term in the request for proposal process, and includes the knowing submission of proposals higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any other form of proposal submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions will result in disqualification of the proposal.

I-10. Insurance Requirements.

The successful Offeror will be required to submit Insurance Coverage as outlined in *Appendix C*. Offeror's must submit with their proposal a sample certificate of insurance from a recent project that meets the requirements. If you do not currently carry the level of insurance that is required you must submit a letter from your insurance company indicating that they will provide the required insurances as outlined in this RFP if awarded a contract. **Insurance requirements will not be negotiated after the proposal due date.**

I-11. Executed Contract Required.

By submitting a proposal in response to this RFP the Offeror agrees that the Authority will not be bound to any contract, performance or payment obligation until the Authority's Board votes to award a contract to the successful Offeror and the Authority's Executive Director signs the written contract.

I-12. Contract Negotiation.

If successful, this procurement process will result in the presentation of a completed final-form contract to the Authority's Board for approval at a public meeting. To advance that goal a sample contract is included as *Appendix B*.

Please review the sample contract carefully. Any exceptions or requested changes to the contract **must be clearly noted in the proposal (Tab I)** in order to be considered.

I-13. Business Licenses.

The proposal should include the Offeror's Philadelphia Commercial Activity License (formerly Business Privilege License) number and the Offeror's Federal Tax ID number. If the Offeror does not currently have a Philadelphia Commercial Activity License, it must obtain one no later than five business days after being notified of selection. If the Offeror does not believe that it needs a Philadelphia Activity License, an explanation with references to statute and/or the Philadelphia Code should be included with the proposal.

I-14. Rejection or Acceptance of Proposals.

An Evaluation Committee comprised of Authority employees will review all proposals. Discussions and negotiations may be conducted with responsible Offerors for the purpose of clarification and of obtaining best and final offers. Responsible offers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

The responsible Offerors or multiple Offerors whose proposal is ranked the highest, taking into consideration price and all criteria for selection, will be selected for contract negotiation. In the event the negotiations reveal that the proposal selected for negotiation is not the most advantageous or the Offeror selected for negotiation defaults or withdraws from negotiation, the Evaluation Committee may select the next highest ranking proposal, taking into consideration price and all evaluation factors, for contract negotiation. The Authority may cancel the RFP and reject all proposals at any time prior to award by the Board.

The Authority reserves the right to waive any irregularities in the completion of the forms and papers enclosed in this schedule; to accept or reject any or all proposals; to re-advertise for proposals if desired, and to accept any proposal which, in the judgment of the Authority, will be in the Authority's best interest.

Any form which is required to be submitted and which is incomplete, conditional, obscure, contains additions not called for and not approved by the Authority, or which contains irregularities of any kind, may be cause for rejection of the proposal, in the sole discretion of the Authority. At any time up to the hour and date set for opening of proposals, an Offeror may withdraw its proposal. Such withdrawal must be in writing and sent to the Authority at the address set forth herein by a nationally recognized overnight courier service, certified mail, return receipt requested, or delivered in person. Such withdrawal shall be effective only upon receipt by the Authority evidenced by written confirmation of such receipt and will preclude the submission of another proposal by such Offeror. After the scheduled time for opening of proposals, no Offeror will be permitted to withdraw their proposal, and each Offeror hereby agrees that their proposal shall remain firm for the contract period. A proposal made and opened may be withdrawn with the written permission of the Authority, if the Authority determines in its sole discretion that the proposal is inconsistent with the best interest of the Authority.

I-15. Unacceptable Proposals.

No proposal will be accepted from or selection made of any person, firm or corporation that is in arrears or in default to the Authority upon any debt or contract, or whose insurer or banking institution is in default as surety or otherwise upon any obligation to the Authority, or has failed in the sole opinion of the Authority to faithfully perform any previous contract with the Authority.

I-16. Subcontracting.

The selected Offeror will not assign or in any way transfer any interest in this agreement without prior written consent of the Authority, nor shall the Offeror subcontract any services without prior written approval of the Authority.

I-17. Notification of Offeror Selection.

The Authority will study and evaluate all proposals which are received in accordance with the instructions set forth in the proposal package and may select an Offeror or multiple Offerors and notify all other Offerors of the selection within sixty (60) days after the date the proposals are opened. Such notice shall be in writing and mailed to the address furnished by each respective Offeror in the Transmittal Letter. The selected Offeror(s) shall not start the performance of any work prior to the effective date of the Contract and the Authority shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the effective date of the Contract. Costs incurred by the Offeror in the preparation of the proposal or during any review or negotiations shall be born exclusively by the Offeror.

I-18. Standard Practices.

All work performed under the contract shall be subject to inspection and final approval by the Authority, through the Executive Director or his designee.

I-19. Document Disclosure.

While documents exchanged by or with the Authority or its agents during this process may be protected from public release by certain terms of Pennsylvania's Right to Know Law (65 P.S. §§67.101–67.3104), Pennsylvania's Procurement Code, or other laws, many documents may not be protected. All Offerors are advised to seek counsel or otherwise educate themselves regarding open records requirements in Pennsylvania.

I-20. Statement of No Proposal.

All Prospective Offerors that do not intend to submit a proposal are asked to complete the Proposal Decline Form enclosed in the proposal documents. This document must be emailed to the attention of Mary Wheeler, Manager of Contract Administration at mwheeler@philapark.org. Specific comments and observations are encouraged.

I-21. Shipping and Delivery.

The vendor will be responsible for all shipping and delivery costs of the specified items required to support the proposal.

PART II

INFORMATION REQUIRED FROM OFFERORS

II-1. Proposal Format.

All proposals submitted must conform to the following format requirements. A transmittal letter signed by a person authorized to engage the Offeror in a contract must be included in your proposal. Proposals must be submitted on letter size (8 ½" x 11") paper. The point size font for text must be 10 to 12, and 6 to 8 for exhibits. All documents must contain a one-inch margin. For exhibits, 11x17 paper is acceptable. An electronic version of the Proposal Form can be provided to all prospective Offerors upon request. Forms that are altered by the offeror may be grounds for rejection of the Offeror's response.

The tab requirements are as follows:

- Tab A - Transmittal Letter
- Tab B - Qualifications and Experience
- Tab C - Staff Experience
- Tab D - Key Personnel
- Tab E - References
- Tab F - Proposal Form
- Tab G - Insurance Requirements
- Tab H - Financial Statements
- Tab I - Proposed Amendments to Sample Contract
- Tab J – Data Security Information

Physical tabs should extend beyond the 8 ½" x 11" paper.

II-2. Transmittal Letter (TAB A).

Briefly summarize the Offeror's qualifications and past experience relevant to the Project scope. Include any additional information which would serve to distinguish the firm/agency from other debt collectors submitting proposals.

A principal or officer authorized to execute contracts or other similar documents must sign the letter. Name, mailing address, phone, email and website address should be included. The Authority will contact this person to address any clarifications needed after proposals are received.

II-3. Qualifications and Experience (TAB B).

Proposals must present evidence satisfactory to the Authority that they are fully competent to perform the conditions of the Contract. Offerors must have the necessary certifications, training, licenses, facilities, equipment, experience and financial capacity to fulfill the conditions of the Contract and all the terms and specifications included herein.

In order to be considered qualified, the Offeror should clearly demonstrate that they have successfully performed similar debt collection services, preferably to government entities within the Commonwealth of Pennsylvania.

II-4. Staff Experience (TAB C).

List professional staff members who will be assigned to this engagement if their proposal is selected. Provide details of each professional staff member's qualifications, including years and types of experience, education, accomplishments, etc. Specify the extent of the availability and commitment of each such professional staff member who will be assigned to this engagement if the vendor's proposal is selected. Do not include staff that will not work under this contract.

II-5. Proposal Form (TAB D).

The Proposal Form contained within this RFP must be submitted in its entirety (with the exception of the Proposal Decline Form).

II-6. References (TAB E).

Offeror must complete the spreadsheet that is provided in Appendix D to supply information regarding similar work performed as described in this RFP, within the past three years.

II-7. Technical Response (TAB F).

Provide a response detailing how your firm will meet the requirements set forth in the Work Statement. Your response should specifically include the following:

1. Offeror shall provide in their technical proposal steps that will be taken once the collection matter is received by the Offeror. Include the number of contacts and procedures that will be taken (written correspondence, telephone contact, judgement, etc.).
2. Offeror shall identify any geographical or jurisdictional limitations applicable to its collection abilities.
3. Provide a detailed description of Offeror's policy and procedure on consumer complaint handling.
4. Specify whether Offeror utilizes any form of automated collection processes, and if so, set forth a detailed description of Offeror's automated collection procedures.
5. Describe the Offerors reporting capabilities and procedures. Include a sample reports.
6. Offeror shall provide any additional information relating to its collection procedure and practices that is not specifically addressed in this RFP.
7. The Offeror shall identify any subcontractors that will be used during the contract period. All subcontractors are subject to approval by the Authority.
8. The Offeror shall comply with the Contractor Integrity Provisions as outlined in Exhibit A.
9. Describe your collection procedures along with payment options offered to debtors. Response should include but not be limited to the following:
 - a. Pay directly over the internet.
 - b. Pay by phone.
 - c. Pay through the United States Mail.
 - d. Pay in person.
 - e. Installment plans
10. Detail the highlights of your collection approach.
11. Provide evidence of internet based web portal that allows the Authority constant access to all of the records and information created or maintained by the Contractor related to any collection account assigned by the Authority, if one does not currently exist please describe how this requirement will be met.

II-8. Insurance Requirements (TAB G).

The successful Offeror will be required to submit Insurance Coverage as outlined in *Appendix C*. Offeror's must submit with their proposal a sample certificate of insurance from a recent project that meets the requirements. If you do not currently carry the level of insurance that is required you must submit a letter from your insurance company indicating that they will provide the required insurances as outlined in this RFP if awarded a contract.

II-9. Financial Statements (TAB H).

Offeror must provide complete financial statements for the last three years, which have been audited or reviewed by an independent Certified Public Accountant who is not an employee of the Offeror. Complete financial statements must include, at a minimum, a balance sheet, income statement, reconciliation of equity and a cash flow statement. Offeror may only submit one copy of their financial statements either with the original proposal or in a separate envelope marked "confidential".

II-10. Proposed Amendments to Sample Contract (TAB I).

If successful, this procurement process will result in the presentation of a completed final-form contract to the Authority's Board for approval at a public meeting. To advance that goal a sample contract as Appendix B. Please review the sample contract carefully. Any exceptions or requested changes to the contract **must be clearly noted in the proposal** in order to be considered.

II-11. Data Security Information (TAB J).

Provide all data security information to evidence that you meet the requirements set forth in the attached Data Sharing Agreement, Section 10. At a minimum the Offeror must have a SOC 2 Type 2 or SOC 3 Type 3 (if cloud-based) audit report.

Provide a current and valid PCI-DSS Level 1 Services Provider Attestation of Compliance.

PART III

CRITERIA FOR SELECTION

III-1. Mandatory Responsiveness Requirements. To be eligible for selection, a proposal shall be (a) submitted by a firm who was represented at the mandatory pre-proposal meeting; (b) timely received from an Offeror; and (c) properly signed by the Offeror.

III-2. Technical Nonconforming Proposals. The three (3) Mandatory Responsiveness Requirements set forth in Section III-1 above are the only RFP requirements that the Authority will consider to be non-waivable. The Authority reserves the right, in its sole discretion, to waive any other technical or immaterial nonconformities in the proposal, allow the Offeror to cure the nonconformity, or consider the nonconformity in the evaluation of the proposal.

III-3. Proposal Evaluation. Proposals will be reviewed, evaluated and scored by an Evaluation Committee consisting of Authority employees. The Authority will select the highest ranking Offeror whose proposal is determined to be most advantageous to the Authority as determined by the criteria listed below.

During the evaluation process, the Authority may require an Offeror to answer questions with regard to the proposal and/or require certain Offerors to make formal presentation to the Evaluation Committee.

III-4. Evaluation Criteria. The Authority determined that it is was not advantageous for it to use a bidding process in order to secure the services outlined in the Work Statement because it wished to consider criteria other than price in the award process, in particular, the Offeror's qualifications and experience.

Proposals will be evaluated consistent with the requirements of this RFP and determine the most responsive Offerors as follows:

- a. **Responsiveness of the proposal to the submission requirements set forth in the RFP. Weight: 5%**
- b. **Qualifications and Experience.** Demonstrated prior experience in providing debt collection services as evidenced in the proposal and confirmed by references. **Weight: 20%**
- c. **Staff Experience** **Weight: 20%**
- d. **Technical Response.** **Weight: 25%**
- e. **Proposed fees and costs.** The Authority is not bound to select the firm who proposes the lowest fees. The Authority reserves the right to obtain best and final offers at its sole discretion. **Weight: 25%**
- f. **Small and Small Diverse Business participation.** **Weight: 5%**

PART IV

WORK STATEMENT

IV-1. Objectives

1. General.

The purpose of this RFP is to obtain the services of the highest quality supplemental debt collection service providers available. All of the money collected pursuant to this RFP and the resulting contract constitutes public money that will be used to support core services provided by the City of Philadelphia, the Philadelphia School District and the special safety programs administered by the Pennsylvania Department of Transportation.

Offerors to this RFP must fully understand the laws and ordinances applicable to the Philadelphia On-Street Parking Program, the Philadelphia Automated Red Light Enforcement System (“Red Light Camera” or “RLC”) and the Philadelphia Speed Enforcement System. Offerors to this RFP should all have in-house counsel on staff or retained outside legal counsel comprised of attorneys licensed to practice law in the Commonwealth of Pennsylvania with the ability to research and understand all federal, state and local laws and ordinance applicable to this RFP and the resulting contract, including but not limited to:

The Philadelphia Code. The Authority’s on-street parking enforcement and collection duties are primarily provided for in Title 12, but also appear in other Titles of the Code. The Authority’s RLC duties are primarily provided for in Chapter 3001 of Title 12 but again not exclusively.

Pennsylvania statute. The Authority’s on-street parking enforcement and collection powers are also identified in 75 Pa.C.S. § 6109 and other sections of Title 75, as well as the Authority’s enabling statute at 53 Pa.C.S. § 5501, *et seq.* The Authority’s RLC authorization is provided for in 75 Pa.C.S. § 3116 and Speed Enforcement is Title 75 § 3370 and House Bill #1187.

Offerors to this RFP must provide debt collection services for on-street parking violations, RLC violations and speed enforcement violations. A successful Offeror is hereinafter referred to as “Contractor.” On-Street parking violations, RLC violations and speed violations will be collectively referred to as “Violations”.

2. Specific.

The Authority has already contracted with a third party to provide certain hardware, software and support services in furtherance of its on-street parking enforcement duties. That contract includes collection services for all Philadelphia On-Street Parking Violations (“Parking Tickets”) from the date of issuance up to and including the date of the one year anniversary of the issuance of the Parking Ticket. The on-street parking collection services requested through this RFP relate only to Parking Tickets that have been issued and unpaid for **more than 1 year**.

The Authority has already contracted with a third party to provide certain hardware, software and support services in furtherance of its RLC enforcement duties. That contract includes collection services for all Red Light Camera Violations (“RLC Tickets”) from the date of issuance up to and including the 180th day after the issuance of the RLC Ticket. The RLC collection services requested through this RFP relate only to RLC Tickets that have been issued and unpaid for **more than 180 days**.

The Authority is under contract with a third party to provide certain hardware, software and support services in furtherance of its speed enforcement duties. The contract includes collection services for all Speed Enforcement violations (“Speed Tickets”) from the date of issuance up to and including the 180th day after the

issuance of the Speed Ticket. The Speed Ticket collection services requested through this RFP relate only to Speed Tickets that have been issued and unpaid for more than 180 days.

The Contractors used by the Authority to provide the services referenced in above paragraphs will be referred to generally as "Support Contractors". The Authority's contracts with Support Contractors are subject to change, including change of Contractor. The Authority will not expand the collection period exclusive to those Support Contractor services during the term of any contract resulting from this RFP.

The scope of the collection services subject to any contract resulting from this RFP will be automatically and continually adjusted to begin the day after the last day of the collection period reserved to the Support Contractor, which may be reduced during the term of this contract. **Each Offeror to this RFP should anticipate a change of this nature and must be prepared to adjust collection services during the term of any collection services contract.**

2.1 Overview of Violation assignment process

The debt collection services applicable to this RFP are provided below.

1. The on-street parking Support Contractor will forward to the Contractor (the Authority reserves the right to use multiple Contractors to be selected through this RFP) information applicable to each Parking Ticket that has not been fully paid within 1 year of issuance.
2. The RLC Support Contractor will forward to the Contractor (the Authority reserves the right to use multiple Contractors to be selected through this RFP) information applicable to each RLC Ticket that has not been fully paid within 180 days of issuance.
3. The Speed Enforcement Support Contractor will forward to the Contractor (the Authority reserves the right to use multiple Contractors to be selected through this RFP) information applicable to each Speed Ticket that has not been fully paid within 180 days of issuance.
4. The information to be provided pursuant to paragraph Nos. 1, 2 and 3 will include:
 - a. The Violation number, debtor name, address and other available information related to the debtor.
 - b. The amount of the outstanding debt, delineated by the original penalty amount and any fees that may have been applied to the account.
5. The electronic information system used by the Support Contractor will be made available to the Contractor for purposes of tracking the debt and to advance collection activities. Information provided to the Contractor is pursuant to this contract must be treated as sensitive and confidential.
6. Once a violation is assigned, the Contractor will be obligated to make certain that the debt remains collectable pursuant to 12 Phila. Code § 2809 (5), the Contractor will cease collection activities after that period has expired.
7. The Support Contractor will send the Contractor a daily report updating the account status of each Violation assigned to that Contractor ("Daily Report"). The report will include all payments received related to assigned debts, as well as recalls. A recall occurs when a ticket is dismissed, placed on suspend for review by the Authority or placed on an installment payment plan with the Authority. See, paragraph No. 15 below.
8. The Daily Report will be provided to the Contractor through daily, weekly and monthly billing reports.

