Statement of Work

Between

[AGENCY]

And

[Contractor Name]

FOR THE

[Project Name]

# 1. INTRODUCTION

The following document will serve as a Statement of Work (“SOW”) between [AGENCY] (“[AGENCY ABBREVIATION]”) and [CONTRACTOR NAME] (“Contractor”) governing Contractor’s work on the [PROJECT NAME]. The entire agreement (the “Agreement”) between the parties consists of the following documents, in the following order of precedence. In the event of a conflict, the document of higher precedence shall govern.

(1) the Commonwealth Standard Terms and Conditions

(2) the Commonwealth’s Standard Form Contract

(3) Request for Response [RFR NAME] (“RFR”)

(4) Contractor’s response thereto

(5) the Request for Quotes [RFQ NAME, RFQ NUMBER AND DATE] (“RFQ”)

(6) this SOW, including Appendix A, and any Task Orders or other documents negotiated between the parties under the RFQ

(7) Contractor’s response to the RFQ

# 2. DEFINITIONS

The following terms shall have the following meanings. All other terms used in this SOW shall have the meaning ascribed to them in the other documents that constitute the Agreement.

**“Deliverable”** means any work product that Contractor delivers for the purposes of fulfilling its obligations to [AGENCY].

**“Task”** means a material activity engaged in by Contractor for the purpose of fulfilling its obligations to [AGENCY].

**“Task Order”** means an amendment to this SOW that specifies Tasks or Deliverables to be completed by Contractor within a specified time period.

# 3. EFFECTIVE DATE AND TERM

This SOW’s term (the “Term”) begins on the date on that it is executed by both parties (the “Effective Date”) and shall terminate on [INSERT END DATE] (“Termination Date”) unless extended or renewed via written amendment executed by the parties.

4. PROJECT BACKGROUND AND OVERVIEW

[Provide background and high-level overview of project.]

5A. TIME AND MATERIALS SERVICES

This Section describes the general Tasks and Deliverables to be completed by the Contractor. A Task or Deliverable will be considered “complete” when all the acceptance criteria set forth in this SOW have been met. All written work product shall be delivered in a format specified by [AGENCY]. All meetings shall be held on-premises at the address of [AGENCY], unless agreed to otherwise by the Project Managers.

**TABLE 1A: TASKS AND DELIVERABLES**

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| --- | --- | --- |
| **Task/Deliverable Name** | **Metrics of Acceptance** | **Estimated Completion Date** |
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For the Time and Materials Services, Contractor shall complete the work described in Table 1A or in the relevant Task Order, and as scheduled through [weekly] planning meetings. Contractor will submit [weekly] reports to the [AGENCY] PM detailing the hours worked by each Named Resource. The weekly reporting must show actual resource hours worked against assigned Tasks and/or Deliverables and a description of completed Tasks or progress toward completion. Contractor will also report [weekly] to the [AGENCY] PM its expected work effort the forthcoming week, showing each Named Resource’s expected level of effort. Prior review and authorization of each report by the [AGENCY] PM is required to authorize any work by the Named Resource.

**5B. FIXED PRICE TASKS AND DELIVERABLES**

In addition to the Time and Materials services detailed above, this Section describes the Tasks to be completed by the Contractor, the Deliverables to be provided by the Contractor, and a timeline for delivery. A Task or Deliverable will be considered “complete” when all the acceptance criteria set forth in this SOW have been met. All written Deliverables shall be delivered in a format specified by [AGENCY]. All meetings shall be held on-premises at the address of [AGENCY], unless agreed to otherwise by the Project Managers.

For the Fixed Price Tasks and Deliverables of this Agreement, Contractor shall perform Tasks and deliver Deliverables in conformance with the Description and Metrics of Acceptance on or before the Due Dates set forth in Table 1B. Upon acceptance by [AGENCY] of the Deliverables or Tasks, the amounts specified in Table 1B associated with each Deliverable or Task shall be payable to Contractor.

**TABLE 1B: FIXED PRICE TASKS AND DELIVERABLES**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Number** | **Name** | **Description and Metrics of Acceptance (Refer to Attachments if needed)** | **Due Date** | **Amount Due** |
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| **TOTAL** | | | |  |

6 KEY PERSONNEL

**6.1 Commonwealth Project Manager(s)**

[NAME] ([email address], [phone number]) will serve as the [AGENCY] Project Manager (“PM”) and will: (i) work closely with the Contractor PM to ensure successful completion of the project; (ii) consult with Contractor PM to develop the Project Management Plan; (iii) review weekly status reports and schedule weekly meetings with Contractor, as necessary; (iv) coordinate participation from other agencies and/or vendors as required during the engagement; (v) acquire [AGENCY] project team members as needed; and (vi) coordinate [AGENCY]’ review of the Tasks and weekly report, and sign an acceptance form to signify acceptance for each accepted weekly report.

[OPTIONAL: [NAME] ([email address], [phone number]) will serve as the [AGENCY] Technical Project Manager (“Technical PM”) and will: (i) work closely with the [AGENCY] PM and Contractor PM to ensure successful completion of the project; (ii) consult with the [AGENCY] PM and Contractor PM to develop the Project Management Plan; and (iii) serve as a technical resource for Contractor PM and Contractor personnel.]

[OPTIONAL: [NAME][email address][phone number]] will serve as the [OTHER AGENCY] Project Manager (“PM”) and will: (i) work closely with the [AGENCY] and Contractor PM to ensure successful completion of the project; (ii) consult with the [AGENCY] and Contractor PM to develop the Project Management Plan; (iii) review [weekly] status reports and schedule [weekly] meetings with Contractor, as necessary; (iv) coordinate participation from other agencies and/or vendors as required during the engagement; (v) acquire [Agency Abbreviation] project team members as needed; and (vi) coordinate [Agency Abbreviation]’s review of the Deliverables and sign an acceptance form to signify acceptance for each accepted Deliverable.

### 6.2 Contractor Project Manager

[NAME] ([email address], [phone number]) will serve as the Contractor Project Manager (the “Contractor PM”) and will (i) be responsible for administering this SOW and the managing of the day-to-day operations under this SOW, (ii) serve as an interface between the [AGENCY] PM and all Contractor personnel participating in this engagement; (iii) develop and maintain the Project Management Plan in consultation with the [AGENCY] PM; (iv) facilitate regular communication with the [AGENCY] PM, including weekly status reports/updates, and review the project performance against the project plan and facilitate weekly project status meetings for the duration of the engagement; (v) update the Project Management Plan on a weekly basis and distribute it at weekly meetings for the duration of the engagement; (vi) sign acceptance forms to acknowledge receipt; and (vii) be responsible for the management and deployment of Contractor personnel.

The [AGENCY] PM and Contractor PM bear the primary responsibility for issue resolution. If an issue cannot be resolved by the PMs, the [AGENCY] PM shall escalate to [NAME] and the Contractor PM shall escalate to [NAME]. The PMs shall be responsible for coordinating a meeting with [AGENCY] and Contractor leadership to review and resolve any issues.

**6.3 Contractor Personnel**

Contractor shall assign each of the following Names Resources to this SOW in accordance with Table 2. If a change to the assigned personnel is necessary, the Contractor PM will provide a written change request at least two weeks prior to the change to the [AGENCY] PM. The [AGENCY] PM may reject or accept such change. The [AGENCY] PM may terminate use of any Named Resource by providing five (5) days written notice to the Contractor PM. If termination is for cause, or for a violation of a term of this Agreement, [AGENCY] may terminate use of the Named Resource effective immediately by providing written notice to the Contractor PM.

Contractor shall take full responsibility for project management and shall obtain [AGENCY]’s written pre-approval for the use of any subcontractor(s). Contractor shall ensure any subcontractor(s) providing work under this SOW comply with all terms of the Agreement and Contractor shall be responsible for the performance, acts, and omissions, of each such subcontractor.

**TABLE 2: TIME AND MATERIALS RATES**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Named Resource** | **Role / Title** | **Hourly Rate** | **Estimated Number of Hours** | **Estimated Cost** |
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| **TOTAL ESTIMATED COST** | | | |  |
| **TOTAL NOT TO EXCEED AMOUNT** | | | |  |

**7. ACCEPTANCE OR REJECTION PROCESS**

Time and Materials

The Contractor PM will submit each weekly report to the [AGENCY] PM. [AGENCY] will review each weekly report and approve these reports based on satisfactory work performance by each Named Resource, satisfactory completion of Tasks listed in Table 1A or in the relevant Task Order, and fulfillment of Metrics of Acceptance in this Agreement.