9. The array of billing, payment and update reports that will be created and used by the Contractor should be substantially similar to the reports used by the Support Contractor and shall be subject to the prior approval of the Authority in its sole discretion.
10. A debt Contractor may not settle and/or compromise a debt assigned pursuant to any contract related to the RFP without the advanced approval of the Authority. The Authority will provide the Contractor with confidential guidelines related to the payment of debts in an amount less than all of what is owed, in order to permit more rapid resolution of such debts.
11. Upon receipt of payment of any debt or portion of such debt, the Contractor must electronically transfer that payment to an account designated by the Authority within 24 hours and send the file associated with the collected debt to the Authority's Support Contractor by 9:00 a.m. the following work day (electronically transferred). The Support Contractor will update its records to reflect receipt of the payment, which must be associated with a specific Violation number or numbers, as applicable. This paragraph shall apply to installment payments as provided in paragraph No. 13.
12. Upon receipt of payment of any Violation debt or portion of such debt, the Contractor will inform the Authority that day through the Support Contractor's electronic reporting system applicable to the debt at issue.
13. A Contractor may permit payment of the assigned debt through an installment payment, pursuant to the Authority's guidelines.
14. The Contractor will work cooperatively with the Authority and the Support Contractor to develop a "Frequently Asked Questions and Follow up Actions" worksheet. This standard information and guidance is subject to the approval of the Authority and is to be used by the respective customer service representatives of the Contractor and the Support Contractor to assure that the same accurate information is communicated to the public and any debtors.
15. **The Authority will continue to pursue its own collection activities of Violation debt, even once assigned to a Contractor.** The Authority employs people to perform collection activities (find, boot and tow vehicles, etc.). Collection methods such as these will result in the collection of outstanding violation debt. In the event violation debt is assigned to a Contractor, but then collected in whole or in part by the Authority through other means, that debt will immediately be considered recalled and no payment or reimbursement will be due to the Contractor.
16. The Contractor will be responsible for all costs associated with the collection of debt including but not limited to credit card processing fees.
17. Contractor must provide evidence of an internet based web portal that allows the Authority constant access to all of the records and information created or maintained by the Contractor related to any collection account assigned by the Authority.

2.2 Certain technical requirements

1. Contractor must be able to transmit, receive and maintain data related to this agreement through secure, encrypted methods that are compatible with systems used by the Authority and Support Contractors. Contractor must be capable of collecting payments through credit cards and other payment systems through a Contractor owned web payment site capable of receiving credit card payments for the collection of debt ("Site"). Contractor's Site shall maintain PCI compliance and adhere to all applicable law and regulations. The Authority must approve any fees the Contractor will be assessing to citizens in regards to payment collection, i.e. transaction fee, ACH fee etc.

2. Offeror must provide a current and valid PCI-DSS Level 1 Service Provider AOC (Attestation of Compliance). If, for some reason Offeror does not think PCI Compliance applies to their services please describe in detail why you are exempt. Where applicable, Vendor must provide an ASV Scan Report Attestation of Scan Compliance (AOSC) for all systems required to meet 11.2.2. Where applicable, provide written verification that the services being provided to the Authority fall within the scope of the services covered by the AOC and AOSC. In instances where payment processing systems are fully outsourced by the Offeror, please provide a description of third party risk assessments and PCI-Compliance requirements.
3. Offeror must meet the data security requirements detailed in PennDOT's Data Sharing Agreement, Section 10. Proposals will not be accepted from any Offeror who does not have at a minimum a SOC 2 Type 2 or SOC 2 Type 3 (if cloud-based) audit.
4. Contractor must be able to support encrypted file transfers. All data transferred from Support Contractors will be sent and received through an encrypted file transfer that is password protected. The Authority's Support Contractor is Duncan Solutions. Contractor will work with Duncan to establish a secure, encrypted, and password protected data transfer process
5. The Support Contractor will be using AutoPROCESS to store and sort data related to collections and several other Violation functions. Contractor's system will be required to communicate with and receive data from this source.
6. Contractor understands that technology used to secure and transfer data improves continually. A fundamental expectation of the Authority in entering into the agreement, without which the Authority would not have entered into this Agreement with Contractor, is that Contractor will continually remain current as to the best data security software, practices and technology for secure electronic storage and transfer of data related to this agreement. This may include the alteration of specifications based on the needs or abilities of Support Contractors.
7. Contractor will be required to sign a Data Sharing Agreement with PennDOT and Business Partner Agreement with Duncan Solutions and send to PennDOT within 30 days of award of a contract with the Authority.
8. Contractor will be evaluated periodically based on key performance indicators including but not limited to collection recovery rate, both overall and for individual ticket types, customer service quality, reporting and procedural compliance.

Every quarter the Authority will set up a meeting or conference call with each Contractor to give and exchange feedback, discuss performance issues and identify potential steps that can be taken to improve collections, reporting and customer service.

2.3 Debt Volume

1. **Redlight Camera – aged 6 months to 10 years**
 Current Debt Volume – 276,976
 Current Debt Dollars - \$46,504,532
2. **Parking aged 1 to 10 years**
 Current Debt Volume – 1,776,737
 Current Debt Dollars - \$83,480,053
3. **Speed – assigned after 180 days**
 No data is available

PART V

CONTRACT TERMS AND CONDITIONS

V-1. Sample Contract. A sample contract is attached to this solicitation as *Appendix B*. Please review the sample contract carefully. Any exceptions or requested changes to the contract **must be clearly noted in the proposal (Tab I)** in order to be considered.

Exceptions or requested changes to the sample contract will be considered a part of the response. Exceptions or requested changes to the sample contract should be made with great care. The Authority may reject all or some of those changes or exceptions, in its sole discretion.

The Authority's Contractor Integrity Provisions are attached to the proposed form of contract as Exhibit "A". Those Provisions apply to every Authority contractor and any party seeking to contract with the Authority. By submitting a proposal to this public procurement process the potential contractor agrees to comply with the Contractor Integrity Provisions.

The term of the contract shall commence on the date the contract is executed and shall terminate automatically without notice after one (1) year. The contract may be renewed, in the Authority's sole discretion, for four (4) one (1) year terms.

Appendix A
Proposal Form

**THE PHILADELPHIA PARKING AUTHORITY
701 MARKET STREET – SUITE 5400
PHILADELPHIA, PA 19106**

**SUPPLEMENTAL DEBT COLLECTION 2020
REQUEST FOR PROPOSALS No. 20-02**

PROPOSAL FORM

1. The undersigned, having familiarized ___self/selves with the proposal documents to provide debt collection services, including the notice of opportunity, Work Statement, Proposal Form, Affidavit of Non-Collusion, and Addenda if any (hereinafter collectively referred to as the “Proposal Documents”), as prepared by the Philadelphia Parking Authority and on file in the office of the Authority at 701 Market Street, Suite 5400, Philadelphia, Pa 19106.
2. In submitting this proposal, it is understood that the Authority reserves the right to withdraw and cancel this invitation prior to opening of proposals or to reject any and all proposals after proposals are opened if this is in the best interest of the Authority and in the Authority's sole judgment. If written notice of the acceptance of this proposal is mailed, telegraphed or delivered to the undersigned within sixty (60) days after the opening thereof, or at any time thereafter before this proposal is withdrawn, the undersigned agrees to execute and deliver a contract in the prescribed form.
3. Attached hereto is an affidavit of proof that the undersigned has not entered into any collusion with any person in respect to this proposal or any other proposal or the submitting of proposal for the contract for which this proposal is submitted.
4. Offeror acknowledges receipt of the following addenda:

| Addendum | Date |
|----------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

5. **Term of Contract:** The Term of this Agreement shall commence on the date the contract is executed and shall terminate automatically without notice after one (1) year. The Authority, at its sole discretion, shall have the right to terminate this Agreement upon five (5) days written notice to Company. The term of the contract may be extended by and at the sole option of the Authority for up to four (4) additional one (1) year terms.

6. Cost Proposal:

Provide the proposed fee for providing all of the services set forth in this RFP. The proposed fee should be a fixed percentage of all monies collected by the Offeror on behalf of the Authority. If an account or debt is reduced or cancelled by the Authority, Offeror shall provide a guarantee that no collection fee will be due to the Offeror for the amount so reduced or cancelled.

| | |
|---|---|
| Fee for a successful collection of debt (RLC/Speed) that is six (6) months to one (1) year old that does not involve litigation | % |
| Fee for a successful collection of debt (RLC/Speed) that is six (6) months to one (1) year old resulting from litigation initiated and prosecuted by the Contractor | % |

| | |
|---|---|
| Fee for a successful collection of debt that is one (1) to two (2) years old that does not involve litigation | % |
| Fee for a successful collection of debt that is one (1) to two (2) years old resulting from litigation initiated and prosecuted by the Contractor | % |

| | |
|--|---|
| Fee for a successful collection of debt that is two (2) to four (4) years old that does not involve litigation | % |
| Fee for a successful collection of debt that is two (2) to four (4) years resulting from litigation initiated and prosecuted by the Contractor | % |

| | |
|---|---|
| Fee for a successful collection of debt that is four (4) to ten (10) years old that does not involve litigation | % |
| Fee for a successful collection of debt that is four (4) to ten (10) years resulting from litigation initiated and prosecuted by the Contractor | % |

Additional Cost Information

1. No additional costs or fees are covered.
2. Tickets forwarded to the Offeror for collection, but actually collected by the Authority through its ongoing and concurrent collection efforts shall not be subject to the collection fee provided in this proposal. Examples of the Authority's collection efforts include booting, or towing vehicles, the aggregation of outstanding tickets in matters before the Philadelphia Bureau of Administrative Adjudication or the Traffic Division of the Philadelphia Municipal Court and registration suspend efforts, as provided in 75 Pa C.S. § 1379.

7. **Requirement Statement:** The undersigned vendor agrees to provide debt collection services as specified in the Work Statement and any Addenda if issued.

Signature

Name
(Please Print)

Title

Date

8. Offeror Signatures: Complete one section below.

If proposal is by a corporation, form must include the date and be signed here by (a) President or Vice President, and (b) Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Officer and (c) a corporate seal must be affixed. If this form is not so signed, a corporate resolution authorizing form of execution must be attached to this proposal.

Signature

Typed or Printed Name

Title

Business Name of Offeror

Street Address

City/State/ZIP Code

Telephone Number

Signature

Typed or Printed Name

Title

SEAL:

Date

If proposal is by a business entity other than a corporation form must be dated and signed here:

Authorized Signature

Typed or Printed Name

Title

Date

Type of Entity

Business Name of Offeror

Street Address

City/State/ ZIP Code

Telephone Number

9. Affidavit of Non-Collusion:

State of: _____
County of: _____

RFP No. _____

I state that I am _____ (Title) of _____ (Name of my organization) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this proposal and I have placed my signature below.

I state that:

(1) The price(s) and amount of this proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, Offeror or potential Offeror.

(2) Neither the price(s) nor the amount of this proposal, and neither the terms nor the approximate price(s) nor approximate amount of this proposal, have been disclosed to any other firm or person who is a bidder or potential offeror, and they will not be disclosed before proposal opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from submitting a proposal in response to this RFP, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.

(4) The proposal of my organization is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid. I have read, understand and will abide by the Authority's Contractor Integrity Provisions.

(5) _____ (my organization's name) its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that _____ (my organization's name) understands and acknowledges that the above representations are material and important and will be relied on by The Philadelphia Parking Authority when awarding the contract for which this proposal is submitted. I understand and my organization understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from The Philadelphia Parking Authority of the true facts relating to the submission of bids / proposals for this contract.

Signature

Printed Name

SWORN TO AND SUBSCRIBED
BEFORE ME THIS ____ DAY
OF 20__

Notary Public
My Commission Expires: _____

10. Offeror's Qualifications:

- a. Type of business:** Individually owned
Check one Partnership
Corporation
Other

- b. Number of employees:** Under 25
Check one Under 50
Under 100
Over 100

c. If you have had previous contracts with the Authority, list date and product or service provided:

i.

ii.

iii.

d. Philadelphia Business Activities License Number: _____

e. Federal EIN Number: _____

Philadelphia Parking Authority

SMALL AND SMALL DIVERSE BUSINESS PARTICIPATION SUBMITTAL

RFP Name and Number: _____

Offeror: _____

Contact Name: _____ Email: _____

OFFEROR INFORMATION:

Does the Offeror hold a Small Business Procurement Initiative certificate issued by the Pennsylvania Department of General Services? Yes No (MUST check one)

If yes, please identify each category that applies to your business:

1. _____.
2. _____.
3. _____.
4. _____.
5. _____.

The Offeror will need to attach a copy of their SBPI certificate. Offeror will be required to maintain their status as a certified Small and Diverse Business throughout the entire term of the contract.



Proposal Decline Form: RFP No. 20-02 Supplemental Debt Collection Services

If you do not intend to submit an offer to the Authority for this solicitation, please return this form immediately.

The undersigned vendor declines to submit an offer for this project.

Name: _____

- Work Statement too "tight" (explain below)
- Unable to meet time period for responding to this RFP
- We do not offer this product or service
- Our schedule would not permit us to perform
- Unable to meet Work Statement requirements
- Work Statement unclear (explain below)
- Unable to meet Insurance Requirements
- Unable to meet Contract Requirements (explain below)
- Other (specify below)

Comments:

| |
|--|
| |
| |
| |
| |
| |
| |
| |
| |

Upon completion of this form, please email the form to Mary Wheeler, Manager of Contract Administration at mwheeler@philapark.org.

Appendix B
Sample Contract

**AGREEMENT FOR SUPPLEMENTAL DEBT
COLLECTION SERVICES BY AND BETWEEN
THE PHILADELPHIA PARKING AUTHORITY
AND**

Contract No. K-20-00__

THIS AGREEMENT effective as of the ___ day of _____, 2020 by and between **The Philadelphia Parking Authority**, an agency of the Commonwealth of Pennsylvania and a body corporate and politic, with its principal address at 701 Market Street, Suite 5400, Philadelphia, PA 19106 (the “**Authority**”) and _____ with a registered address at _____ (“**Contractor**”).

WITNESSETH:

WHEREAS, the Authority, a public body corporate and politic organized and existing under the Act of 2001, June 19, P.L. 287, No. 22, as amended;

WHEREAS, the Authority requires supplementary debt collection services to be provided by a firm specializing in such, in addition to the debt collection activities the Authority conducts itself and through existing support contractors;

WHEREAS, in order to secure the supplemental debt collection services of highly qualified contractors to act on its behalf, the Authority issued a Request for Proposals No. 19-11 “Supplemental Debt Collection - Reissue (hereinafter “RFP”) on _____ and attached hereto as Exhibit “A” and incorporated into this Agreement as if set forth fully herein;

WHEREAS, the Contractor submitted an offer in response to the RFP, dated _____, 2020 (the “Response”), which is attached hereto as Exhibit “B” and incorporated into this Agreement as if fully set forth herein; and

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, intending to be legally bound, the parties hereto hereby agree as follows:

1. SCOPE OF SERVICES.

The Authority hereby engages and Contractor hereby agrees to perform the following professional debt collection services (“Services”):

A. To provide professional debt collection services for delinquent on-street parking violations, including penalties (“Parking Tickets”), as well as delinquent Automated Red Light Enforcement System (“Red Light Camera Program” or “RLC”) violations and penalties (“RLC Tickets”) and delinquent Speed Enforcement violations and penalties (“Speed Tickets”) in an efficient manner and at all times consistent with applicable local, state and federal debt collection laws and regulations and in a manner consistent with this Agreement, the RFP, Contractor’s

Response and the exhibits attached hereto.

B. To coordinate the fulfillment of this Agreement with the Authority's Deputy Director of Debt Collection, Dennis Rosen, who may be reached by e-mail at DRosen@philapark.org or by phone at 215-683-9431. However, the parties agree that only the Authority's Board or Executive Director may consent to any alteration or amendment to this Agreement, and in each such case in writing. Any change in excess of \$25,000 will require advanced approval of the Authority's Board at a public meeting.

C. The parties agree and understand that this Agreement does not create an exclusive debt collection service relationship and that the Authority will independently and simultaneously pursue collection of debts, even once assigned pursuant to this Agreement. The parties agree and understand that the Authority contracts with other third parties to conduct debt collection services; however, such third parties will not be simultaneously assigned a collection account while it is assigned to Contractor. It is understood that no Contractor shall be permitted to collect debt on behalf of the Authority without first providing proof of required certification as detailed in Section 2 of this Agreement.

D. Contractor acknowledges that it is required to communicate with the Authority's Support Contractor to track, pursue and report on its debt collection activities in accordance with the Overview of Violation Assignment Process identified in Section 2.1 of the RFP, attached hereto as Exhibit A.

E. The Authority can withdraw any collection account assigned pursuant to this Agreement at any time. In the event a collection account is withdrawn without any collection having been made on the account, no payment will be due Contractor.

F. It is understood that Contractor may not settle and/or compromise any debt assigned without the prior written approval of the Authority. Failure to obtain written approval prior to settling and/or compromising a debt for less than what is owed shall be grounds for termination of this Agreement pursuant to Section 7 herein.

G. Any debt collected by the Contractor on behalf of the Authority shall be deposited into an account designated by the Authority within 24 hours of being collected. The file associated with the collected debt shall be electronically transferred to the Authority's support contractor by 9:00 am the day following its collection.

H. The Authority will have constant access to all of the records and information created or maintained by Contractor related to any collection account assigned by the Authority through an internet based web portal. The parties agree and understand that the purposes of this access is to permit the Authority to continually monitor the handling of all of its assigned debt accounts in real time and that the information made available to the Authority must be sufficient for this purpose, in the Authority's sole discretion. Information accessible by the Authority will include the form, content and frequency of debt collection notices, amounts collected and other collection activity conducted by Contractor. All notes or reports created by Contractor related to each assigned account must also be made available through the web portal. Contractor will make

this fully functional web portal available to the Authority within ninety (90) days of this Agreement's execution.

I. Contractor shall have the ability to support encrypted files transfers that are password protected and shall work with the Authority's support contractor to establish a secure and encrypted data transfer process. Contractor hereby agrees that it is required to seamlessly communicate, exchange and store data using AutoProcess, the system currently utilized by the Authority and its support contractors. However, Contractor acknowledges that due to technological advancements in electronic security, the data transfer system may change. The failure or inability of company to utilize the data transfer system currently in place with the Authority or its support contractors shall constitute a breach of this Agreement and shall be grounds for immediate termination of this Contract by the Authority.

J. Contractor shall maintain a web payment site capable of receiving credit card payments for the collection of debt ("Site"). Contractor's Site shall maintain PCI compliance and adhere to all applicable state and federal laws and regulations.

K. Contractor shall at all times comply with the technical requirements contained in Section 2.2 of the RFP, attached hereto as Exhibit A. Failure to comply with any requirement shall constitute a breach of this Agreement and shall be grounds for termination of this Agreement by the Authority.

2. THIRD PARTY AGREEMENTS.

A. Contractor hereby acknowledges that this Agreement with the Authority is contingent upon Contractor obtaining, at its sole expense, the appropriate certification as mandated by the Pennsylvania Department of Transportation's ("PennDOT") Data Sharing Agreement, attached hereto as Exhibit "C". Contractor shall provide to the Authority proof of its compliance with the Data Sharing Agreement and certification of such by PennDOT ("Certification") prior to being assigned or engaging in any debt collection services on behalf of the Authority. In the event Contractor fails to maintain its Certification, it shall, within 24 hours, notify the Authority of such in writing and immediately cease all debt collection services. The loss of Contractor's Certification and/or the failure to notify the Authority within 24 hours of the loss and/or cancellation of Contractor's Certification, shall constitute a breach of this Agreement and shall, at the Authority's sole discretion, be grounds for termination of this Agreement.

B. Contractor hereby acknowledges that this Agreement with the Authority is contingent upon Contractor entering into a Business Partner Agreement ("BPA") with Duncan Solutions, Inc., which oversees the Authority's on-street parking management functions. The BPA is attached hereto as Exhibit "D". In the event the BPA with Duncan Solutions, Inc. is terminated or rendered void for any reason, Contractor shall, within 24 hours, notify the Authority of such in writing and immediately cease all debt collection services. Failure to maintain a valid BPA with Duncan Solutions, Inc. and/or failure to notify the Authority with 24 hours of the BPA's termination, shall constitute a breach of this Agreement and shall, at the Authority's sole discretion, be grounds for termination of this Agreement.

3. TERM.

The Term of this Agreement shall commence on the date first written above and shall expire automatically and without notice after one year. This Agreement may be renewed, in the Authority's sole discretion, for four (4) one year terms.

4. CONSIDERATION AND PAYMENT.

A. For the performance of Services described herein, the Authority shall pay the Contractor ___% of the amount of each debt collected by Contractor ("Payment"). The Payment shall not include any fees associated with the collection of debt, including but not limited to, credit card processing fees ("Collection Fees"). Such Collection Fees shall be the responsibility of the Contractor. Contractor must receive prior approval from the Authority before assessing any fee associated with the collection of the debt to a consumer, including but not limited to, a transactional fee, incidental fee or an ACH fee.

B. In the event Contractor initiates litigation against a debtor, with the advanced approval of the Authority, Contractor shall be paid ___% of the amount of each debt collected as a result of that litigation. Contractor agrees to accept such amounts resulting from the successful collection of outstanding debts as the sole and full compensation for such Services. The Authority's obligation to pay for such Services is contingent upon the Authority's finding that the Contractor has performed in a competent and professional manner satisfactory to the Authority and that the collection was not caused by the Authority's own collection efforts (*e.g.* booting, impoundment, etc.) as identified in the Overview of Violation Assignment Process outlined in Section 2.1 of the RFP, attached hereto as Exhibit A.

C. The Contractor shall invoice the Authority monthly for payment for Services as provided in this Agreement in a form acceptable to the Authority. Contractor shall provide such documentation and evidence of collection related activities to the Authority upon request. All invoices shall be forwarded to Dennis Rosen via email at DRosen@philapark.org.

D. At no time will Contractor be reimbursed for any administrative or overhead costs incurred by Contractor in fulfilling the terms of this agreement, including, but not limited to, any time, fees or expenses associated with Contractor's travel, fuel, lodging, food, or photocopying in connection with Contractor's Services.

5. NO SOLICITATION/CONFLICTS OF INTEREST.

A. Contractor does hereby warrant and represent that the laws of the Commonwealth of Pennsylvania have not been violated as they relate to the procurement or performance of this Agreement by any conduct, including payment or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly to any Authority employee, officer or Contractor.

B. To the best of Contractor's knowledge, no Authority member or officer, and no

employee of the Authority has any interest (whether contractual, non-contractual, financial or otherwise) in this transaction or in the business of Contractor. If such transaction comes to the knowledge of the Contractor at any time, a full and complete disclosure of such information shall be made to the Authority.

C. Contractor hereby acknowledges receipt and acceptance of the Authority's Contractor Integrity Provisions attached hereto as Exhibit "E".

6. INABILITY OF CONTRACTOR TO PERFORM.

The inability of Contractor to perform or provide the Services under this Contract, for any reason, shall automatically terminate this Agreement, whereupon all liabilities or obligations for payment hereunder shall terminate as of the date of such termination.

7. TERMINATION FOR CONVENIENCE OF AUTHORITY.

The Authority and Contractor agree that this Agreement may be terminated by the Authority with or without cause upon five (5) days' notice in writing by the Authority to Contractor, at which time Contractor shall cease all collection activities on behalf of the Authority. If the Agreement is terminated by the Authority, as provided herein, Contractor will be paid any compensation outstanding for the Services satisfactorily performed pursuant to Section 3 herein for the period prior to the date of termination. In such event, all memoranda, records, data, information and other documents prepared by Contractor shall become the property of the Authority and shall be forthwith delivered to the Authority. The payments to be made to Contractor hereunder are the Contractor's sole remedy and right with respect to termination under this paragraph.

8. GENERAL TERMS AND CONDITIONS.

A. Right to Know Law Provisions.

1. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Agreement.

2. If the Authority requires the assistance of the Contractor as to any request or other issue related to the RTKL in regard to this Agreement ("Requested Information"), it will notify the Contractor using the contact information provided in this Agreement. Upon written notification from the Authority that it requires the Contractor's assistance in responding to such a request under the RTKL the Contractor must:

- i. Provide the Authority, within 5 days after receipt of written notification, with copies of any document or information in the Contractor's possession arising out of this Agreement that the Authority reasonably believes is Requested Information and may be a public record under the RTKL; and

ii. Provide such other assistance as the Authority may reasonably request, in order to comply with the RTKL with respect to this Agreement.

3. If the Contractor considers the Requested Information to be exempt from production under the RTKL, the Contractor must notify the Authority and provide, within 5 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 and identifying the specific provision of the RTKL that renders some or all of the Requested Information exempt from disclosure.

4. The Authority will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Authority determines that the Requested Information is clearly not protected from disclosures under the RTKL. In the event the Authority determine that the Requested Information is clearly not exempt from disclosure, the Contractor must provide the Requested Information to the Authority within 5 days of receipt of written notification of the Authority's determination.

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

6. If the Contractor fails to provide the Requested Information as provided in paragraph No. 4. ("Contractor's Refusal") the party requesting the information may have the right to challenge that failure to disclose before the Pennsylvania Office of Open Records ("OOR") and potentially the courts. Contractor hereby understands and agrees that the Authority will not argue in favor of the Contractor's non-disclosure of the Requested Information and will inform the tribunal that it directed Contractor to produce such information.

7. In the event of administrative or legal proceedings, or both, related to Contractor's Refusal, the following will apply:

i. Contractor will defend the Authority, at its sole cost, before an agency or court as to any matter or claim related to Contractor's Refusal. Contractor will provide that defense through independent legal counsel agreed to in advance by the Authority, in its sole discretion.

ii. Contractor further agrees that it will indemnify and hold the Authority harmless for any damages, penalties, costs, detriment or harm that the Authority may incur as a result of the Contractor's failure to releases Requested Information, including any statutory damages or order to pay any party's attorney's fees.

8. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Authority's disclosure of Requested Information pursuant to the RTKL.

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

B. Force Majeure.

Neither contracting party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition and governmental action) that was beyond the party's reasonable control.

C. No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement.

D. Maintenance of Records.

Regardless of the impact of the Right-to-Know Law, Contractor shall maintain all data, records, memoranda, statements of services rendered, correspondence and copies thereof, in adequate form, detail and arrangement, for the Authority's benefit for a minimum of seven (7) years following the termination or expiration of this Agreement. Such information must be maintained in a secure and professionally reasonable manner. Thereafter, Contractor shall contact the Authority before disposing of any such materials and the Authority may direct that some or all of such materials be delivered to the Authority.

E. Assignment.

This Agreement may not be transferred or assigned by Contractor without the prior written consent of the Authority which consent may be withheld in the sole discretion of the Authority, any transfer or assignment made without the prior written consent of the Authority shall be void.

F. Non-Discrimination.

Contractor agrees to abide by all legal provisions regarding non-discrimination in hiring and contracting made applicable by federal, state and local laws.

G. Notices.

Any legal notice or demand given by one party to the other under this Agreement shall be in writing and served by nationally recognized overnight courier service or sent by United States

certified or registered mail return receipt requested, postage prepaid, or by overnight express delivery service or by courier service, against written receipt or signed proof of delivery addressed to the other party at the address set forth below, unless a party shall have provided written notice to the other identifying a new address for notice:

The Authority:

The Philadelphia Parking Authority
701 Market Street, Suite 5400
Philadelphia, PA 19106
Attn: Dennis G Weldon, Jr.
General Counsel

Contractor:

All notices shall be deemed given on the day after the notice was given to the courier or Postal service.

H. Press Releases

Contractor shall obtain the prior written approval of the Authority concerning the content and timing of news releases, articles, brochures, advertisements, speeches and other information releases concerning the work performed or to be performed hereunder by Contractor, its sub-Contractors or employees or Contractors of either. Contractor agrees to give the Authority reasonable advance time for review of any material submitted to the Authority approval.

I. Captions.

The captions in this Agreement are for convenience only and are not a part of this Agreement and do not in any way define, limit, describe or amplify the terms and provisions of this Agreement or the scope or intent thereof.

J. General Indemnity.

Contractor, for itself, its successors, assigns, agents, and sub-Contractors hereby agrees to indemnify, hold harmless and defend the Philadelphia Parking Authority, the City of Philadelphia, and the Commonwealth of Pennsylvania and their agents, employees, representatives, attorneys, officers and directors (the Indemnified Parties) from and against any and all liability for losses, (including those related to business interruption), damage (including special, consequential and incidental) liabilities, claims, demands, causes of action or expense (including attorney's fees and expenses) for which the Indemnified Parties may be held liable by reason of injury (including death or workers' compensation) to any person (including Contractor's employees) or damage to any property of whatsoever kind or nature arising out of or in any manner connected with the work to be performed for the Indemnified Parties (including, but not limited to, work performed under this contract, work performed under Change Order, or any such other work performed for or on behalf of the Indemnified Parties), or damages related to any data breach or loss, whether or not due in whole or in part to any act, omission, or negligence of the Indemnified Parties or any of their agents, employees,

representatives, officers, directors, stockholders, subcontractors, third parties or parent, subsidiary and affiliated companies, whether known or unknown to the Indemnified Parties or Contractor. It is expressly understood and agreed that the indemnity contained in this paragraph covers claims by Contractor's employees. It is further expressly agreed that Contractor assumes the fullest extent of all obligations to indemnify and defend all parties whom the Indemnified Parties are obligated to indemnify and defend in the Indemnified Parties contract with others (whether or not such obligations may extend to items beyond those addressed in this Agreement). This obligation to indemnify, defend and hold harmless shall survive termination of this Contract.

K. Conflicting Provisions.

This Agreement contains the entire agreement of the parties with respect to the matter covered by this Agreement. No other agreement, statement, representation, understanding or promise made by any party or by any employee, officer or agent of any party, that is not contained in this Agreement, shall be binding or valid. Any revisions, additions, and/or modifications of this Agreement must be set forth in writing and signed by all parties.

L. Entire Agreement.

This Agreement contains the entire agreement of the parties with respect to the matter covered by this Agreement. No other agreement, statement, representation, understanding or promise made by any party or by any employee, officer, or agent or any party, that is contained in this Agreement, shall be binding or valid. Any revisions, additions, and/or modifications of this Agreement must be set forth in writing and signed by all parties.

M. Exhibits.

All Exhibits to this agreement are hereby incorporated by reference into, and made a part of this Contract.

N. Interpretation.

The contracting parties acknowledge and agree that (i) each party reviewed and negotiated the terms and provisions of this Agreement and has contributed to it; and (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of the Agreement, regardless of which party was generally responsible for the preparation of this Agreement.

O. Order of Precedence.

In the event of an inconsistency between provisions of this Agreement, it shall be resolved by giving precedence in the following order: (1) the main body of this Agreement (not including Exhibits); (2) the RFP (Exhibit "A"), (3) the PennDOT Data Sharing Agreement (Exhibit "C"), (4) the BPA (Exhibit "D"), (5) the Contractor's Proposal (Exhibit "B") and (6) all other exhibits. It is Contractor's responsibility to study this Agreement and to report at once in

writing to the Authority any errors, inconsistencies, discrepancies, omissions or conflicts discovered between any provisions of the Agreement. Any work performed by the Contractor prior to receiving a written response from the Authority with respect to any alleged error, inconsistency, discrepancy, omission or conflict shall be at the Contractor's own risk and expense.

P. Specific Proposals.

It is understood that the Authority shall have the absolute discretion to accept, reject or modify any proposal or offer which Contractor may bring to the Authority's attention during the term of this Agreement. The Authority may direct that Contractor suspend or modify any of its Services related to this Agreement at any time.

Q. Independent Contractor.

Contractor agrees that it, as well its employees, are independent contractors as to any Services provided and this Agreement is not intended to create any form of employment relationship.

R. Applicable Law and Venue.

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The parties hereto irrevocably consent to the exclusive jurisdiction of the First Judicial District of Pennsylvania, being the Philadelphia Court of Common Pleas and waiving any claim or defense that such forum is not convenient or proper. Contractor agrees that the Philadelphia Court of Common Pleas shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

S. Taxes.

1. Contractor hereby certifies that neither it, nor any of its parent or subsidiary entities, is delinquent or overdue in the payment of any tax or fee to the City or County of Philadelphia or the Commonwealth of Pennsylvania. Contractor also certifies that its Philadelphia Activity License No. is: _____. Contractor further certifies that its Federal Tax ID. No. is: _____.

2. As an agency of the Commonwealth of Pennsylvania, and a local government agency, the Authority is exempt from the payment of state and local sales and use and other taxes on material, equipment or other personal property. Contractor agrees that the fees, prices or rates stated in this Agreement (1) do not include any state or local taxes, surcharges or fees on the Authority in connection with this transaction, and (2) do include all other applicable taxes for which Contractor is liable. In the event Contractor's performance under this Agreement creates a tax liability, such taxes, including but not limited to, real estate taxes, school taxes, use & occupancy taxes, and sales taxes shall be the sole obligation of Contractor, and Contractor shall

maintain current accounts as to the payment of such taxes and be liable over to the Authority for any taxes assessed against the Authority as a result of Contractors performance under this Agreement.

T. Ownership of Authority Materials.

As between the parties, the Authority shall own and retain all right, title and interest in and to all Authority data, records, policies, procedures, files, any and all Authority Provided Resources, and all written summaries, findings and reports, and proposed policies and procedures produced by Contractor pursuant to this Agreement.

U. Insurance.

Contractor agrees to provide the Authority the appropriate certificates of insurance in accordance with the Insurance Requirements of the RFP.

V. Waiver.

No term or provision hereof shall be deemed waived by the parties unless such waiver or consent shall be in writing signed by both parties. No breach shall be excused unless it is in writing signed by the non-breaching party.

W. Separation Clause.

If any provision of this Agreement, or the application of any provision to any person or circumstances, is held invalid or unenforceable, the remainder of this Agreement and the application of such provision(s) to other persons or circumstances shall remain valid and enforceable.

IN WITNESS WHEREOF, and intending to be legally bound pursuant to the Uniform Written Obligations Act, 33 P.S. 6, the parties have set their hands and seals on the date first above written.

INTENTIONALLY LEFT BLANK

The Philadelphia Parking Authority

Attest: _____

Print Name: _____

Print Title: _____

By: _____
Scott Petri
Executive Director

APPROVED AS TO FORM

By: _____
Office of General Counsel

Contractor

Witness: _____

Print Name: _____

By: _____

Print Title: _____

Appendix C

Insurance Requirements

THE PHILADELPHIA PARKING AUTHORITY
INSURANCE REQUIREMENTS
RFP NO. 20-02 SUPPLEMENTAL DEBT COLLECTION
SERVICES 2020
Page 1 of 3

Prior to commencement of the contract and until completion of your work, **Vendor** shall, at its sole expense, maintain the following insurance on its own behalf, with an insurance company or companies having an A.M. Best Rating of “A-: Class VII” or better, and furnish to The Philadelphia Parking Authority (PPA) Certificates of Insurance evidencing same. Coverage must be written on an “occurrence” basis (exception – professional liability may be written on a “claims-made basis) and shall be maintained without interruption through the entire period of this agreement.

1. Workers’ Compensation and Employers Liability: in the State in which the work is to be performed and elsewhere as may be required and shall include, where applicable, U.S. Longshoremen’s and Harbor Workers’ Coverage.
 - a) Workers’ Compensation Coverage: Statutory Requirements
 - b) Employers Liability Limits not less than:

| | |
|----------------------------|-------------------------|
| Bodily Injury by Accident: | \$500,000 Each Accident |
| Bodily Injury by Disease: | \$500,000 Each Employee |
| Bodily Injury by Disease: | \$500,000 Policy Limit |

2. Commercial General Liability: including Premises-Operations, Independent Contractors, Products/Completed Operation, Broad Form Property Damage, Contractual Liability (including Liability for Employee Injury assumed under a Contract), and Personal Injury Coverage.
 - a) Occurrence Form with the following limits:

| | |
|--|-------------|
| (1) General Aggregate: | \$2,000,000 |
| (2) Products/Completed Operations Aggregate: | \$1,000,000 |
| (3) Each Occurrence: | \$1,000,000 |
| (4) Personal and Advertising Injury: | \$1,000,000 |
| (5) Fire Damage (any one fire): | \$ 50,000 |
| (6) Medical Expense (any one person): | \$ 5,000 |
 - b) General Aggregate must apply on a Per Location Basis as applicable.
 - c) Owner must be named as additional insured as shown in requirement #9.

3. Automobile Liability: (Note: if no owned vehicles, show at least hired and non-owned coverage)
 - a) Coverage to include:
 - (1) All Owned, Hired and Non-Owned Vehicles
 - (2) Contractual Liability Coverage (including Liability for Employee Injury assumed under a Contract)
 - b) Per Accident Combined Single Limit: \$1,000,000
 - c) Owner must be named as additional insured as shown in requirement #9.

4. Excess / Umbrella Liability Insurance with a minimum acceptable limit of coverage of \$5,000,000 per occurrence and aggregate. Such coverage shall be excess of the general liability insurance, business auto liability insurance, and employers liability as required by this contract. Owner must be named as additional insured as shown in requirement #9.

5. Professional (E&O) Liability Insurance with minimum acceptable limits of \$1,000,000 per claim, \$2,000,000 aggregate. Claims-made is acceptable.

6. Cyber Liability Insurance, including 3rd party privacy, with minimum limits of \$5,000,000 per claim. Owner must be named as additional insured as shown in requirement #9.

THE PHILADELPHIA PARKING AUTHORITY
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7. Deductibles or Self Insured Retention's: **Vendor** is responsible to pay any and all deductibles and/or self-insured retentions that may apply to the required insurance.
8. Financial Rating of Insurance Companies:
 - a) A.M. Best Rating: A- (Excellent) or Higher
 - b) A.M. Best Financial Size Category: Class VII or Higher
9. The Philadelphia Parking Authority, The City of Philadelphia, The Commonwealth of Pennsylvania its agents, employees, representatives, officers and directors individually and collectively, shall be added as ADDITIONAL INSUREDS on the policies as noted above. **Vendor's** coverage shall be primary and non-contributory to any other coverage available to Philadelphia Parking Authority, including, without limitation, coverage maintained by Philadelphia Parking Authority wherein Philadelphia Parking Authority is named insured, and that no act of omission shall invalidate the coverage.
10. It is agreed that **Vendor's** insurance will not be cancelled, materially changed or non-renewed without at least thirty (30) days written notice to The Philadelphia Parking Authority, 701 Market Street, Suite 5400, Philadelphia, PA 19106, by Certified Mail-Return Receipt Requested.
11. Waiver of Rights of Recovery and Waiver of Rights of Subrogation:
 - a) **Vendor** waives all rights of recovery against The Philadelphia Parking Authority and all additional Insureds for loss or damage covered by any of the insurance maintained by **Vendor** pursuant to this Contract.
 - b) **Vendor** and its respective insurance carriers hereby waive all rights of subrogation against The Philadelphia Parking Authority and all additional insureds for loss or damage covered by any of the insurance maintained by **Vendor** Pursuant to this contract.
 - c) If any of the policies of insurance required under this Contract require an endorsement to provide for the waiver of subrogation set forth in b, above, then the named insured's of such policies will cause them to be endorsed.
12. The amount of insurance provided in the aforementioned insurance coverages, shall not be construed to be a limitation of the liability on the part of the **Vendor**.