Within five (5) business days of each weekly report, the [AGENCY] PM will notify the Contractor PM, in writing, of acceptance or rejection. A rejection will include a written description of any relevant defects or issues. If the [AGENCY] PM does not respond with acceptance or rejection within five (5) business days of receipt, the Contractor PM shall provide a reminder notice to the [AGENCY] PM. Upon receipt of rejection, Contractor will act diligently to correct the specified defects or issues.

Fixed Price

The Contractor PM will submit each Deliverable to the [AGENCY] PM on or before the Due Date specified in Table 1B. [AGENCY] will review each Deliverable and determine whether it has met in all material respects the criteria established in this Agreement.

Within ten (10) business days of receipt of each Deliverable, the [AGENCY] PM will notify the Contractor PM, in writing, of acceptance or rejection. A rejection will include a written description of the defects of the Deliverable. If the [AGENCY] PM does not respond with acceptance or rejection within ten (10) business days of receipt, the Contractor PM shall provide a reminder notice to the [AGENCY] PM. Upon receipt of rejection of a Deliverable, Contractor will act diligently to correct the specified defects and deliver an updated version of the Deliverable to the [AGENCY] PM. Acceptance or rejection of the updated version of the Deliverable will be subject to the process described in this paragraph.

Following any acceptance of a Deliverable which requires additional work to be entirely compliant with the pertinent specifications, and until the next delivery, Contractor will use reasonable efforts to provide a prompt correction or workaround.

## 8. PAYMENT TERMS

Time and Materials

Contractor shall provide a bi-weekly invoice to the [AGENCY] PM for the actual hours worked per week of the Named Resource identified in Table 2 or in the relevant Task Order. Each invoice must include resource names, dates of service, and the hours worked and approved for each date of service. The [AGENCY] PM will review and approve these invoices based on satisfactory work performance by each Named Resource, satisfactory completion of Tasks listed in Table 1A or in the relevant Task Order, and fulfillment of Metrics of Acceptance in this Agreement. Approved invoices will be payable by [AGENCY] in accordance with the Commonwealth’s bill-paying policies.

Fixed Price

A Deliverable or Task will be considered “completed” when the [AGENCY] PM has accepted the Deliverable or Task in accordance with Section 7 of this SOW. Contractor shall issue invoices to [AGENCY] for the Deliverables or Tasks that are completed (each, a “Valid Invoice”). Valid invoices shall be payable by [AGENCY] in accordance with the Commonwealth’s bill-paying policies.

**9. AMENDMENTS TO THE SOW**

The SOW may be amended prior to the end of the Term. The PM who would like to request a change will provide the suggested amendment in writing to the other party’s PM. The PMs will jointly determine whether the change impacts any terms contained within the Agreement. The parties may mutually agree to the change through a written signed amendment to the SOW.

**10. ADDITIONAL CONTRACTOR REQUIREMENTS**

[Include any additional privacy / security requirements based on data being accessed or used by Contractor. Include additional technical specifications, support terms, etc. Refer to attached documents if needed.

e.g. Any personnel providing services under this SOW who will have access to [AGENCY]’s premises and/or systems will be subject to [AGENCY]’s background screening requirements prior to commencement of such services.]

**11. TOTAL COSTS**

Unless otherwise agreed to by the parties in the form of an executed written amendment or Task Order hereto, the total amount payable to Contractor by [AGENCY] is as follows:

For Time and Materials Work: Not to exceed XXXXX USD

For Fixed Price Deliverables and TASKS: XXXX USD

**12. AUTHORITY TO EXECUTE**

The undersigned hereby represent that they are duly authorized to execute this Statement of Work on behalf of their respective organizations. The signer on behalf of Contractor further represents that he/she is listed as an Authorized Signatory under the applicable Statewide Contract or RFR. This Statement of Work may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**[AGENCY] [Enter Contractor Name]**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**APPENDIX A**

The following terms are entered into by and between the Commonwealth entity and the Contractor signing the Statement of Work (“SOW”) attached hereto. The term “Agency” as used in this Appendix A shall refer to the Commonwealth entity signing the SOW. The following terms cannot be modified unless a written waiver is provided by the Agency General Counsel, or designee. The following Sections shall continue in effect beyond the Termination Date of the SOW: 2, 3, 6, 8, 9, 10, and any other Sections that would under the circumstances reasonably extend beyond the Termination Date of the SOW.