None of the requirements contained herein as to the types, limits, or Philadelphia Parking Authority's approval of insurance coverage to be maintained by **Vendor** are intended to and shall not in any manner, limit, qualify, or quantify the liabilities and obligations assumed by **Vendor** under the Contract Documents, any other agreement with **Vendor**, or otherwise provided by law.
13. Any type of insurance or any increase in limits of liability not described above which the Authority requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
14. The carrying of insurance shall in no way be interpreted as relieving **Vendor** of any responsibility or liability under the contract.
15. Prior to the commencement of work or use of premises, **Vendor** shall file Certificates of Insurance with The Philadelphia Parking Authority, which shall be subject to The Philadelphia Parking Authority's approval of adequacy of protection and the satisfactory character of the insurer. The Certificates of Insurance should be mailed within five days of receipt of these insurance requirements to The Philadelphia Parking Authority, 701 Market Street, Suite 5400, Philadelphia, PA 19106, regardless of when your work will start. Project description and Job Number must be shown on the Certificate of Insurance.

THE PHILADELPHIA PARKING AUTHORITY
INSURANCE REQUIREMENTS
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In the event of a failure of **Vendor** to furnish and maintain said insurance and to furnish satisfactory evidence thereof, The Philadelphia Parking Authority shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of **Vendor** who agrees to furnish all necessary information thereof and to pay the cost thereof to The Philadelphia Parking Authority immediately upon presentation of an invoice.

16. Failure of **Vendor** to obtain and maintain the required insurance shall constitute a breach of contract and **Vendor** will be liable to the Philadelphia Parking Authority for any and all cost, liabilities, damages, and penalties (including attorney's fees, court, and settlement expenses) resulting from such breach, unless the Philadelphia Parking Authority provides **Vendor** with a written waiver of the specific insurance requirement.
17. None of the requirements contained herein as to the types, limits, or PPA's approval of insurance coverage to be maintained by **Vendor** are intended to and shall not in any manner, limit, qualify, or quantify the liabilities and obligations assumed by **Vendor** under the Contract Documents, any other agreement with the PPA, or otherwise provided by law.
18. If work involves subcontractors, **Vendor** shall require all subcontractors (of every tier) to meet the same insurance criteria as required of **Vendor**. The subcontractor's insurance must name the PPA as additional insured. **Vendor** shall maintain each subcontract's certificate of insurance on file and provide such information to the PPA for review upon request.
19. Failure of **Vendor** to provide insurance as herein required or failure of PPA to require evidence of insurance or to notify **Vendor** of any breach by **Vendor** of the requirements of this Section shall not be deemed to be a waiver of any of the terms of the Contract Documents, nor shall they be deemed to be a waiver of the obligation of **Vendor** to defend, indemnify, and hold harmless the indemnified parties as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of **Vendor** and independent of the duty to furnish a copy or certificate of such insurance policies.

Appendix D

Reference Information

Appendix E
Data Sharing Agreement

EFFECTIVE DATE: _____
(PennDOT will insert)

AGREEMENT NO.:
FEDERAL I.D. NO.:
SAP VENDOR NO.:

DATA SHARING AGREEMENT Vehicle Records

This data sharing agreement (“Agreement”) is made by and between the Commonwealth of Pennsylvania, Department of Transportation (“PennDOT”),

and

Click or tap here to enter text., a Click or tap here to enter text. located at Click or tap here to enter text. (“Contractor”).

The Parties agree, with the intention of being legally bound, as follows:

1. **Definitions.** The following terms shall have the meanings set forth below.

Applicable Laws means the federal and state laws and regulations, local ordinances, and Commonwealth policies applicable to release and use of vehicle record information, including 75 Pa. C.S. 6114 (Limitation on sale, publication and disclosure of records); 67 Pa. Code, Chapter 95 (Sale, Publication, or Disclosure of Driver, Vehicle, and Accident Records and Information); 18 U.S.C. §§ 2721-2725 (Federal Driver’s Privacy Protection Act); 15 U.S.C. §§ 1681-1681x (Federal Fair Credit Reporting Act); and 73 P.S. § 2301 et seq (the Breach of Personal Information Notification Act).

Business Partner means an individual or company involved with the Contractor's business dealings, including owning or managing the Contractor's

business, or having a cooperative alliance, whether by contract or not. A business partner can be a subcontractor, supplier, intermediary (including an agent, reseller, or third-party administrator), or a vendor of complimentary offerings. The Contractor's customers are End Users (defined below), not Business Partners.

Business Partner Agreement means a written agreement with a Business Partner specifying the purpose for which vehicle record information ("VRI") is provided, and prohibiting the Business Partner from selling, assigning, viewing, or otherwise transferring VRI to a third party for another purpose.

End Users means people using the Contractor's products and services, the Contractor's customers, potential customers, and other users of and visitors to the Contractor's physical and electronic properties (including users of applications that use VRI-related data, like users of an Internet connected device, visitors to a website, users of a mobile app, users of an IoT device, and visitors on an advertisement, landing page, or campaign). Some End Users may receive VRI (including government agencies, motor vehicle manufacturers, and towing companies). End Users shall not be considered Business Partners, and Business Partners shall not be considered End Users.

Permitted Uses means use of VRI for obligations to PennDOT per this Agreement, as required by law, or as otherwise authorized by PennDOT, for programs determined by PennDOT to be in the public interest, per an affidavit certifying the purpose and use of the VRI and PennDOT's written approval.

Personal Information means an individual's name, address, license plate number, or a combination of that information, or any of those items with other VRI, as per 18 U.S.C. § 2725(3), the Breach of Personal Information Notification Act, 73 P.S. § 2301, et seq., Commonwealth IT Policy ITP-SEC019 (Policy and Procedures for

Protecting Commonwealth Electronic Data), and the applicable OPD documents publicly available at: <https://www.oa.pa.gov/Policies/Pages/itp.aspx>.

Vehicle Record Information (“VRI”) means data containing owner, vehicle, lien, registration, Personal Information, or related information contained in a Commonwealth information technology system.

2. Access to Records.

- a. **Record Requests.** PennDOT shall provide the Contractor VRI for Permitted Uses for each vehicle titled and registered in Pennsylvania. The Contractor may make batch requests (multiple requests processed overnight). PennDOT shall respond to requests in a timely manner during business hours, Monday to Saturday from 0600 to 2100 hours.
- b. **Notice to Proceed.** The Contractor’s access to VRI shall begin upon receipt of a written Notice to Proceed.
- c. **No Representations or Warranties.** PennDOT has made its best efforts to ensure the accuracy and completeness of the shared data. PennDOT makes no warranties with respect to the accuracy of the shared data and assumes no responsibility for its use or reliability.
- d. **DISCLAIMERS.** VRI IS PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. NEITHER PENNDOT NOR ITS EMPLOYEES OR AGENTS MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. PENNDOT MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE THAT PENNDOT

TECHNOLOGY WILL MEET THE CONTRACTOR'S REQUIREMENTS OR EXPECTATIONS, THAT VRI WILL BE ACCURATE, COMPLETE, OR PRESERVED WITHOUT LOSS, OR THAT PENNDOT TECHNOLOGY WILL BE TIMELY, UNINTERRUPTED, OR ERROR-FREE. PENNDOT DOES NOT GUARANTEE THAT SECURITY MEASURES WILL BE ERROR-FREE AND SHALL NOT BE RESPONSIBLE OR LIABLE FOR UNAUTHORIZED ACCESS BEYOND ITS REASONABLE CONTROL. PENNDOT SHALL NOT BE RESPONSIBLE OR LIABLE FOR CONTRACTOR PROPERTIES, THIRD-PARTY PRODUCTS, THIRD-PARTY CONTENT, OR NON-PENNDOT SERVICES (INCLUDING FOR DELAYS, INTERRUPTIONS, TRANSMISSION ERRORS, SECURITY FAILURES, AND OTHER PROBLEMS CAUSED BY THESE ITEMS), DATA RECEIVED FROM CONTRACTOR IN BREACH OF THIS AGREEMENT, THE COLLECTION, USE AND DISCLOSURE OF DATA AUTHORIZED BY THIS AGREEMENT, OR FOR DECISIONS OR ACTIONS TAKEN (OR NOT TAKEN) BY THE CONTRACTOR BASED UPON PENNDOT DATA, TECHNOLOGY, OR PENNDOT'S RELATED SERVICES (INCLUDING CHANGES TO THE CONTRACTOR'S PROPERTIES). THE DISCLAIMERS IN THIS SECTION SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT. THE CONTRACTOR MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, STATUTORILY REQUIRED WARRANTIES UNDER APPLICABLE LAW, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD AND MAXIMUM EXTENT PERMITTED BY LAW.

3. **Intended Use.**

- a. **Contractor Affidavit of Intended Use.** The Contractor shall file with PennDOT an Affidavit of Intended Use on the form prescribed by PennDOT. The Contractor shall file an updated Affidavit of Intended Use by January 31st of

each calendar year. PennDOT shall have 14 calendar days to review the Affidavit of Intended Use. If not approved within 14 calendar days, the intended use is deemed denied.

- b. **Agreements with Business Partners and End Users.** The Contractor shall execute an Agreement with each Business Partner before providing VRI. If an End User will have access to VRI, the Contractor shall execute an Agreement with the End User before providing VRI (if the End User has no access to VRI, see subsection d for requirements). The Agreement shall ensure Business Partners and End Users meet the requirements of this Agreement. Agreements shall not restrict a Business Partner's or End User's ability to provide information necessary to meet legal obligations arising from an authorized transaction. Upon request, the Contractor shall provide copies of its Business Partner and End User Agreements to PennDOT.

- c. **Business Partner and End User Affidavits of Intended Use.** Business Partner and End User Agreements shall require each Business Partner and End User to complete an Affidavit of Intended Use on the form prescribed by PennDOT. The Contractor shall provide PennDOT with an Affidavit of Intended Use for each Business Partner and End User before providing access to VRI. The Contractor shall submit an updated Affidavit of Intended Use for each Business Partner and End User to PennDOT for approval by January 31st of each calendar year. PennDOT shall have 14 calendar days to review an Affidavit of Intended Use. If not approved within 14 calendar days, the intended use is deemed denied. The Contractor shall keep the Affidavits of Intended Use on file at a central location during access to VRI and for three years after expiration or termination of this agreement. The Contractor shall provide PennDOT a complete list of Business Partners and End Users by January 31st annually.

d. **End User Approval Where No Access to VRI.** The Contractor may make limited information available to End Users who will not have direct access to VRI. The Contractor shall disclose the type of information to be released, manner of release, estimated number of End Users, and data sharing policies at the same time it submits its Affidavit of Intended Use. PennDOT's approval of the Affidavit of Intended Use shall be approval to provide access to End Users to the extent disclosed in the End User submission. If limited information disclosure is approved by PennDOT, the Contractor may make the information available to End Users without following the requirements in this Agreement intended for Business Partners. The Contractor may request waivers from individual requirements of this Agreement for specific End Users or classes of End Users; waivers may be granted, in writing, at PennDOT's sole discretion. If the Contractor fails to disclose its intended End Users, PennDOT may refuse to issue a notice to proceed until the submission is made.

e. **End User Access.**

i. **Data Privacy.** The Contractor's data sharing policies shall determine the product sharing settings applicable to the Contractor's End Users for specific purposes. The Contractor shall implement End User responsibility controls. End Users shall first contact the Contractor with a request to stop access, storage, or use of personal information.

ii. **Data Security.** The Contractor's data security requirements for End Users with access to VRI shall meet or exceed the standards set for the Contractor's Business Partners in this Agreement. The Contractor shall require End Users with no access to VRI to meet or exceed the standards stated in Section 10(d)(ii) of this Agreement. End Users with no access to VRI shall have no obligation to comply with other data security standards set for Business Partners in this

Agreement.

- f. **Compliance with Laws.** The Contractor shall comply, and shall require its Business Partners and End Users to comply, with the Applicable Laws, and the federal, state, and local laws, regulations, and policies applicable to its services. The Contractor shall procure at its expense necessary licenses and permits. If an existing law, regulation, or policy is changed, or if a new law, regulation, or policy is enacted affecting this Agreement, the parties shall modify this Agreement to the extent necessary to ensure compliance. Any ambiguity in this Agreement shall be resolved to permit PennDOT to comply with the Applicable Laws.

- g. **Order of Precedence for Compliance with Laws.** The Contractor's obligations pursuant to this Agreement may be stricter than those in an applicable law, rule, or regulation. If a law, rule, or regulation is more protective than those obligations set out in this Agreement, Contractor shall comply with the law, rule or regulation (in addition to complying with its obligations under this Agreement). If Contractor's obligations under this Agreement are more protective than those obligations set out in an applicable law, rule, or regulation, than Contractor shall comply with its obligations under this Agreement (in addition to complying with the applicable law, rule or regulation).

- h. **Incorporation of Changes, Amendments, and Interpretations.** If any of the Applicable Laws are superseded by new or modified Applicable Laws (including decisions or interpretations by a relevant court or governmental authority), the new or modified Applicable Laws shall be deemed to be incorporated into this Agreement, and the Contractor shall promptly begin complying with the Applicable Laws.

- i. **Business Partner and End User Information.** The Contractor shall maintain a record of the Business Partner and End User (including the name, address, and

telephone number) for each request for VRI containing Personal Information. The Contractor shall provide the record to PennDOT upon request.

4. **PennDOT Business Partner Approval.**

- a. **Business Partner Approval is Needed for Access to VRI.** The Contractor's Business Partners may be subcontractors, and Business Partners shall comply with the requirements for approval of intended uses in Section 3 of this Agreement whether they are classified as subcontractors, independent contractors, consultants, agents, or otherwise. Business Partners shall be approved in writing by PennDOT before receiving VRI; approval shall not be unreasonably withheld. In its Business Partner Agreements, the Contractor shall require its Business Partners to notify the Contractor of a change of the Business Partner's ownership within five calendar days of the change (where, in the case of a publicly traded or held Business Partner, a change in ownership means a transfer, exchange, sale or acquisition of ten percent or more of the voting securities or stock of the approved Business Partner). The Contractor shall then notify PennDOT within ten calendar days of becoming aware of an approved Business Partner's ownership change. PennDOT may require a new or updated Affidavit of Intended Use for the Business Partner, at PennDOT's sole discretion, and may rescind a Business Partner's approval if not timely provided. The Contractor shall be the single point of contact for PennDOT. The Contractor shall not provide VRI to a Business Partner who has been denied or disapproved, or whose approval has been rescinded by PennDOT.

- b. **Guidance to Business Partners.** The Contractor shall have a documented security program and policies providing guidance to its Business Partners to ensure the security, confidentiality, integrity, and availability of VRI and systems maintained or processed by the Business Partners and providing express

instructions regarding the steps to take in the event of a compromise or other anomalous event.

- c. **Business Partner Approval Requirements.** Before seeking PennDOT's approval, and in addition to the Business Partner's Affidavit of Intended Use, the Contractor shall provide PennDOT with details of the proposed Business Partner's involvement (including the identity of the Business Partner, its data security record, the location of its processing facilities, a description of the access to VRI proposed, and other information PennDOT may reasonably request to assess the risks involved in allowing a subcontractor to process VRI).
- d. **Business Partner Data Security.** The Contractor's Business Partner Agreement with an approved Business Partner shall contain equivalent terms to this Agreement (including data destruction). The Contractor shall not be entitled to permit a Business Partner to further subcontract or otherwise delegate the Contractor's services. The Business Partner Agreement shall provide PennDOT with third-party beneficiary rights to enforce the terms; or shall require the Business Partner to enter into a data security agreement with PennDOT directly if privity of contract is required by law (or at PennDOT's sole discretion).
- e. **Contractor to Remain Responsible.** The Contractor shall be responsible and accountable for the acts or omissions of its Business Partners to the same extent it is responsible and accountable for its own actions or omissions under this Agreement (including data destruction).
- f. **Termination of Business Partners and Employees.**
 - i. **Reasons for Termination.** If the Contractor terminates a Business Partner or employee, the Contractor shall immediately terminate access to VRI. The Contractor shall document the termination (including the basis for

termination and confirmation of termination). Upon request, the Contractor shall provide proof of termination in a manner satisfactory to PennDOT. If a Business Partner is terminated, the Business Partner shall no longer be an approved Business Partner. Previously terminated Business Partners shall be approved by PennDOT before receiving VRI.

- ii. **Data Destruction.** The Contractor shall ensure terminated Business Partners and employees immediately destroy data in their possession or control, whether electronic or otherwise, per the data destruction standards stated in this Agreement.

5. **Data and Information Ownership and Property Rights**

- a. **PennDOT Owns the Data.** As between the parties, VRI is the sole and exclusive property of PennDOT. If the Contractor generates data based on the VRI, the data is also PennDOT's sole and exclusive property. Proprietary rights (including patent rights, trademarks, and proprietary rights, in and to VRI) shall be and remain in PennDOT, subject to the rights granted in this Agreement. Personal Information may only be re-disclosed by Contractor according to PennDOT's written approvals.
- b. **The Contractor's Rights.** To the extent consistent with the Applicable Laws, PennDOT grants the Contractor a non-exclusive, non-transferable, revocable, limited license during the term or a renewal term of this Agreement to access and use VRI for the Permitted Uses and for no other purpose.
- c. **Data Sharing is Limited.** Transfer and use of VRI shall not obligate or entitle either party to enter into arrangements or agreements other than those stated in this Agreement. No right, title, or interest in or copyrights, trademarks, or other

proprietary information is being transferred from PennDOT to the Contractor. No other right, license, or authorization, express or implied, to use or disclose VRI is granted. The parties shall enter into separate terms governing the release of VRI for other purposes.