**1. Equipment and Workplace**

The Agency will provide standard workspace, office equipment, and network connectivity, as provided to state employees, and as required to enable Contractor personnel working on-site to provide the services contemplated under the SOW. Contractor will submit a list of personnel who will need access to the building and to state systems before execution of the SOW. Any Contractor personnel who have access to IT resources must comply with the Acceptable Use of Information Technology Policy (<https://www.mass.gov/policy-advisory/acceptable-use-of-information-technology-policy>) and any other workplace policies provided to Contractor by Agency.

## 2. System Security

## Contractor shall comply with the Commonwealth’s Enterprise Information Security Policies and Standards (<https://www.mass.gov/handbook/enterprise-information-security-policies-and-standards>).

## Contractor will be required to use data provided by Agency (“Commonwealth Data”) and will implement commercially reasonable safeguards necessary to: (i) prevent unauthorized access to Commonwealth Data from any public or private network; (ii) prevent unauthorized physical access to any information technology resources involved in the SOW project; and (iii) prevent interception and manipulation of Commonwealth Data during transmission to and from any servers.

If Contractor uses, or receives access or potential access to, Commonwealth personal data under M.G.L. c. 66A or personal information under M.G.L. c. 93H (collectively, “Commonwealth Personal Data”). Contractor shall implement the maximum feasible safeguards reasonably needed to: (i) ensure the security, confidentiality and integrity of electronic personal data and personal information; (ii) prevent unauthorized access to electronic personal data or personal information or any other Commonwealth Personal Data from any public or private network; and (iii) notify the Agency immediately if any breach of such system or of the security, confidentiality, or integrity of electronic personal data or personal information occurs.

If the Deliverables include software or code that will be developed by Contractor and migrated into a production environment, Contractor shall implement the following controls for the purpose of maintaining software integrity and traceability throughout the software or code creation life cycle, including during development, testing, and production: (i) Contractor shall configure at least two software environments including a development/quality assurance (QA) environment and a production environment; (ii) Contractor shall implement a change management procedure to ensure that activities in the development/QA environment remain separate and distinct from the production environment; (iii) Contractor shall segregate duties between development and testing of software changes and migration of changes to the production environment; (iv) Contractor shall implement security controls to restrict individuals who have development or testing responsibilities from migrating changes to the production environment; (v) Contractor shall create a process to log and review all source control activities; (vi) Contractor shall implement a source control tool to ensure that all changes made to the production system are authorized, tested, and approved before migration to the production environment; (vii) Contractor shall not make any development or code changes in a production environment; and (viii) Contractor shall implement additional internal controls as specified in the Agreement.

**3. Accessibility**

Contractor shall comply with the obligations and requirements set forth in the Accessibility for IT Solutions Contract Language (<https://www.mass.gov/service-details/accessibility-for-it-solutions-contract-language>).

## 4. MassGIS Web Mapping Services

MassGIS is the Commonwealth’s Office of Geographic and Environmental Information. Its legislative mandate includes coordinating GIS activities in the Commonwealth’s public agencies and distributing GIS data. MassGIS has also developed and is the host for the Commonwealth’s e-government geospatial web mapping initiative.

If the Deliverables include the capability for viewing maps and related information on an internet web site and if that web site will display map information available through MassGIS web mapping services (e.g., parcels, orthophotos, streets, wetlands), then Contractor shall use MassGIS geospatial web mapping services. MassGIS may grant a waiver of this requirement if Contractor demonstrates to MassGIS’ satisfaction that using the MassGIS web mapping services for the proposed application is not reasonably practical due to one or more of the following: (i) performance of the application would be degraded due to using the MassGIS services; (ii) the proposed application requires reliability that exceeds those that MassGIS can reasonably be expected to provide; (iii) the security requirements of the application preclude using the MassGIS services; and (iv) cost. Waivers are not valid under this Agreement unless they are provided in writing by the Director or Assistant Director of MassGIS.