- d. **Acknowledgement and Preservation of Rights.** The Contractor shall not remove, alter, cover, or obfuscate acknowledgements, copyright notices, trademarks, or other proprietary right notices placed by PennDOT on the data. The Contractor shall comply with directions given by PennDOT regarding the form and placement of proprietary rights notices on products generated by the Contractor using VRI.
- e. **Infringement.** Unauthorized use or distribution of the shared data may subject the Contractor to claims and penalties for intellectual property infringement.
- f. **Internal Re-Use.** Shared data shall not be distributed, repurposed, or shared across the Contractor's other applications, environments, or business units. VRI shall not be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by PennDOT.
- g. **No Transformational Use.** VRI shall not be used to create or update a file to be used by the Contractor or its Business Partners to develop their own source of VRI.
- h. **Secondary Products are not Contemplated.** VRI has been provided for sole use by the Contractor to perform the work defined in this Agreement and shall not be used to create derivative works or other forms of data. VRI and tangible expressions of the data shared, in any media, shall remain PennDOT's property.

i. **Contractor Requests to Use or Create Secondary Products.** PennDOT may agree to Contractor ownership of intellectual property derived from or combined with VRI and other shared data as follows:

i. **Contractor's Existing Intellectual Property.** The Contractor shall notify PennDOT, as soon as possible but no later than the issuance date of the notice to proceed, of data, discoveries, developments, inventions (whether patentable or not), improvements, methods of use or delivery, processes, know-how, or trade secrets in use by the Contractor, and which the Contractor intends to use or combine with VRI provided per this Agreement (the "Existing Intellectual Property").

ii. **Contractor's New Intellectual Property.** The Contractor shall notify PennDOT, promptly and in writing, of data, discoveries, developments, inventions (whether patentable or not), improvements, methods of use or delivery, processes, know-how, or trade secrets made by the Contractor as a result of the use of data provided per this Agreement (the "New Intellectual Property").

iii. **Review and Approval.** PennDOT shall undertake a comprehensive appraisal of the Existing Intellectual Property and the New Intellectual Property to determine its components and evaluate its conformance to this Agreement (including the data confidentiality and security provisions). PennDOT shall have the right to review all aspects of the Contractors Existing Intellectual Property and the New Intellectual Property necessary to assess overall condition, compliance or non-compliance with the Applicable Laws and Commonwealth information technology policies, and other matters PennDOT deems relevant. The Contractor shall not use

Existing Intellectual Property or New Intellectual Property to perform under this Agreement without PennDOT's written consent.

- iv. **Inventorship.** Inventorship of Inventions (including processes) shall be determined by application of United States laws pertaining to inventorship. "Invention" means a useful discovery or invention, (whether patentable or not), and the intellectual property rights (including related patents and patent applications), solely or jointly invented or otherwise made by the Contractor with use of or reference to VRI. For avoidance of doubt, for purposes of this Agreement the term "Invention" does not include discoveries or inventions made solely by PennDOT.
- v. **Sole Contractor Inventions.** All rights, title and interests in and to intellectual property invented or otherwise made solely by the Contractor ("Sole Contractor Inventions") shall be assigned to the Contractor.
- vi. **Ownership of PennDOT Intellectual Property and Derivative Works.** The Contractor shall acquire no ownership rights in VRI or derivative works based on VRI, or intellectual property deemed to be owned by PennDOT because of this Agreement. The Contractor shall, when requested by PennDOT (whether during or after the term of this Agreement), disclaim in writing property interests and ownership in VRI.
- vii. **Notice.** The Contractor shall include the following language in secondary products developed from VRI: This [product] was developed using data provided by the Commonwealth of Pennsylvania. This is a secondary product and has not been verified or authorized by the Commonwealth of Pennsylvania.

viii. **PennDOT License to Use Secondary Products.** The Contractor grants to PennDOT a perpetual, non-exclusive, fully-paid up, royalty-free, irrevocable, worldwide, unrestricted license to New Intellectual Property and Sole Contractor Inventions for PennDOT uses, with the right to sublicense through multiple tiers. If additional assistance from the Contractor is requested beyond the rights supplied by the non-exclusive license, the Contractor shall provide reasonable assistance to PennDOT, upon commercially reasonable terms at least as favorable to PennDOT as the terms agreed with another licensee for the assistance, to allow PennDOT to use the New Intellectual Property and Sole Contractor Inventions. If required to comply with this Section, and at no cost to PennDOT, the Contractor shall obtain written agreements with Business Partners assigning, without additional consideration, appropriate rights and interests in New Intellectual Property and Sole Contractor Inventions to the Contractor for subsequent licensing to PennDOT.

6. Constraints on Use.

- a. **Consents.** The Contractor shall ensure neither the Contractor nor its Business Partners avoid a provision of this Agreement requiring PennDOT approval or consent by obtaining waivers or consents from individuals whose Personal Information resides in VRI or other shared data (whether for marketing purposes or otherwise). When required by this Agreement, PennDOT's approval or consent shall be considered cumulative.
- b. **Required Disclosure.** If the Contractor is required to disclose VRI by law, the Contractor shall promptly notify PennDOT to provide PennDOT an opportunity to seek a protective order or other relief. If PennDOT does not elect to seek, or is unable to obtain, a protective order or other relief, the Contractor may disclose the required VRI, after first giving PennDOT written notice of the specific VRI to

be disclosed as far in advance of its disclosure as practicable. The Contractor shall use reasonable efforts to obtain assurances the entity receiving VRI uses at least the same degree of care in safeguarding the disclosed VRI as the Contractor is obligated to use pursuant to this Agreement (including appropriate confidentiality agreements and court orders).

- c. **No Direct Mailing or Advertising.** Except as approved by PennDOT, the Contractor shall not use or permit others to use VRI for direct mail advertising, marketing, survey research, or other types of mailings (including electronic transmittals).
- d. **Online Publication.** The Contractor shall provide PennDOT with website addresses, web services, and other places VRI is placed online by the Contractor and its Business Partners. The website address, web service, or online location shall be given when first used, and a comprehensive list of online publications providing VRI shall be given to PennDOT by January 31st each year. The Contractor shall ensure its Business Partners comply with the Applicable Laws and Commonwealth information technology policies for online publications.
- e. **Sharing Requests to be Referred to PennDOT.** If the Contractor receives a request to make available information owned or the primary responsibility of PennDOT, the Contractor shall refer the request to PennDOT.

7. Data Storage.

- a. **Data Storage Standard of Care.** VRI shall be uniquely stored so it can be destroyed within 24 hours. The Contractor shall destroy VRI when it is no longer needed by Contractor for meeting its performance obligations under this Agreement within 24 hours if no alternative period is requested or approved by

PennDOT. The Contractor's Business Partners are not permitted to retain VRI unless required by Federal law or regulation, or when permitted by PennDOT, in writing.

b. **Data Encryption.** The Contractor shall ensure neither it nor its Business Partners transfer VRI through an electronic, nonvoice transmission to a person outside of the Contractor's secure system unless the Contractor uses encryption to ensure the security of electronic transmission; or move a data storage device containing VRI beyond the logical or physical controls of the Contractor or its data storage contractor unless the Contractor uses encryption to ensure the security of the information. Data shall be encrypted in transit and at rest per Commonwealth information technology policies.

c. **Data Residency.** VRI processed and stored in an information technology system shall remain within the United States of America's borders (physically or logically stored). The Contractor shall ensure VRI is not moved outside of the United States of America.

8. **Contractor Warranty.** The Contractor: warrants its operations shall be in substantial conformity with the information in the Contractor's Affidavit of Intended Use; agrees to inform PennDOT promptly of a material variation in operations from that reflected in the Affidavit of Intended Use; and agrees a material deficiency in operations from those described in the Affidavit of Intended Use shall be deemed a material breach of this Agreement. The Contractor certifies and warrants it is and shall remain compliant with applicable state and federal laws, regulations, and policies regarding the VRI's protection (including the Applicable Laws and Commonwealth information technology policies).

9. **Data Confidentiality Standard of Care.**

- a. **Permissions.** The Contractor may: keep and update the VRI for the Permitted Uses only for as long as required and approved by PennDOT and disclose VRI for Permitted Uses on a need-to-know basis to employees, Business Partners bound by Business Partner Agreements, and End Users.

- b. **Requirements.** The Contractor shall: ensure Business Partners receiving VRI do not use VRI for a purpose other than the Permitted Uses; ensure no one obtains, transfers, uses, or stores VRI in facilities not owned or operated by the Contractor or its approved Business Partners; and keep records of data disclosures (including the names of the parties to which Contractor may have disclosed shared data and the legitimate interests under this Agreement or the Applicable Laws, if any). If this Agreement does not specifically address a data security or privacy standard or obligation, the Contractor shall use appropriate, generally accepted privacy practices to protect the confidentiality, security, privacy, integrity, availability, and accuracy of VRI.

- c. **Prohibitions.** The Contractor shall not: use or otherwise disclose VRI in a manner conflicting with PennDOT's interests; use or disclose VRI for a purpose other than the Permitted Uses; publish VRI or allow it to be published without PennDOT's prior written approval; sell, distribute, reproduce, send, or otherwise disclose VRI to a party not a signatory to this Agreement without PennDOT's prior written approval; use VRI to provide information to another entity or person without PennDOT's prior written approval; transfer, copy, replicate, or otherwise distribute VRI to the public, or make it available on the Internet without PennDOT's prior written approval; attempt to identify the vehicle owners from whom VRI was generated or combine VRI with data from other sources leading to identification of an individual; or contact individuals whose data is contained in VRI (unless instructed by PennDOT); or retain, store, combine, save, or link VRI with other data by the Contractor or its Business Partners without

PennDOT's prior written approval.

- d. **Personal Identification Prohibited.** The Contractor shall collect, access, and use shared data in a manner that does not permit personal identification of information deemed confidential per the Applicable Laws by individuals other than Contractor's employees and subcontractors who have necessary and legitimate interests in Personal Information for meeting Contractor's performance obligations under this Agreement. The Contractor shall notify PennDOT within 24 hours if VRI is re-identified, intentionally or inadvertently, or aggregated, anonymized, or de-identified data is used in publicly-available documents.

- e. **End User Data Processing.** The Contractor shall only handle VRI per this Agreement and PennDOT's documented instructions for: (i) Processing initiated by End Users in their use of the Contractor's services for the Permitted Uses; (ii) Processing to comply with other documented, reasonable instructions provided by End Users (including via email) where those instructions are consistent with this Agreement. The Contractor shall not be required to comply with or observe an End User's instructions if those instructions would violate applicable data privacy laws.

- f. **Anonymizing Data.** For personal information that can reasonably be aggregated or anonymized, or both, the Contractor shall do so before sharing with Business Partners and End Users. The Contractor shall alter the personal information, so it cannot reasonably be used to identify a person or relate the information back to a person. The Contractor shall also contractually require the recipients to not attempt to re-identify the data. For personal information that cannot be completely aggregated or anonymized, the Contractor shall de-identify the information before sharing it with Business Partners and End Users. This means

the information can no longer reference or be linked directly to a person by name, driver license number, address, or unique vehicle identifier (or other information restricted by the Applicable Laws). Before sharing de-identified information with Business Partners and End Users, the Contractor shall contractually require they may not identify a person, relate de-identified personal information back to a person, and strictly limit the purposes for which they can use the de-identified information. The Contractor may share aggregated, anonymized, or de-identified information with Business Partners and End Users so they may provide a product or service, develop new products and services, perform data analysis, store or process information for us, or otherwise help the Contractor operate its business.

- g. **Required Disclosures.** Nothing in this Agreement prevents the Contractor from disclosing VRI to the extent required by law, subpoenas, or court orders. The Contractor may share Personal Information under exigent circumstances, to protect its rights, property, or legal interests, including to enforce the Contractor's and its Business Partner's End User agreements, or as part of a merger, acquisition, divestiture, or other corporate reorganization. Other than to Business Partners and End Users approved per this Agreement, the Contractor shall not share VRI with unaffiliated third parties without aggregating, anonymizing, and de-identifying it first (to the extent possible), unless the Contractor obtains PennDOT's prior written consent. If the Contractor combines VRI with other information the Contractor collects, the combined information shall be treated as VRI for as long as it remains combined. The Contractor shall use commercially reasonable efforts to first notify PennDOT and obtain PennDOT's consent before making a required disclosure, unless prohibited by law from doing so, and shall notify PennDOT within 24 hours after a required disclosure is made, if prior disclosure cannot be made.
- h. **Security Awareness Training.**

- i. **Training Standards.** The Contractor shall educate and hold its Business Partners, agents, employees, contractors, and subcontractors to standards at least as stringent as those contained in this Agreement.
- ii. **Training.** The Contractor shall conduct formal security awareness training, with a testing component, for Business Partners, agents, employees, contractors, and subcontractors as soon as practicable after execution of this Agreement and then annually. The Contractor shall retain documentation of security awareness training, confirming the training and subsequent annual recertification process have been completed, and make the documentation available for review by PennDOT upon request.
- iii. **Confidentiality and Disclosure.** The Contractor shall ensure work performed by it and its Business Partners shall be under the supervision of the Contractor's responsible employees. Each officer or employee of the Contractor to whom VRI may be made available or disclosed shall be notified in writing by the Contractor that information disclosed can be used only to the extent authorized by this Agreement. Further disclosure, by any means, for a purpose or to an extent unauthorized by this Agreement, may subject the offender to criminal sanctions per the Applicable Laws.
- i. **Confidentiality of Safeguards.** The Contractor shall not publish or disclose, without PennDOT's written consent, the details of safeguards designed or developed by the Contractor under this Agreement or otherwise supplied by PennDOT.

10. Data Security.

- a. **Information to be Secure.** The Contractor shall ensure its Business Partners,

agents, employees, contractors, subcontractors, and others receiving or using VRI obtained or derived from the Contractor have ensured the security and protection of VRI and have taken necessary steps to prevent the release or use of VRI in a manner not expressly permitted by this Agreement. Business Partner Agreements shall require Business Partners keep VRI in a controlled access area (physical and electronic, as applicable). Storage arrangements shall be subject to inspection or audit by PennDOT.

b. **Data Security Standard of Care.** The Contractor shall: implement appropriate measures to protect against the unauthorized release of VRI; protect VRI according to industry standard security best practices (including Commonwealth information technology policies); have appropriate technical and organizational security measures with regard to the risks inherent in the processing and to the nature of VRI; prevent unauthorized reading, copying, alteration, or removal of storage media; prevent unauthorized input; prevent unauthorized disclosure, alteration, or erasure of stored VRI; prevent unauthorized using of data-processing systems by means of data transmission facilities; ensure authorized users of a data-processing system can access only the VRI to which their access right refers; record which VRI has been communicated, when, and to whom; design its organizational structure to meet data protection requirements; ensure no one is able to download, save, edit, photograph, print, or transfer all or a portion of VRI for an unauthorized purpose, or remove, bypass, circumvent, neutralize, or modify technological protection measures, or share a username, password, or other account details with a third party or otherwise provide a third party with VRI.

c. **Minimum Security Safeguards.** The Contractor shall not transmit unencrypted VRI over the Internet or a wireless network and shall not store VRI on a mobile computing device (like a laptop computer, USB drive, or portable data device),

except where a business necessity exists, and then only if the mobile computing device is protected by industry-standard encryption software approved by PennDOT. At a minimum, the Contractor's safeguards for protection of VRI shall include: limiting access to employees and other persons to the Permitted Uses; securing business facilities, data centers, paper files, servers, back-up systems, and computing equipment (including mobile devices and other equipment with information storage capability); implementing network, device application, database, and platform security; securing information transmission, storage, and disposal; implementing authentication and access controls within media, applications, operating systems, and equipment; encrypting VRI stored on mobile media; encrypting VRI transmitted over public or wireless networks; strictly segregating VRI from information of the Contractor or its Business Partners so VRI is not commingled with other types of information; implementing appropriate personnel security and integrity procedures and practices (including conducting background checks consistent with applicable law); and providing appropriate privacy and information security training to the Contractor's employees.

d. Compliance with Information Technology Management Standards.

- i. **Commonwealth Information Technology Policies ("ITPs").** The Contractor shall comply with the information technology standards and policies issued by the Governor's Office of Administration, Office for Information Technology (located at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in ITP ACC001, Accessibility Policy. If so required, the Contractor shall ensure its services comply with the applicable standards. The Contractor may request a waiver from an ITP by providing detailed written justification as to why the ITP cannot be met. PennDOT may

waive the ITP in whole, in part, or conditionally, or require the Contractor provide an acceptable alternative. PennDOT waivers shall be in writing.

- ii. **Information Technology Industry Standards.** Unless PennDOT has specified an alternative standard in this Agreement, the Contractor shall implement administrative, physical, and technical safeguards to protect VRI no less rigorous than accepted industry best practices (including the International Organization for Standardization's standards: ISO/IEC 27001:2005 - Information Security Management Systems - Requirements and ISO-IEC 27002:2005 - Code of Practice for International Security Management, and other applicable industry standards for information security), and shall ensure the safeguards (including the manner in which VRI is collected, accessed, used, stored, processed, disposed of, and disclosed), comply with applicable data protection and privacy laws, and this Agreement.

- e. **Data Destruction.** If VRI is required to be permanently deleted from magnetic, electronic, or optical media (or other type of storage method) owned, operated, or used by the Contractor, the media shall be purged (sanitized to protect the confidentiality of information against a laboratory attack) or destroyed (by a method, including disintegration, incineration, pulverizing, shredding, or melting, after which the media cannot be reused as originally intended), or both, in accordance with the NIST SP800-88 Guidelines for Media Sanitization. The Contractor shall maintain documented evidence of data destruction and shall provide written and signed proof of destruction within 24 hours of destruction (including certification the destruction was per the NIST standards).

- f. **Physical Security.** Backup and archival media containing VRI shall be contained in secure, environmentally-controlled storage areas owned, operated, or contracted for by the Contractor, and backup and archival media containing VRI

shall be encrypted.

g. **Information Security Audits.** Before receiving a notice to proceed, the Contractor shall deliver to PennDOT copies of certifications it maintains (along with relevant supporting documentation) applying to the systems, policies, and procedures that govern VRI handling. The Contractor shall promptly notify PennDOT if the Contractor has failed or no longer intends to adhere to those certifications or successor frameworks. Examples of potentially relevant certifications include: SSAE 16 - SOC1, SOC2, SOC3; ISO 27001:2013; ISO 27018:2014, EU Binding Corporate Rules; APEC Cross Border Privacy Rules System; EU-US and Swiss-US Privacy Shields; and Federal Information Security Management Act (FISMA) Compliance Certification. The Contractor shall have an independent service auditor annually perform an examination in accordance with attestation standards established by the American Institute of Certified Public Accountants ("AICPA") (Attestation Engagements AT Section 101) in the form of a SOC 2 Type 2 report. This report, unless otherwise determined by PennDOT in writing, shall provide:

- i. **Description of System.** A description of the Contractor's system and an opinion on the fairness of the presentation of the description of the system;
- ii. **Controls.** The suitability of the design of the controls and the operating effectiveness of the controls to meet the criteria for the principles set forth in TSP Section 100, Trust Services Principles, Criteria, and Illustrations for Security, Confidentiality, Privacy, Processing Integrity, and Availability (AICPA, Technical Practice Aids) (applicable trust services principles); and,
- iii. **Results.** A description of the tests of controls and test results.