**5. Code Review**

If the Deliverables include software code or applications developed by Contractor for the Agency, such code or applications shall follow current industry design and best practices, including, but not limited to those published by The National Institute of Standards & Technology (NIST), the SANS (SysAdmin, Audit, Network, Security (SANS) Institute), and other recognized bodies.

Contractor shall cooperate with the Agency’s code review of the relevant software or application Deliverables. Prior to implementation or acceptance of a Deliverable, Contractor shall subject such Deliverable, if it includes software code or script, to independent application review by Agency or its delegated reviewer to validate that all applicable enterprise IT standards and security policies have been met, as well as other specifications as identified in this Agreement. The review shall be performed by individuals other than Contractor’s or Agency’s personnel who developed the Deliverables. For purposes of this requirement, "independent" may include other staff of the Agency provided that no direct reporting relationships exist between the development and review organizations.

**6. Intellectual Property Rights**

If the Deliverables include new software or code developed or created by Contractor for the Agency, the following Section 6 shall apply.

The term Property includes the following: (1) confidential, proprietary, and trade secret information; (2) trademarks, trade names, discoveries, inventions processes, methods and improvements, whether or not patentable or subject to copyright protection and whether or not reduced to tangible form or reduced to practice; and (3) works of authorship which are used by Contractor to complete its work under the SOW (which may consist of computer programs (in object and source code form), scripts, data, documentation, the audio, visual and audiovisual content related to layout and graphic presentation, text, photographs, video, pictures, animation, sound recordings, training materials, images, techniques, methods, algorithms, program images, text visible on the Internet, HTML code and images, illustrations, graphics, pages, storyboards, writings, drawings, sketches, models, samples, data, other technical or business information, reports, and other works of authorship fixed in any tangible medium).

Contractor’s work under the SOW may involve: (1) a third party’s intellectual property; (2) Property created by Contractor for the open market (e.g. Contractor’s commercial off the shelf software); (3) Property developed by Contractor for other individual clients or for internal purposes prior to the Effective Date of the SOW and not delivered to any other client of Contractor; or (4) Property developed by Contractor specifically for the purposes of fulfilling its obligations to Agency under the terms of the Agreement. Ownership of the first and second categories of intellectual property is addressed in separate agreements. This Section 6 addresses exclusively ownership rights in the third and fourth categories of Property.

Contractor will retain all right, title and interest in and to all Property referenced in subsection (3) of the paragraph immediately preceding (hereinafter the "Contractor Property"). The Agency’s possession, installation or use of Contractor Property will not transfer to it any title to such property. The Agency acknowledges that Contractor Property may contain commercially valuable and proprietary trade secrets of Contractor, the development of which may involve the expenditure of substantial time and money and the use of skilled experts. The Agency will take no affirmative steps to disclose such information to third parties, provided that the Agency may do so if required under the Commonwealth’s Public Records Law, M.G.L. c. 66 § 10, or by legal process.

Except as expressly authorized herein, the Agency will not copy, modify, distribute or transfer by any means, display, sublicense, rent, reverse engineer, decompile or disassemble Contractor Property. Contractor grants to Agency a fully-paid, royalty-free, non-exclusive, non-transferable, worldwide, irrevocable, perpetual, assignable license to make, have made, use, reproduce, distribute, modify, publicly display, publicly perform, digitally perform, transmit, copy, sublicense to any Agency contractor for purposes of creating, implementing, maintaining or enhancing a Deliverable, and create derivative works based upon Contractor Property, in any media now known or hereafter known, to the extent the same are embodied in the Deliverables, or otherwise required to exploit the Deliverables. During the Term of this Agreement and immediately upon any expiration or termination thereof for any reason, Contractor will provide to Agency the most current copies of any Contractor Property to which Agency has rights pursuant to the foregoing, including any related documentation.

Notwithstanding anything contained herein to the contrary, and notwithstanding Agency’s use of Contractor Property under the license created herein, Contractor shall have all the rights and incidents of ownership with respect to Contractor Property, including the right to use such property for any purpose whatsoever and to grant licenses in the same to third parties. Contractor shall not encumber or otherwise transfer any rights that would preclude a free and clear license grant to the Commonwealth.

In conformance with the Commonwealth’s Standard Terms and Conditions, all Deliverables created under this Agreement whether made by Contractor, subcontractor, or both are the property of the Agency, except for the Contractor Property embodied in the Deliverable. Contractor irrevocably and unconditionally sells, transfers and assigns to the Agency or its designee(s), the entire right, title, and interest in and to all intellectual property rights that it may now or hereafter possess in said Deliverables, except for the Contractor Property embodied in the Deliverables, and all derivative works thereof. This sale, transfer and assignment shall be effective immediately upon creation of each Deliverable and shall include all copyright, patent, trade secret, trademark and other intellectual property rights created by Contractor or subcontractor in connection with such work (hereinafter the "Commonwealth Property").

### All copyrightable material contained within a Deliverable and created under this Agreement are works made for hire. Contractor bears the burden to prove that a work within a Deliverable was not created under this Agreement. If work is determined to not be made for hire or that designation is not sufficient to secure rights, to the fullest extent allowable and for the full term of protection otherwise accorded to Contractor under such law, Contractor shall and hereby irrevocably does, assign and transfer to the Agency free from all liens and other encumbrances or restrictions, all right, title and interest that Contractor may have or come to have in and to such Deliverable. CONTRACTOR HEREBY WAIVES IN FAVOR OF THE AGENCY (AND SHALL CAUSE ITS PERSONNEL TO WAIVE IN FAVOR OF CLIENT IN WRITING SIGNED BY SUCH PERSONNEL) ANY AND ALL ARTIST’S OR MORAL RIGHTS (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF INTEGRITY AND ATTRIBUTION) IT MAY HAVE PURSUANT TO ANY STATE OR FEDERAL LAWS OF THE UNITED STATES IN RESPECT TO ANY DELIVERABLE AND ALL SIMILAR RIGHTS UNDER THE LAWS OF ALL OTHER APPLICABLE JURISDICTIONS.

### Contractor agrees to execute all documents and take all actions that may be reasonably requested by the Agency to evidence the transfer of ownership of or license to intellectual property rights described in this Section 6, including providing any code used exclusively to develop such Deliverables to the Agency and the documentation for such code. Contractor acknowledges that there are currently and that there may be future rights that the Commonwealth may otherwise become entitled to with respect to Commonwealth Property that does not yet exist, as well as new uses, media, means and forms of exploitation, current or future technology yet to be developed, and that Contractor specifically intends the foregoing ownership or rights by the Commonwealth to include all such now known or unknown uses, media and forms of exploitation.

The Commonwealth retains all right, title and interest in and to all derivative works of Commonwealth Property. The Agency hereby grants to Contractor a nonexclusive, revocable license to use, copy, modify and prepare derivative works of Commonwealth Property only during the Term and only for the purpose of performing services and developing Deliverables for the Agency under this Agreement.

If Contractor’s Tasks and Deliverables include development of a web site, the Agency will bear sole responsibility for registering the software or system domain name or URL, applying for any trademark registration relating to the software or system domain name or URL and applying for any copyright registration related to its copyright ownership with respect to any Commonwealth Property.

If the Deliverables contain or will contain any third-party intellectual property to which Contractor intends to provide a sublicense, Contractor must provide copies of all such sublicense agreements as early in the process as possible. The sublicense agreements must be included in Contractor’s initial quotation to the Agency, or, if the requirement to utilize sublicensed intellectual property is not known at the outset of the project, as soon as the requirement becomes known. Sublicenses to third-party intellectual property can ONLY be provided under RFR if they are provided at no charge to the Commonwealth.

**7. Software Escrow**

If the Agency is purchasing a system based on code that will not be owned by the Commonwealth, upon the Agency’s request, Contractor shall deposit such code or components thereof in escrow, and Contractor and Agency shall enter into a separate agreement governing the terms of the escrow account (the “Escrow Agreement”) on or prior to the Effective Date of the SOW. Agency may request custom escrow services, which shall be agreed upon in the form of a written Escrow Agreement.