- h. **Relevant Principles.** The examination shall cover the following relevant principles: Security, Confidentiality, Privacy, Processing Integrity, and Availability throughout the related 12-month period. If a control within a principle is not applicable, as determined by the auditor, the report shall include the auditor's determination and the basis for the determination.
- i. **Scope of Audit.** SOC 2 Type 2 reports shall include the Contractor and Business Partners who handle VRI, host or assist with a related implemented system, and assist the Contractor in the critical functions of the Agreement.
- j. **Audit Period.** The Contractor shall complete one SOC 2 Type 2 audit per calendar year. The Contractor and Business Partners shall provide a complete copy of the final SOC 2 Type 2 reports to PennDOT within 30 calendar days of the date the report is received from the auditor. This reporting requirement shall continue until the expiration date or until the termination of this Agreement. The Contractor shall provide to PennDOT, within 60 calendar days of the issuance of each report, a documented corrective action plan addressing each exception contained in a report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor or Business Partners (or both) along with the dates when each remedial action is to be implemented.
- k. **Exception for Cloud Service Providers.** The Contractor's Business Partner may satisfy the audit requirement by providing an appropriate SOC 3 report if the Business Partner is a cloud-based (network-accessed) data center and is not providing other services per this Agreement. Business Partners engaged in other services shall complete the SOC 2 Type 2 report. PennDOT may accept a SOC 3 report posted on a cloud service provider's website with a seal indicating compliance. SOC 3 reports may be accepted for the hosted infrastructure only.

SOC 2 Type 2 reports are required for applications, data, and processes residing on the hosted infrastructure.

1. **Penetration Testing.** During the term of this Agreement, the Contractor shall engage, at its own expense and at least one time per year, a third-party vendor reasonably acceptable to PennDOT to perform penetration tests and vulnerability assessments with respect to the Contractor's systems. The objective of the penetration tests and vulnerability assessments is to identify design or functionality issues in infrastructure of the Contractor's systems that could expose VRI and its computer and network equipment and systems to risks from malicious activities. Penetration tests and vulnerability assessments shall probe for weaknesses in network perimeters or other infrastructure elements as well as weaknesses in process or technical countermeasures relating to the Contractor's systems that could be exploited by a malicious party. Penetration tests shall identify, at a minimum: OWASP Best Practices; insecure storage; denial of service; insecure configuration management; proper use of updated encryption technology (TLS 1.2 or latest); and commodity anti-virus protection, malware, ransomware, and advanced persistent threats. Within a reasonable period after the annual penetration test has been performed, PennDOT may request from the Contractor a report of the highest two security risk categories (i.e., critical, severe, high, medium) revealed during the penetration test. PennDOT may request certification in writing that the highest revealed categorical issues have been remediated. If security issues were revealed during a penetration test, the Contractor shall subsequently perform, at its own expense, an additional penetration test within a reasonable period to ensure continued resolution of identified security issues.

- m. **Information Risk Management.** Risk assessment is the process of assessing potential business impact, evaluating threats and vulnerabilities, and selecting

appropriate controls to meet the business requirements for information security. The Contractor shall have a risk management framework certified in a SOC 2 Type 2 report and conduct a yearly risk assessment of its environment and systems to understand its risks and apply appropriate controls to manage and mitigate those risks. Threat and vulnerability assessment shall be periodically reviewed, and remediation actions taken where material weaknesses are found. The Contractor shall provide PennDOT with the reports and analysis upon written request, to the extent disclosure would not violate the Contractor's own information security policies, or applicable law.

- n. **Notice.** If new or unanticipated threats or hazards are discovered by PennDOT or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.
- o. **End User Software.** Software and applications available for online use or downloading from the Contractor shall be subject to this Agreement and to any End User license agreement accompanying the software, as applicable. Software and applications designed for End Users shall run in the standard user context without elevated system administration privileges.

11. **Compliance Review and Audit.**

- a. **Security Review.** PennDOT shall have the right to review the Contractor's and Business Partners information security before providing VRI, and from time to time during the term of this Agreement. During the term of this Agreement, the Contractor or Business Partner may be asked to complete a security survey or attestation document designed to assist PennDOT in understanding and documenting the Contractor's security procedures and compliance with the requirements contained in this Agreement. The Contractor's failure to complete

either of these documents within the reasonable timeframe specified by PennDOT shall constitute a material breach of this Agreement. The Contractor shall provide PennDOT with information concerning the Contractor's security practices as they pertain to the protection of VRI, as PennDOT may from time to time request. Failure of the Contractor to complete or to respond to PennDOT's request for information within the reasonable timeframe specified by PennDOT shall constitute a material breach of this Agreement.

- b. **Right to Audit.** PennDOT or an appointed audit firm (the "Auditors") has the right to audit the Contractor. The Contractor's Business Partner Agreements shall provide PennDOT with a right to audit Business Partners to the same extent as the audit requirements in this Section. The degree, conduct, and frequency of the audits shall be at PennDOT's sole discretion, except PennDOT shall not conduct more than one audit per fiscal year (July-June). The Contractor shall afford PennDOT access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases. The Contractor shall cooperate with PennDOT's auditors and shall ensure cooperation by its Business Partners (including insurance company agents). If a Business Partner refuses to cooperate with the Auditors, the Contractor shall stop providing them VRI.
- c. **Conduct of Audit.** PennDOT shall announce its intent to audit the Contractor by providing at a minimum ten calendar days' notice to the Contractor. A scope document along with a request for deliverables shall be provided at the time of notification of an audit. If the documentation requested cannot be removed from the Contractor's premises, the Contractor shall allow the Auditors access to the site. Where necessary, the Contractor shall provide a personal site guide for the Auditors while on site. The Contractor shall provide a private accommodation on site for data analysis and meetings; the accommodation shall allow for a reasonable workspace, with appropriate lighting, electrical, a printer, and Internet

connectivity. The Contractor shall make necessary employees or contractors available for interviews in person or on the phone during the time frame of the audit. In lieu of PennDOT or its appointed audit firm performing their own audit, if the Contractor has an external audit firm perform a certified SOC 2 Type 2 audit, PennDOT may review the controls tested and the results, and may request additional controls to be added to the certified SOC 2 Type 2 review for testing the controls having an impact on VRI.

12. Data Breach or Loss.

- a. **Data Breach Notification Requirements.** The Contractor shall comply with applicable data protection, data security, data privacy and data breach notification laws (including the Breach of Personal Information Notification Act, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301 – 2329). The Contractor shall also comply with applicable Commonwealth information technology policies.
- b. **Incidents.** For VRI in the possession, custody, and control of the Contractor or its Business Partners, employees, or agents, an “Incident” means a suspected, successful, or imminent threat of unauthorized access, use, disclosure, breach, modification, theft, loss, corruption, or destruction of information; interference with information technology operations; or interference with system operations.
- c. **Notice to PennDOT.** The Contractor shall report an Incident to PennDOT within two hours of when the Contractor knows of or reasonably suspects an Incident, and the Contractor shall immediately take reasonable steps to mitigate the potential harm or further access, use, release, loss, destruction, or disclosure of VRI.

- d. **Notice to Affected Individuals; Credit Monitoring.** The Contractor shall provide timely notice to individuals that may require notice under an applicable law or regulation because of an Incident. The notice shall be pre-approved by PennDOT. At PennDOT's request, the Contractor shall, at its sole expense, provide credit monitoring services to individuals that may be impacted by an Incident requiring notice.
- e. **Contractor Responsible for Damages.** The Contractor shall be solely responsible for costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.
- f. **Immediate Response Required.** As to VRI fully or partially in the possession, custody, or control of the Contractor and PennDOT, the Contractor shall immediately perform the duties required in this Agreement in cooperation with PennDOT, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.
- g. **Post-Incident.** The Contractor shall cooperate with PennDOT in post-incident investigation, remediation, and communication efforts. The Contractor shall conduct a forensic and security review and audit in connection with an Incident and, if appropriate to the nature and scope of the Incident, retain an independent third-party auditor to perform an audit or assessment of the Contractor's information security procedures, systems, and network (including testing the system of controls, appropriate systems implementation, vulnerability analysis, and penetration testing). If a material security-related risk is identified by the Contractor or auditor, the Contractor shall take timely remedial action based on industry best practices and the results of the assessment, audit, or risk identification.

- h. **Default.** The Contractor shall not, and shall not permit another to, interfere with system operations; or access, use, disclose, breach, modify, steal, lose, corrupt, or destroy VRI, in a manner not authorized by PennDOT. PennDOT may consider each of these acts or failures to act an event of default. PennDOT may terminate this Agreement for cause upon a default.

13. Contractor Data Sharing Costs.

- a. **Contractor to Bear All Costs.** The Contractor shall bear the cost of providing VRI to Business Partners and End Users, at no cost to PennDOT (including costs of computer hardware, software, services, personnel, networks, licenses, transportation, insurance, bonds, or installation). The Contractor may charge fees to its Business Partners and End Users. PennDOT does not guarantee the Contractor can recover the costs it incurs under this Agreement.
- b. **Vehicle Record Fees.** The Contractor shall pay PennDOT's fee per record. PennDOT's fee schedule is attached as Exhibit A to this Agreement. PennDOT may increase the fee per record upon 30 calendar days' prior notice. The Contractor may decline the increase in writing before the effective date of the increase, in which case this Agreement shall terminate for convenience on the effective date.
- c. **Connection Fees.** The Contractor shall pay connection fees required by a designated connection provider. The Contractor shall comply with this Agreement's requirements for Business Partner approval to obtain PennDOT's consent to use a connection provider.
- d. **Information Security Audit Costs.** SOC 2 Type 2 reports, including by the Contractor and relevant Business Partners, shall be provided at no expense to

PennDOT.

- e. **Compliance Audit Costs.** The Contractor shall pay the costs of financial and performance audits. Payment for each audit shall be submitted within 45 calendar days of receipt of an invoice from PennDOT or PennDOT's designated auditor.
 - f. **Normal Delays and Downtime.** PennDOT shall not be responsible for loss of work or income resulting from system downtime due to hardware or software malfunction, extended power failure, communications line failures, and other normal and usual consequences of operation of a computer network.
 - g. **Payment.** The Contractor shall pay via electronic funds transfer, unless another method is agreed to by the parties, in writing. Payment is due on or before the first business day of each month. If PennDOT or its designated connection provider assigns the Contractor an account number, the Contractor shall include the account number on payments.
 - h. **Positive Account Balance Required.** Failure of the Contractor to maintain a positive balance in its account shall be an event of default.
14. **Performance Security.** At its sole cost, and for the entire term of this Agreement, the Contractor shall obtain and maintain a bond or escrow account for PennDOT's benefit in the amount of ten percent of the annual payments due to PennDOT from the Contractor under this Agreement (based on the payments due in the immediate preceding year under a prior agreement or \$300,000, whichever is greater). The bond shall be issued so it renews each year on the anniversary of its issuance. The Contractor shall, at least 15 calendar days before the bond renewal date, review the annual payments the Contractor received for the prior year and forward the total to PennDOT, with a request to adjust the bond amount.

If the request is approved, the Contractor shall adjust its bond coverage or escrow amount to reflect the approved annual payment amount. A copy of the bond shall be delivered to PennDOT after the Effective Date of this Agreement and before the date of the notice to proceed (PennDOT will not issue a notice to proceed until PennDOT approves the bond). Bond renewals and amendments shall be delivered to PennDOT within five calendar days of issuance.

15. Notification Requirements. Unless prohibited by law enforcement or court order, the Contractor shall notify PennDOT by telephone within 24 hours when the Contractor has reason to believe it or a Business Partner may have violated this Agreement. Written confirmation shall be submitted to PennDOT within five calendar days of initial notification. The Contractor shall notify PennDOT within 24 hours if the Contractor is under investigation and shall provide PennDOT with the name of the investigating entity and the reason for the investigation, if known. The Contractor shall provide follow-up documentation requested by PennDOT and cooperate in PennDOT investigations.

16. Confidentiality of Contractor Information and Communications. PennDOT shall not treat the contents of the Contractor's communications, information, data, or reports (including those related to the Contractor's data security and certifications) as confidential unless marked by the Contractor as confidential per the Pennsylvania Right to Know Law, which requires an agency to notify a third party when a request meets both of the following conditions: (a) The third party provided the records to the agency; and (b) The third party included a written statement signed by a representative of the third party stating that the record contains a trade secret or confidential proprietary information (See 65 P.S. § 67.707(b)).

17. Indemnification.

- a. **In General.** The Contractor (including its employees, officers, and agents) shall pay PennDOT (including its employees, officers, and agents) for a loss of PennDOT's caused by the Contractor's negligence or intentional misconduct. The Contractor need not pay to the extent the loss was caused by PennDOT's negligence or intentional misconduct. A loss means judgments, settlements, fines, damages, injunctive relief, staff compensation, decreases in property value, and expenses for defending against a claim (including fees for legal counsel, expert witnesses, and other advisers) PennDOT is legally responsible for or pays. A loss can be tangible or intangible; can arise from bodily injury, property damage, or other causes; can be based on tort, breach of contract, or other theory of recovery; and includes incidental, direct, and consequential damages. Mere allegations shall not establish an event has been caused by PennDOT's negligence or intentional misconduct; an event shall not be deemed caused by PennDOT's negligence or intentional misconduct unless the negligence or intentional misconduct shall have been finally proven in a court of law.

- b. **Injury to the Contractor's Employees.** The Contractor waives immunity from liability to PennDOT from damages, contribution, or indemnity per Section 303 of the Worker's Compensation Act, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §481.

- c. **Data Breach or Loss.** The Contractor shall indemnify, defend, and hold PennDOT harmless from and against claims, actions, suits, and proceedings resulting from the cost of notification of affected persons, third-party credit monitoring services (which shall be provided for at least one year to affected parties), establishing and maintaining a call center in the event of a data breach or loss, and costs of an investigation (including computer forensic work) to assess and mitigate the effects of a data breach or loss. Indemnification shall include:

- i. **Legal Breaches.** Breach of security and privacy laws, rules, or regulations globally, as presently constituted or amended.
 - ii. **Hacking and Theft.** Data theft, damage, unauthorized disclosure, destruction, or corruption, including unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information in whatever form, transmission of a computer virus or other type of malicious code, and participation in a denial of service attack on third-party computer systems.
 - iii. **Denial of Service.** Loss or denial of service.
 - iv. **Breach of Contract.** Breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs (including notification costs, forensics, credit protection services, call center services, identity theft protection services, and crisis management/public relations services).
 - v. **Employees and Business Partners.** Indemnification without limitation if caused by a Business Partner, employee of the Contractor, independent contractor working on behalf of the Contractor in performing services under this Agreement, or End User.
 - vi. **Negligence.** Indemnification for wrongful acts, claims, and lawsuits anywhere in the world.
- d. **PennDOT's Duty to Notify.** PennDOT shall notify the Contractor promptly when PennDOT knows of a claim for a loss the Contractor might be obligated to pay. PennDOT's failure to give timely notice does not terminate the Contractor's

obligation, except to the extent the failure prejudices the Contractor's ability to defend the claim or mitigate losses.

- e. **Legal Defense of a Claim.** PennDOT has control over defending a claim for a loss (including settling it), unless the Contractor elects to control the defense as described below, or PennDOT directs the Contractor to control the defense. Upon receiving notice of a claim for a loss, the Contractor may take control of the defense by notifying PennDOT. If the Contractor takes control, the Contractor may retain legal counsel, and PennDOT may retain its own legal counsel. The Contractor shall not settle litigation without PennDOT's written consent if the settlement imposes a penalty, non-monetary obligation, imposes limits on a PennDOT program or project, admits PennDOT's fault, or does not fully release PennDOT from liability.
- f. **Legal Costs and Insurance.** Except as otherwise agreed to by the parties, and regardless of who has control over the defense, the Contractor shall pay PennDOT's costs of litigation or other disputes brought by third parties related to this Agreement (including reasonable attorney's fees incurred by PennDOT in asserting claims or defenses), except PennDOT shall bear its own costs of litigation or disputes (including attorney's fees) for liability solely caused by PennDOT's negligence or intentional acts, and for litigation or other disputes between the parties. If the Contractor purchases general liability or cyber liability insurance (or both) to satisfy this obligation, PennDOT shall be named an additional insured on the policy and the Contractor shall deliver a certificate of insurance to PennDOT before the effective date of the notice to proceed. Policies shall be occurrence-based and provide for 30 days' notice to PennDOT before cancellation (15 days for non-payment of premium).
- g. **No Limitations.** The indemnification obligations in this Section (including Business Partner indemnification), shall apply without regard to a limitation in

insurance coverage. PennDOT's rights under this Section do not affect other rights PennDOT might have.

18. **Required Commonwealth Exhibits.** The Contractor shall comply with the following Commonwealth provisions:

a. **Contractor Integrity Provisions.** The current version of the Commonwealth Contractor Integrity Provisions, which are attached and made part of this Agreement as Exhibit B;

b. **Contractor Responsibility Provisions.** The current version of the Commonwealth Contractor Responsibility Provisions, which are attached and made part of this Agreement as Exhibit C;

c. **Nondiscrimination/Sexual Harassment Clause.** The current version of the Commonwealth Nondiscrimination/Sexual Harassment Clause, which is attached and made part of this Agreement as Exhibit D; and

d. **Americans with Disabilities Act.** The current version of the Commonwealth Provisions Concerning the Americans with Disabilities Act, which is attached and made part of this Agreement as Exhibit E.

19. **Right to Know Law.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Agreement. Therefore, this Agreement is subject to, and the Contractor shall comply with the clause entitled Contractor Provisions - Right to Know Law, attached and made part of this Agreement as Exhibit F.

20. **Offset Provision.** The Commonwealth of Pennsylvania may set off the amount of state tax liability or other obligation of the Contractor or its subsidiaries to the

Commonwealth of Pennsylvania against payments due the Contractor under any contract with the Commonwealth of Pennsylvania.

21. **Representations against Contingent Compensation.** The Contractor warrants it has not employed or retained a company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and it has not paid or agreed to pay a company or person, other than a bona fide employee working solely for the Contractor, a fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, PennDOT shall have the right to annul this Agreement without liability, or, in its discretion, otherwise to recover the full amount of the fee, commission, percentage, brokerage fee, gift, or contingent fee.
22. **Officials not to Benefit.** No member of the General Assembly of the Commonwealth of Pennsylvania, nor an individual employed by the Commonwealth, shall be admitted to a share or part of the Agreement, or to a benefit arising from it; but this provision shall not be construed to extend to this Agreement if made with a corporation for its benefit.
23. **Notices.** Notices and reports arising out of, or from, this Agreement shall be in writing and given to the parties at the addresses below, either by regular mail, facsimile, email, or delivery in person. A party may revise its contact information by providing written notice to the other party.

If to PennDOT:

Title: Driver and Vehicle Information Manager
Address: Pennsylvania Department of Transportation
1101 South Front Street, 3rd Floor
Harrisburg, PA 17104

Phone: 717-265-7588
Fax: 717-705-2401
E-mail: [Click or tap here to enter text.](#)

If the Contractor:

[Click or tap here to enter text.](#)

24. **Term and Renewal.** Unless terminated earlier, this Agreement shall continue for five years from the Effective Date. This Agreement may be renewed for up to five years by letter, signed exclusively by authorized officials of PennDOT (including PennDOT's Office of Chief Counsel and the Office of Comptroller Operations) and the Contractor. The Agreement may be renewed multiple times via letter; however, each letter may only renew the Agreement up to five years. The Contractor shall provide at least 60 calendar days' written notice before the expiration of Contractor's desire to renew. Contractor's failure to provide notice shall not preclude renewal. A renewal letter shall be fully executed before the expiration date. If the parties need to update the standard Commonwealth provisions set forth in Section 18 and 19, they may be updated through a renewal letter.