**8. Warranty**

### Contractor represents and warrants that (i) Contractor and its subcontractors are sufficiently staffed and equipped to fulfill Contractor’s obligations under this Agreement; (ii) Contractor’s services will be performed: by appropriately qualified and trained personnel; with due care and diligence and to a high standard of quality as is customary in the industry; in compliance with the Due Dates and the terms and conditions of this Agreement; and in accordance with all applicable professional standards for the field of expertise; (iii) Deliverables delivered under the SOW will substantially conform with the Tasks and Deliverable descriptions set forth in this Agreement;  (iv) all media on which Contractor provides any software under this Agreement shall be free from defects; (v) all software delivered by Contractor under the SOW shall be free of Trojan horses, back doors, and other malicious code; (vi) Contractor has obtained all rights, grants, assignments, conveyances, licenses, permissions and authorizations necessary or incidental to any materials owned by third parties supplied or specified by Contractor for incorporation in the Deliverables to be developed; (vii) documentation provided by Contractor under the SOW shall be in sufficient detail so as to allow suitably skilled, trained, and educated Agency personnel to understand the operation of the Deliverables and Contractor shall promptly, at no additional cost to the Agency make corrections to any documentation that does not conform to this warranty; and (viii) any systems created or modified by Contractor under the SOW shall operate in substantial conformance with the specifications for the system or modifications for a minimum of six months (the “Warranty Period”) after the Agency accepts such system or modifications pursuant to Section 7 (Acceptance or Rejection Process) of the SOW. During the Warranty Period, Contractor shall correct any defects, at no charge to the Agency.

**9. Transfer of Engagement Products at Contract Termination**

As of the Termination Date of the SOW, Contractor shall make available all Commonwealth Data to the Agency in a format to be agreed upon by Agency and Contractor. Contractor shall provide reasonable assistance at no charge to provide knowledge transfer to Agency personnel, or Agency designees. Agency and Contractor may execute a Task Order or Change Order governing the transfer period if additional services are required by the Agency.

**10. Other Representations: Work Effort, Confidentiality, Assignment of Inventions, and Representation of Non-Infringement**

Contractor agrees, and shall ensure that is personnel and subcontractor personnel agree, to the following terms.

Contractor shall not use for its own benefit, or divulge or disclose to anyone except to persons within the Commonwealth whose positions require them to know it, any information not already lawfully available to the public concerning the Commonwealth (“Confidential Information”), including but not limited to information regarding any website of the Commonwealth, any e-commerce products or services, any web development strategy, any financial information or any information regarding users of or vendors to the Commonwealth’s websites. Confidential Information also includes, without limitation, any technical data, design, pattern, formula, computer program, source code, object code, algorithm, subroutine, manual, product specification, or plan for a new, revised or existing product or web site; any business, marketing, financial or sales information; and the present or future plans of the Commonwealth with respect to the development of its web sites and web services.

All confidential, proprietary or other trade secret information and all other works of authorship, trademarks, trade names, discoveries, inventions, processes, methods and improvements, conceived, developed, or otherwise made by Contractor, and in any way relating to the Commonwealth or any of its web development projects, whether or not patentable or subject to copyright protection and whether or not reduced to tangible form or reduced to practice during the period of Contractor’s assignment with the Commonwealth (“Developments”) shall be the sole property of the Commonwealth.

As of the termination of the Agreement with the Commonwealth, Contractor agrees to return to the Commonwealth all Commonwealth materials, documents and property, in Contractor’s possession or control, including without limitation, all materials relating to work done while assigned to Commonwealth projects or relating to the processes and materials of the Commonwealth. Contractor shall return to the Commonwealth all materials concerning past, present and future or potential products and/or services of the Commonwealth. Contractor shall return to the Commonwealth all materials provided by persons doing business with the Commonwealth and all teaching materials provided by the Commonwealth.

Contractor represents and warrants that it is not a party to any agreement or arrangement which would constitute a conflict of interest with the obligations undertaken under the SOW or would prevent Contractor from carrying out its obligations hereunder.

Contractor represents and warrants that it has paid all due state and federal taxes, or, if its tax status is in dispute or in the process of settlement, that it has responded as directed and within the required timeframes to all communications received from the state or federal government.

Contractor acknowledges that it is not an employee of any Massachusetts state or municipal government agency, and is not entitled to any benefits, guarantees or other rights granted to state or municipal government agencies, including but not limited to group insurance, disability insurance, paid vacations, sick leave or other leave, retirements plans, health plans, or premium overtime pay. Should Contractor be deemed to be entitled to receive any such benefits by operation of law or otherwise, Contractor expressly waives any claim or entitlement to receiving such benefits from Massachusetts state or municipal government agencies.