25. **Termination and Expiration.**

a. **Termination for Convenience.** Either party may terminate for convenience upon notice to the other party. The Contractor shall not owe PennDOT fees other than those incurred to the effective date of the termination. A termination for convenience shall automatically convert to termination for cause if an ongoing

data breach is discovered after the termination, upon notice to the Contractor.

- b. **Termination for Changes in the Law.** This Agreement may be terminated immediately, upon written notice, should changes in governing state or federal laws or regulations render performance illegal, impracticable, or impossible. Should this Agreement be terminated for changes in the law, the Contractor shall remain liable for the payment of charges accrued up to and including the date of termination.
- c. **Termination for Cause.** The Contractor's failure to comply with this Agreement shall be grounds for immediate termination.
- d. **Termination for Cause - Gratuities.** PennDOT may, by written notice to the Contractor, terminate if the Secretary of Transportation or the Secretary's duly authorized representative finds, after notice and hearing, gratuities in the form of entertainment, gifts, or other incentives were offered or given by the Contractor (or an agent or representative of the Contractor) to an officer or employee of PennDOT with a view to the awarding or amending of this Agreement, or the making of determinations with respect to its performance. The existence of the facts upon which the Secretary or the Secretary's duly authorized representative makes shall be in issue and may be reviewed in a competent court. PennDOT shall be entitled to pursue the same remedies against the Contractor as it could pursue for a breach of contract and, in addition to other damages to which it may be entitled by law and this Agreement, shall be entitled to exemplary damages in an amount determined by the Secretary or the Secretary's duly authorized representative, which shall not be less than three nor more than ten times the costs incurred by the Contractor in providing gratuities to an officer or employee.
- e. **Post-Termination and Post-Expiration Obligations.** Upon termination or

expiration of this Agreement, PennDOT's intellectual property licenses granted in this Agreement shall be deemed revoked, and the Contractor shall transfer and deliver to PennDOT reports and other documentation in the Contractor's possession (including those in the possession of its Business Partners) pertaining to VRI, subject to Contractor's obligation to retain a record of its service. The Contractor shall no longer purchase or receive VRI. The Contractor's duty to return VRI includes written, electronic, and other forms of media in which VRI is embodied along with copies and extracts. Memoranda, notes, reports, designs, plans, schedules, lists, and other writings prepared by Contractor based on VRI shall either be immediately delivered to PennDOT or destroyed, as PennDOT requests. Contractor shall promptly certify compliance with the requirements of this Section to PennDOT in writing. Contractor shall comply with its obligations pursuant to this Section within 30 calendar days of termination or expiration of this Agreement, or within another time as the parties mutually agree.

- f. **End of Agreement Data Handling.** The Contractor shall maintain timely communication with PennDOT, and document its communication activities, to avoid unduly impairing business operations by hasty destruction or return of component data files. No VRI shall be retained when files are returned or destroyed unless authorized in writing by PennDOT.
- g. **Accrued Rights and Obligations.** Termination or expiration of this Agreement shall not release either party from liability already accrued to the other party or attributable to a period before termination or expiration, nor preclude either party from pursuing rights and remedies it may have with respect to a breach of this Agreement.
- h. **Survival Sections.** The confidentiality, nondisclosure, data ownership and property rights, and indemnification provisions of this Agreement shall survive

termination or expiration indefinitely.

26. Remedies for Default; Cure Period. The remedies in this Agreement shall not be construed to limit the parties' remedies if the other party fails to perform its obligations, or if representations or warranties in this Agreement are found to be materially inaccurate or untrue. At PennDOT's discretion, the Contractor may be offered the opportunity to cure a breach within 30 calendar days of a cure period notice.

27. Equitable Remedies. In the event of a breach of this Agreement, neither PennDOT nor an affected Pennsylvania citizen will have an adequate remedy in damages and therefore either PennDOT or an affected citizen shall be entitled to seek injunctive or equitable relief to immediately cease or prevent the use or disclosure of VRI not contemplated by the Agreement, to enforce the terms of this Agreement, or ensure compliance with Applicable Laws.

28. Amendments and Modifications.

a. **Amendments to this Agreement.** Unless otherwise stated, no alterations or variations to this Agreement shall be valid unless made in writing and signed by the parties, except as stated in this Agreement; amendments shall be accomplished through a formal written document signed by the parties with the formality of the original Agreement.

b. **Amendments by Letter.** Fee increases per Section 13, notice per Section 23, and renewals per Section 24 shall be made through a written document signed by the Contractor and PennDOT's authorized representative, without the necessity of the formality of an Agreement.

- c. **Amendment for System Security Updates.** PennDOT may determine, in its sole discretion, this Agreement requires amendment to immediately implement additional system security measures. System security update amendments may be made by letter or other notice issued by PennDOT. System security update amendments shall be effective immediately upon receipt and Contractor shall immediately take reasonable measures to implement those security updates. If Contractor cannot take reasonable measures to immediately implement the security updates it shall contact the appropriate PennDOT representative as soon as possible to discuss and resolve the concerns. If the Contractor fails to implement a system security update within 24 hours of receipt, or within an alternative period set by PennDOT, PennDOT may consider continued use of VRI without the update an unauthorized use and an event of default per Section 12 of this Agreement.

29. Construction.

- a. **Incorporation of Exhibits.** Exhibits shall be deemed to be incorporated by reference as a material part of this Agreement.
- b. **Words and Phrases.** Where a word or phrase is defined, its other grammatical forms and tenses have a corresponding meaning. The words “or” and “and” shall be construed either disjunctively or conjunctively to effectuate the intent of the parties.
- c. **Use of “Including.”** The words “including,” “includes,” or “include” are to be read as listing non-exclusive examples of the matters referred to, whether words like “without limitation” or “but not limited to” are used in each instance.
- d. **Titles Not Controlling.** Titles of Sections are for reference only and shall not be used to construe the language in this Agreement.

30. **Severability.** The provisions of this Agreement shall be severable. If a phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and its applicability to a government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and its applicability to a government, agency, person, or circumstance shall not be affected.

31. **No Waiver.** Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by the other party. Failure by either party to enforce its rights and remedies shall not be construed as a waiver of a subsequent breach of the same or another term or condition of this Agreement.

32. **Independence of the Parties.** Nothing contained in this Agreement is intended or shall be construed to create or establish the relationship of partners between the Contractor and PennDOT, or as constituting PennDOT as the Contractor's representative or general agent. The Contractor, its agents and employees shall act in an independent capacity and shall not act or be deemed to act as officers, employees, or agents of PennDOT. People furnished, used, retained, or hired by subcontractors shall be the employees or agents of the Contractor or subcontractor; they shall not act (or be deemed to act) as PennDOT officers, employees, or agents.

33. **Assignment.** This Agreement is not assignable in whole or in part, without PennDOT's prior written consent.

34. **No Third-Party Beneficiary Rights.** This Agreement does not create or intend to confer rights in or on persons or entities not a party to this Agreement. Although Contractor is seeking authorizations on behalf of its Business Partners, the Contractor and PennDOT are the sole parties and there are no intended beneficiaries. The Contractor shall be responsible for liabilities and obligations imposed on it by

this Agreement. This Agreement shall not be construed for the benefit of a non-party and shall not be construed to authorize a non-party to maintain a lawsuit under this Agreement.

35. **Force Majeure.** Neither party shall be liable for failure to perform if the failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Causes may include acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

36. **Integration and Merger.** This Agreement, and, as applicable, its attachments and exhibits, when executed, approved, and delivered, shall constitute the final, complete, and exclusive Agreement between the parties containing the terms and conditions agreed on by the parties. Representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made before or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by this Agreement. No conditions precedent to the performance of this Agreement exist, except as expressly set forth in this Agreement.

37. **Choice of Laws.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to conflict of laws provisions) and the decisions of Pennsylvania courts. The Contractor consents to jurisdiction of a court of the Commonwealth of Pennsylvania and federal courts in Pennsylvania, waiving claims or defenses the forum is not convenient or proper. The Contractor acknowledges a Pennsylvania court shall have

in personam jurisdiction over it and consents to service of process in a manner authorized by Pennsylvania law.

38. **Effective Date.** This Agreement shall not be effective until the necessary Commonwealth officials required by law have executed it. Following full execution, PennDOT shall insert the effective date at the top of page 1.

[The remainder of this page is intentionally left blank.]

The parties have executed this Agreement the date of the last signature entered below.

ATTEST

CONTRACTOR

Title: _____ Date _____ BY _____
Title: _____ Date _____

If a Corporation, the President or Vice-President must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Contractor, Authority or other entity, please attach a resolution.

DO NOT WRITE BELOW THIS LINE – FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary Date
Transportation

APPROVED AS TO LEGALITY
AND FORM

FUNDS COMMITMENT DOCUMENT NO. ____
CERTIFIED FUNDS AVAILABLE
UNDER SAP NO. _____
SAP COST CENTER _____
GL ACCOUNT _____

BY _____
for Chief Counsel Date

BY _____
Office of Comptroller Operations Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

OCC Form No. 18-AT-1.5

Appendix F
Vehicle Record Business Partner &
End User Agreement

Vehicle Record Business Partner & End Users Agreement

This VEHICLE RECORD BUSINESS PARTNER & END USER AGREEMENT (“Agreement”) is made by _____ (“Company” or “you”) with its principal address at _____. Company is involved with Duncan Solutions, Inc. (“Contractor” or “Duncan”) as either a Business Partner or End User (as such terms are defined below) and will have access to certain **vehicle record information** (“VRI”) received from and owned by the Pennsylvania Department of Transportation (“PennDOT”). The Company acknowledges that it is a **Business Partner / End User** (circle or otherwise identify which is applicable). The Company will have access to VRI pursuant to its role as a Business Partner or End User supporting Contractor’s legitimate business functions.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. INTRODUCTION

As a Business Partner or End User, you must comply with the applicable terms of the Data Sharing Agreement (as applicable to you as either a Business Partner or End User), attached hereto at Appendix A, before you will be permitted to access VRI. Accordingly, the primary intent of this Agreement is to confirm and bind the Business Partner or End User to all terms and conditions of Appendix A as applicable and as they relate to either Business Partners or End Users.

Appendix A is hereby incorporated by reference and made a part of this Agreement. The Business Partner or End User hereby acknowledges and agrees to be fully bound by, and adhere to and comply with, all applicable terms and conditions of Appendix A as they relate to Business Partners or End Users, as applicable. The Business Partner or End User further agrees to not directly or indirectly cause Duncan to violate the terms and conditions of Appendix A. In the event of any conflict between this Agreement and Appendix A, Appendix A shall control (provided that, if the Company’s obligations in the body of this Agreement are more protective than its comparable obligations set forth in Appendix A, the more protective obligations in the body of this Agreement shall control). In the event of any changes in rules or laws, or changes to the terms of Appendix A, those changes shall be incorporated and made a part of this Agreement upon reasonable advance written notice to the Business Partner or End User.

2. DEFINITIONS

Vehicle Record Information (“VRI”) means data containing owner, vehicle, lien, registration, Personal Information, or related information contained in a Commonwealth of Pennsylvania information technology system. For the avoidance of doubt, the Business Partner or End User shall presume all the above described data containing owner, vehicle, lien, registration, Personal Information, or related information that it accesses or receives, directly or indirectly, from Contractor is VRI.

Business Partner means an individual or company involved with the Contractor's business dealing, including owning or managing the Contractor's business, or having a cooperative alliance, whether by contract or not. A Business partner can be a subcontractor, supplier, intermediary (including an agent, reseller, or third-party administrator), or a vendor of complimentary offerings. The Contractor's customers are End users, not Business Partners.

End Users means people using the Contractor's products and services, the Contractor's customers, potential customers, and other users of and visitors to the Contractor's physical and electronic properties (including users of applications that use VRI-related data, like users of an Internet connected device, visitors to a website, users of a mobile app, users of an IT device, and visitors on an advertisement, landing page, or campaign). Some End Users may receive VRI (including government agencies, motor vehicle manufacturers, and towing companies). **End Users shall not be considered Business Partners, and Business Partners shall not be considered End Users.**

Permitted Uses means use of VRI for obligations as required by law, or as otherwise authorized by Contractor and/or PennDOT, for programs determined to be in the public interest, per an affidavit certifying the purpose and use of the VRI and written approval. For the avoidance of doubt, Permitted Uses must at a minimum be those uses or purposes allowed under both the Drivers Privacy Protection Act and /or all other similar state or local laws.

Security Breach means (i) any act or omission that compromises either the security, confidentiality, or integrity of VRI or the physical, technical, administrative, or organizational safeguards put in place by Company, or by Contractor should Company have access to Contractor's systems, that relate to the protection of the security, confidentiality, or integrity of VRI, or (ii) receipt of a complaint in relation to the privacy and data security practices of Company, or (iii) a breach or alleged breach of this Agreement relating to such privacy and data security practices. Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of VRI.

3. INTENDED USE

Each Business Partner and End User must sign and complete this Agreement, and an Affidavit of Intended Use on the form prescribed, before they will be permitted to access VRI by PennDOT or Contractor. Updated Affidavits of Intended Use for each Business Partner and End User may need to be submitted to Duncan each year by January 15th. Each Business Partner and End User acknowledge and agree that any receipt or access to VRI is subject to any required approvals, or other terms and conditions, that may be imposed, requested, or required by Contractor (or by PennDOT or similar government entities that own or regulate the VRI).

This Agreement shall not restrict a Business Partner or End User's ability to provide information necessary to meet legal obligations arising from an authorized transaction. Upon request, the Contractor shall provide copies of its Business Partner and End User Agreements to state agencies..

End Users shall first contact the Contractor with a request to stop access, storage, or use of personal information. End Users with no access to VRI shall have no obligation to comply with other data security standards set for Business Partners in this Agreement.

Business Partners and End Users shall comply with the Applicable Laws, and the federal, state, and local rules, regulations, and policies applicable to its services. If an existing law, regulation, or policy is changed, or if a new law, regulation, or policy is enacted affecting this Agreement, the parties shall modify this Agreement to the extent necessary to ensure compliance.

Company shall implement administrative, physical, and technical safeguards to protect VRI no less rigorous than accepted industry best practices (including the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, and other applicable industry standards for information security), and shall ensure the safeguards (including the manner in which VRI is collected, accessed, used, stored, processed, disposed of, and disclosed), comply with applicable data protection and privacy laws, and this Agreement.

4. BUSINESS PURPOSE (Applicable to Business Partners only, not End Users)

Business Partners shall comply with the requirements for approval and VRI access as described in this Agreement whether they are classified as subcontractors, independent contractors, consultants, agents, or otherwise. Business Partners must notify the Contractor of a change of the Business Partner's ownership within five calendar days of the change. The Contractor will not provide VRI to a Business Partner who has been denied, rescinded, or disapproved access to VRI by the Contractor or by any applicable state agency.

Business Partners must have a documented security program and policies to ensure the security, confidentiality, integrity, and availability of VRI, and to identify, report and manage any security breaches. Terminated Business Partners and employees shall immediately destroy data in their possession or control, whether electronic or otherwise, per the data destruction standards stated in this Agreement. Business Partner may not further subcontract or otherwise delegate the Contractor's services.

5. CONSTRAINTS ON USE

a. Consents

The Business Partner, working through the Contractor, shall obtain PennDOT approval or consent when required in Appendix A, regardless of any waivers or consents obtained from individuals whose Personal Information resides in VRI or other shared data (whether for marketing purposes or otherwise). When required by this Agreement, PennDOT's approval or consent shall be considered cumulative.

b. Required Disclosure

If the Business Partner is required to disclose VRI by law, the Business Partner shall promptly notify Contractor, to provide Contractor (or PennDOT) an opportunity to seek a protective order or other relief. If Contractor or PennDOT does not elect to seek, or is unable to obtain, a protective order or other relief, the Business Partner may disclose the required VRI, after first giving Contractor written notice of the specific VRI to be disclosed as far in advance of its disclosure as practicable. The Business Partner shall use reasonable efforts to obtain assurances the entity receiving VRI uses at least the same degree of care in safeguarding the disclosed VRI as the Business Partner is obligated to use pursuant to this Agreement (including appropriate confidentiality agreements and court orders).

c. No Direct Mailing or Advertising

Except as approved by Contractor, VRI must not be used for direct mail advertising, marketing, survey research, or other types of mailings (including electronic transmittals).

d. Online Publication

The Business Partner shall provide Contractor with all website addresses, web services, and other places VRI is placed online by Business Partner. The website address, web service, or online location shall be given when first used, and a comprehensive list of online publications providing VRI shall be given to Contractor prior to January 15th each year. Business Partner shall comply with the Applicable Laws and Commonwealth of Pennsylvania information technology policies for online publications.

e. Sharing Requests to be Referred to PennDOT

If the Business Partner receives a request to make available information owned or the primary responsibility of Contractor or PennDOT, the Business Partner shall refer the request to Contractor.

6. DATA OWNERSHIP

Company acknowledges and agrees that the Company has no ownership rights or interest in the VRI. More specifically, VRI is the sole and exclusive property of PennDOT. If data is generated based upon VRI data, the data is also PennDOT's sole and exclusive property. Proprietary rights (including patent rights, trademarks, and proprietary rights, in and to VRI) shall be and remain in PennDOT, subject to the rights granted in this Agreement. Personal Information may only be re-disclosed according to Contractor written approvals.

Shared data shall not be distributed, repurposed, or shared across other applications, environments, or business units. VRI shall not be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by case basis as specifically agreed to in writing by Contractor . VRI shall not be used to create or update a file or to develop your own or other source of VRI.

If required in order for Contractor to comply with its requirements in Appendix A at Section5(i), the Business Partner hereby agrees to assign, without additional consideration, appropriate rights and interests in New Intellectual Property and Sole Contractor Inventions to the Contractor for subsequent licensing to PennDOT.

7. DATA SECURITY

a. Data Security Standards

Business Partners, agents, employees, contractors, subcontractors, and others receiving or using VRI obtained or derived from the Contractor shall ensure the security and protection of VRI and have taken necessary steps to prevent the release or use of VRI in a manner not expressly permitted by this Agreement. Business Partners shall keep VRI in a controlled access area (physical and electronic, as applicable). Storage arrangements shall be subject to inspection or audit by Contractor.

The Business Partner or End User shall not transmit unencrypted VRI over the Internet or a wireless network and shall not store VRI on a mobile computing device (like a laptop computer, USB drive, or portable data device), except where a business necessity exists, and then only if the mobile computing

device is protected by industry-standard encryption software approved by Contractor. At a minimum, the safeguards for protection of VRI shall include: limiting access to employees and other persons to the Permitted Uses; securing business facilities, data centers, paper files, servers, back-up systems, and computing equipment (including mobile devices and other equipment with information storage capability); implementing network, device application, database, and platform security; securing information transmission, storage, and disposal; implementing authentication and access controls within media, applications, operating systems, and equipment; encrypting VRI stored on mobile media; encrypting VRI transmitted over public or wireless networks; strictly segregating VRI from information of the Contractor or its Business Partners so VRI is not commingled with other types of information; implementing appropriate personnel security and integrity procedures and practices (including conducting background checks consistent with applicable law); and providing appropriate privacy and information security training to the Contractor's employees.

SOC 2 Type 2 reports shall include the Business Partner, to the extent they handle VRI, host or assist with a related implemented system, and assist the Contractor in the critical functions of the Agreement.

The Business Partner shall provide a complete copy of the final SOC 2 Type 2 reports to the Contractor within 15 calendar days of the date the report is received from the auditor. This reporting requirement shall continue until the expiration date or until the termination of this Agreement. The Business Partner shall provide to Contractor, within 50 calendar days of the issuance of each report, a documented corrective action plan addressing each exception contained in a report. The corrective action plan shall identify in detail the remedial action to be taken by the Business Partner along with the dates when each remedial action is to be implemented.

Business Partner may satisfy the audit requirement by providing an appropriate SOC 3 report if the Business Partner is a cloud-based (network-accessed) data center and is not providing other services per this Agreement. Business Partners engaged in other services shall complete the SOC 2 Type 2 report. Contractor may accept a SOC 3 report posted on a cloud service provider's website with a seal indicating compliance. SOC 3 reports may be accepted for the hosted infrastructure only. SOC 2 Type 2 reports are required for applications, data, and processes residing on the hosted infrastructure.

b. Data Storage and Transmission

VRI shall be uniquely stored so it can be destroyed within 24 hours. Where required by Contractor, VRI shall be destroyed when it is no longer needed for meeting its performance obligations under this Agreement within 24 hours if no alternative period is requested or approved by Contractor or PennDOT. **Business Partners are not permitted to retain VRI unless required by Federal law or regulation, or when permitted by Contractor, in writing.**

Business Partners shall not transfer VRI through an electronic, non-voice transmission to a person outside of the Contractor's secure system unless the Contractor uses encryption to ensure the security of electronic transmission; or move a data storage device containing VRI beyond the logical or physical controls of the Contractor or its data storage contractor unless the Contractor uses encryption to ensure the security of the information. Data shall be encrypted in transit and at rest per Commonwealth information technology policies.

VRI processed and stored in an information technology system shall remain within the United States of America's borders (physically or logically stored). The Company shall ensure VRI is not moved outside of the United States of America.

c. Data Confidentiality and Standards of Care

The Contractor may provide VRI to Business Partners and End Users for Permitted Uses and on a need-to-know basis.

Business Partners receiving VRI shall not use VRI for a purpose other than the Permitted Uses; ensure no one obtains, transfers, uses, or stores VRI in facilities not owned or operated by the Contractor or its approved Business Partners; and keep records of data disclosures (including the names of the parties to which Contractor or Business Partner may have disclosed shared data and the legitimate interests under this Agreement or the Applicable Laws, if any). If this Agreement does not specifically address a data security or privacy standard or obligation, the Company shall use appropriate, generally accepted privacy practices to protect the confidentiality, security, privacy, integrity, availability, and accuracy of VRI.

The Business Partner or End User shall not use or otherwise disclose VRI in a manner conflicting with Contractor's or PennDOT's interests; use or disclose VRI for a purpose other than the Permitted Uses; publish VRI or allow it to be published without Contractor's prior written approval; sell, distribute, reproduce, send, or otherwise disclose VRI to a party not a signatory to this Agreement without Contractor's prior written approval; use VRI to provide information to another entity or person without Contractor's prior written approval; transfer, copy, replicate, or otherwise distribute VRI to the public, or make it available on the Internet without Contractor's prior written approval; attempt to identify the vehicle owners from whom VRI was generated or combine VRI with data from other sources leading to identification of an individual; or contact individuals whose data is contained in VRI (unless instructed by Contractor in writing); or retain, store, combine, save, or link VRI with other data by the Contractor or its Business Partners without Contractor's prior written approval.

Nothing in this Agreement prevents the Company from disclosing VRI to the extent required by law, subpoenas, or court orders. Other than to Contractor (or to Business Partners and End Users approved per this Agreement), the Company shall not share VRI with unaffiliated third parties without aggregating, anonymizing, and de-identifying it first (to the extent possible), unless the Company obtains Contractor's prior written consent. If the Company combines VRI with other information the Company collects, the combined information shall be treated as VRI for as long as it remains combined. The Contractor shall use commercially reasonable efforts to first notify Contractor and obtain Contractor's written consent before making a required disclosure, unless prohibited by law from doing so, and shall notify Contractor within 24 hours after a required disclosure is made, if prior disclosure cannot be made.

Business Partners (and their agents, employees, contractors and subcontractors) are subject to, and required to perform, security awareness training, with a testing component, along with annual recertification (with applicable documentation and recordkeeping requirements).

d. Data Security Breaches.

In the event of a Security Breach Company shall:

- i. Provide Contractor with the name and contact information for an employee of Company who shall serve as Contractor's primary security contact and shall be available to assist Contractor twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach; and
- ii. Notify Contractor of a Security Breach as soon as practicable, but no later than one (1) hour after Company becomes aware of it; and

Immediately following Company's notification to Contractor of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. Company agrees to fully cooperate with Contractor in Contractor's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing Contractor with physical access to the facilities and operations affected; (iii) facilitating interviews with Company's employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise reasonably required by Contractor.

Company shall at its own expense use best efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. Company shall reimburse Contractor for all actual and reasonable costs incurred by Contractor in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.

Company agrees that it shall not inform any third party of any Security Breach without first obtaining Contractor's prior written consent, other than to inform a complainant that the matter has been forwarded to Contractor's legal counsel.

Company agrees to maintain and preserve all documents, records, and other data related to any Security Breach. Company agrees to cooperate with Contractor in any litigation, investigation, or other action deemed reasonably necessary by Contractor to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.

e. Data Destruction.

If VRI is required to be permanently deleted from magnetic, electronic, or optical media (or other type of storage method) owned, operated, or used by the Business Partner, the media shall be purged (sanitized to protect the confidentiality of information against a laboratory attack) or destroyed (by a method, including disintegration, incineration, pulverizing, shredding, or melting, after which the media cannot be reused as originally intended), or both, in accordance with the NIST SP800-88 Guidelines for Media Sanitization. The Business Partner shall maintain documented evidence of data destruction and shall provide written and signed proof of destruction within 24 hours of destruction (including certification the destruction was per the NIST standards).

8. AUDIT AND INSPECTION RIGHTS

Contractor shall have the right to review the Company's information security before providing VRI, and from time to time during the term of this Agreement. During the term of this Agreement, the Business

Partner may be asked to complete a security survey or attestation document in understanding and documenting the Contractor's or Business Partner's security procedures and compliance with the requirements contained in this Agreement. Failure to complete either of these documents within the reasonable timeframe specified shall constitute a material breach of this Agreement. The Company shall provide Contractor with information concerning the Company's security practices as they pertain to the protection of VRI, as the Contractor may from time to time request.

Company shall maintain accurate and complete data, records, and all other appropriate records of its activities and operations relating to its performance under this Agreement in accordance with generally accepted principles and all applicable and customary laws and practices. Company agrees that Contractor will be granted access to, and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to performance under this Agreement. All such records will be kept and maintained by Company and made available to Contractor through the term of this Agreement and any extensions and for a period of three (3) years thereafter.

Contractor, or any state entity (including as specified in Appendix A) or an appointed audit firm (the "Auditors") has the right to audit the Business Partner. The Auditors shall have access to the Business Partner's facilities, installations, technical capabilities, operations, documentation, records, and databases. The Business Partner (including its insurance agents) shall cooperate with the Auditors (including insurance company agents). If a Business Partner refuses to cooperate with the Auditors, the Contractor shall stop providing them VRI.

9. COMPENSATION

Contractor shall be paid under this Agreement as follows: [fill in compensation amounts here]. If not filled in, then no compensation is due per this Agreement.

10. TERMINATION

Contractor may terminate this Agreement for convenience upon 30 days advance written notice. Either Party may terminate for cause in the event of a material breach or material act of default. Notice will be given to the defaulting Party specifying the cause or default giving rise to the termination for cause and the specific actions required to cure such cause or default. The defaulting Party shall have a minimum of fifteen (15) business days from the date of receipt of notice to either cure the default or, if the default is of a nature that cannot be cured within fifteen (15) business days, to provide a written Corrective Action Plan (CAP) for the approval of the non-defaulting Party. Approval of a CAP or time provided to cure default is not a waiver of the non-defaulting Party's right to terminate the Agreement. If the default is not cured to the reasonable satisfaction of the non-defaulting Party within the agreed time period or in compliance with a CAP, the non-defaulting Party may terminate this Agreement by giving ten (10) business days notice. Contractor may suspend Company's access to VRI upon written notice.

Upon termination or expiration of this Agreement, the Company shall transfer and deliver to Contractor reports and other documentation in the Company's possession pertaining to VRI, subject to the Company's obligation to retain a record of its service. The Company's duty to return VRI includes written, electronic, and other forms of media in which VRI is embodied along with copies and extracts. memoranda, notes, reports, designs, plans, schedules, lists, and other writings prepared by the Company

based on VRI shall either be immediately delivered to Contractor or destroyed, as Contractor requests. The Company shall promptly certify compliance with the requirements of this Section 10 to Contractor in writing. The Company shall comply with its obligations pursuant to this Section 10 within 20 calendar days of termination or expiration of this Agreement, or within another time as the parties mutually agree.

The Company shall maintain timely communication with Contractor, and document its communication activities, to avoid unduly impairing business operations by hasty destruction or return of component data files. No VRI shall be retained when files are returned or destroyed unless authorized in writing by Contractor.

Termination or expiration of this Agreement shall not release either party from liability already accrued to the other party or attributable to a period before termination or expiration, nor preclude either party from pursuing rights and remedies it may have with respect to a breach of this Agreement.

The terms and conditions of this Agreement that would, by their nature, survive the expiration or termination hereof, including the confidentiality, nondisclosure, data ownership, indemnification provisions of this Agreement and this Section 10, shall survive termination or expiration indefinitely.

11. INDEMNIFICATION

For purposes of this Section only, the term “Third Party” is defined to mean any entity, approved in accordance with Appendix A, that obtains access to VRI by or through the Company, directly or indirectly. A Third Party may be any individual, business, government entity, or similar entity. For the avoidance of doubt, a Third Party includes, but is not limited to, an employee, vendor, servicer provider, end user, business partner, subcontractor, agent, representative, subsidiary, or affiliate of the Company.

Company hereby agrees to indemnify, defend and hold harmless Contractor, its agents, officers, employees, affiliates and representatives from and against any and all allegations, demands, losses, obligations, liabilities, reasonable remediation costs and expenses, reasonable consulting and investigation costs and expenses, settlements, judgements, fines, penalties, actual or threatened claims, suits or actions, and other costs and expenses of any kind (including without limitation all court and defense costs and attorneys’ fees, the costs of enforcing any right to indemnification under this Agreement, the cost of pursuing insurance and any expert witness’, attorneys’, and other advisors’ fees and costs) which arise out of or relate to: (i) any data breach or loss or actual or suspected breach of confidentiality or security related to VRI while it is in the custody or control of Company or a Third Party or which otherwise arises out of any act, error or omission of the Company or a Third Party, (ii) Company’s breach of this Agreement, (iii) any negligent or willfull act, error or omission of Company, except to the extent caused by the negligence of the Contractor, or (iv) Company’s access to or use of the VRI or a Third Party’s access to or use of the VRI.

12. LIMITATION OF LIABILITY

THE VRI AND ANY RELATED DATA IS PROVIDED TO COMPANY ‘AS IS’ AND ‘AS AVAILABLE’ WITHOUT WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Neither Contractor nor any third party shall be liable to Company for any

damages, costs, expenses, or losses arising from or caused in whole or in part by errors or omissions in the VRI or associated data.

IN NO EVENT SHALL CONTRACTOR BE LIABLE TO COMPANY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, COSTS, EXPENSES, FEES, LOST PROFITS OR OTHER LOSSES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH.

13. INTELLECTUAL PROPERTY

Notwithstanding anything to the contrary, nothing in this Section or elsewhere in this Agreement shall be construed as assigning, selling, conveying, or otherwise transferring any ownership, interest in, or title to either Party's Intellectual Property to the other Party. For purposes of this section Intellectual Property shall include software, pre-existing works or independently developed intellectual property, materials, software, methodologies, tools, or inventions.

14. COMPLIANCE

During the term of this Agreement, Company will comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives including, but not limited to those specifically listed herein and the Drivers Privacy Protection Act. Company acknowledges that data at issue in this Agreement is subject to applicable state and federal laws, and that state agencies, including PennDOT, regulate and restrict the access and use of the data and VRI. The Company agrees to comply with any rules, regulations or directives of such state agencies, including PennDOT.

Further, Company agrees that it will comply with any reasonable standards, directives, policies, procedures, and directives issued or communicated to the Company by the Contractor as they relate to VRI and this Agreement. Company also agrees to at all times fully and expeditiously cooperate with Contractor, and provide reasonable access and information to Contractor, as reasonably necessary for Contractor to ensure that both this Agreement and Appendix A are being complied with, and otherwise as necessary to mitigate risk and to ensure that Company has robust processes and procedures in place to secure and protect the VRI. Company acknowledges and agrees that now or in the future, Contractor or state agencies may require data security standards and safeguards, and other similar protections and safeguards, in excess of, and more protective, than those outlined in this Agreement or Addendum A.

The Business Partner's or End User's obligations pursuant to this Agreement (including, for the avoidance of doubt, Appendix A) may be stricter than those in an applicable law, rule, or regulation. If a law, rule, or regulation is more protective than those obligations set out in this Agreement, the Business Partner or End User shall comply with the law, rule or regulation (in addition to complying with its obligations under this Agreement). If the Business Partner's or End User's obligations under this Agreement are more protective than those obligations set out in an applicable law, rule, or regulation, than the Business Partner or End User shall comply with its obligations under this Agreement (in addition to complying with the applicable law, rule or regulation).

15. EMPLOYMENT ELIGIBILITY AND BACKGROUND CHECKS

Company shall conduct all necessary employment eligibility verifications as well as criminal background checks on personnel with access to VRI or otherwise performing work related to this Agreement. Company warrants that no adverse or negative employment eligibility background check findings were noted for any employee with access to VRI or otherwise performing related to this Agreement.

16. THIRD PARTY BENEFICIARY

PennDOT is not a party to this Agreement. However, PennDOT shall have third-party beneficiary rights to enforce the terms of this Agreement and any data security agreement or requirements; and PennDOT, at its sole discretion or where required by law, may enter into a data security agreement directly with the Business Partner. There are no other third party beneficiaries created or intended by this Agreement.

17. AMENDMENTS

Except as otherwise stated in this Agreement, no changes to this Agreement or any Exhibits, Attachments or Schedules are valid unless made in writing and executed by duly authorized representatives of Company and Contractor.

18. ASSIGNMENT AND DELEGATION

This Agreement and any interest therein, including but not limited to any claim for monies due or to become due, may not be assigned, delegated, or otherwise transferred by Company without the prior written approval of Contractor (which shall not be unreasonably withheld).

19. SUBCONTRACTING

Company shall not subcontract any core services under this Agreement without prior written consent of Contractor.

20. SUSPENDED OR DEBARRED ENTITIES

Company certifies that it is not presently listed by any Federal Agency as debarred, suspended, or proposed for debarment or suspension from any federal, state or government or commercial contract activity. Company shall notify Contractor immediately of any change related to this provision. Such notice shall contain all information relevant to any debarment, suspension, or proposed debarment or suspension.

21. NOTICES

All notices or demands required or permitted to be given or made under this Agreement must be in writing and delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the respective Parties at the following addresses. Either Party may modify its address hereunder with prior written notice to the other Party.

To Contractor:

Duncan Solutions, Inc.

Attn: Contracts Department

633 W. Wisconsin Avenue, Suite 1600

Milwaukee, WI 53203

Email: contracts@DuncanSolutions.com

Fax: (866) 449-7575

To Company:

Attn: _____

Email: [Email@Address]

Fax: [(XXX) XXX-XXXX]

22. GOVERNING LAW AND VENUE

This Agreement is governed by and construed in accordance with the laws of the State of Pennsylvania. The Parties hereby submit and consent to the exclusive jurisdiction of any state or federal court located within the State of Pennsylvania.

23. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to any other persons or circumstances are not affected thereby. The Parties agree to negotiate in good faith to modify any invalid or unenforceable provision of this Agreement to fulfill as closely as possible the original intent of invalid or unenforceable provision.

24. INSURANCE

Without limiting in any way the Company's indemnification obligations under this Agreement, the Company shall maintain at its expense (i) a minimum of \$10,000,000 (per claim and in the aggregate) of professional liability/errors and omissions insurance, which includes cyber liability coverage and covers the services and other activities under this Agreement (for the term of this Agreement and for a period of 3 years thereafter), including damages arising from a breach of security, violation or infringement of any right of privacy, data theft, unauthorized access or use, identity theft, a wrongful release of private information, transmission of a computer virus or other type of malicious code, or a failure to protect personally identifiable information from misappropriation, and which insurance names Contractor as an additional insured, (ii) a minimum of \$10,000,000 per occurrence (with a maximum deductible amount of 10% of such policy amount) of employee dishonesty insurance coverage which names Contractor as a joint loss payee and which includes coverage for computer fraud and for the loss of property that is under the care, custody or control of the Company and its personnel, and (iii) any other insurance required by law. The Company shall furnish to Contractor, at or promptly after the execution of this Agreement, and at least annually thereafter, and at such other times as Contractor may reasonably request, a certificate of insurance indicating that all of the above-referenced coverage is in effect. The Company shall provide Contractor

with mandatory thirty (30) days prior written notice of a material reduction in or cancellation of such insurance coverage. The Company shall be responsible for the payment of any and all deductibles from insured claims under its policies of insurance. The foregoing insurance coverage shall be provided for the benefit of Contractor and shall be primary and noncontributory over any insurance carried by, or available to, Contractor. The foregoing insurance policies shall also provide a waiver of subrogation in Contractor's favor.

25. REMEDIES

The remedies in this Agreement shall not be construed to limit the parties' remedies if the other party fails to perform its obligations, or if representations or warranties in this Agreement are found to be materially inaccurate or untrue. In the event of a breach of this Agreement, neither Contractor, PennDOT nor an affected Pennsylvania citizen will have an adequate remedy in damages and therefore Contractor, PennDOT and any affected citizen shall be entitled to seek injunctive or equitable relief to immediately cease or prevent the use or disclosure of VRI not contemplated by the Agreement, to enforce the terms of this Agreement, or ensure compliance with Applicable Laws.

IN WITNESS WHEREOF, Company and Contractor have caused this Agreement to be signed by their duly authorized officers on the day and year first set forth herein above. Each signatory represents that s/he is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the respective Party.

COMPANY: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

CONTRACTOR: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____