



Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: e-GOVERNMENT PORTAL FOR THE COMMONWEALTH OF KY		
Doc ID No: MA 758 100000126 13	Proc Folder: 1262701	
Procurement Type: Computer Services		
Effective Date: 2009-09-01	Expiration Date: 2014-08-31	Not To Exceed Amount
Administered By: Don Speer	Cited Authority: FAP111-57-00-CS	
Telephone: 502-564-4510	Issued By: Stephanie Williams	

Reason For Modification: 11-14-13 Adding commodity line 11 to include HBE Debit Card Transactions at \$1.00 ea. for CHFS.
See header for all documentation. SD

V E N D O R	KENTUCKY INTERACTIVE INC 229 WEST MAIN STREET SUITE 400 FRANKFORT KY 40601 US
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Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	VOID LINE DO NOT USE	0	0.00		0.00000	0.00	0.00

Extended Description

VOID LINE DO NOT USE

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Professional Services/Fully Loaded Hourly Rates		0.00		0.00000	0.00	0.00

Extended Description

The following fees shall be applicable to the services provided under this Contract, including for projects and/or services that fall outside of the self-funded model, such as, for example, in the event an agency application becomes such a priority that it cannot wait for Contractor s web application development resources funded through the self-funded model.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	1st Year - GovDelivery Email & Digital Subscription Manageme		0.00		0.00000	115,248.00	115,248.00

Extended Description

1st Year - GovDelivery Email and Digital Subscription Management The Statement of Work (SOW) is attached to the header.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
4	Every Year After - GovDelivery Email & Digital Subscription		0.00	YR	124,873.00000	0.00	0.00

Extended Description

Every Year After - GovDelivery Email and Digital Subscription Management The Statement of Work (SOW) is attached to the header.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
5	Hardware IPOS Project KYTC		15.00	EA	189.00000	0.00	2,835.00

Extended Description

6-21-11Hardware IPOS Project KYTCTopaz Systems Electronic Signature Pad Model T-S751-HSB-R

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
6	TPS Online Processing Fee		0.00	EA	2.00000	0.00	0.00

Extended Description

TPS Online Processing Fee

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
7	TPS Touchtone / Integrated Voice Response (IVR)		0.00	EA	0.35000	0.00	0.00

Extended Description

TPS Touchtone / Integrated Voice Response (IVR)

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
8	KY Historical Society User Interaction Development		0.00		0.00000	0.00	0.00

Extended Description

KY Historical Society User Interaction Development

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
9	KI Portal Processing Fee for Annual License Renewal		0.00	EA	2.50000	0.00	0.00

Extended Description

KI Portal Processing Fee for Kentucky Real Estate Commission Annual License Renewal Applications

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
10	KYTC DVR Processing Fee		0.00		0.00000	0.00	0.00

Extended Description

KYTC DVR Processing Fee

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
11	HBE Debit Card Transactions for CHFS		0.00	EA	1.00000	0.00	0.00

Extended Description

HBE Debit Card Payment Services
(\$1.00 per Debit Card payment transaction)

Total Order Amount:	118,083.00
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**MASTER AGREEMENT
FOR
COMMONWEALTH EGOVERNMENT PORTAL SERVICES – KY.GOV
BETWEEN
THE COMMONWEALTH OF KENTUCKY
COMMONWEALTH OFFICE OF TECHNOLOGY
AND
KENTUCKY INTERACTIVE, LLC.**

* * * * *

This Master Agreement (“Contract”) is entered into, by and between the Commonwealth of Kentucky, Commonwealth Office of Technology (“the Commonwealth”), and, Kentucky Interactive, LLC. (“Kentucky Interactive” or “Contractor” or “Vendor”) as the Prime Contractor to establish a Contract to provide e-Government portal services.

The Commonwealth and Contractor agree to the following:

I. Scope of Master Agreement

This Master Agreement shall provide the Commonwealth with secure hosting services, portal architecture and design, web application development and integration services, operations support and a full suite of consulting services for Commonwealth e-Government related services.

II. Contract Components and Order of Precedence

The Commonwealth’s acceptance of the Contractor’s offer in response to the Solicitation, RFP-758-0800001640, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation, RFP-758-0800001640;
3. The Solicitation, RFP-758-0800001640, and all attachments thereto, including Section 40--Terms and Conditions of a Contract with the Commonwealth of Kentucky;
4. General Conditions contained in 200 KAR 5:021 and Office of Procurement Services’ FAP110-10-00;

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5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation, RFP-758-0800001640;
7. The Contractor's proposal in response to the Solicitation, RFP-758-0800001640.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

III. Negotiated Items

Confidentiality of Vendor's Proprietary Information

The Commonwealth shall maintain the confidentiality of all confidential and proprietary information of the Vendor which is marked or otherwise identified as proprietary and confidential information, whether so identified in this Contract, or subsequently upon disclosure to the Commonwealth. If a public disclosure request is made to view Vendor's proprietary and confidential information, the Commonwealth will notify Vendor of the request, and provide Vendor sufficient notice to obtain necessary court rulings protecting such release, if required, prior to releasing such information. The Commonwealth agrees that Kentucky Interactive Portal Software and source code for such Kentucky Interactive Portal Software constitutes proprietary and confidential information of Vendor, which is trade secret, the disclosure of which would cause immediate harm to Vendor.

Vendor's Right to Terminate for Cause

The Vendor shall have the right to terminate this Contract for cause, subject to cure, by providing thirty (30) days' written notice of termination to the Commonwealth. Such notice shall specify the time, the specific provision of this Contract or "for cause" reason that gives rise to the termination, and shall specify reasonable appropriate action that can be taken by the Commonwealth to avoid termination of the Contract. The Vendor shall provide a specified period of time of up to sixty (60) days from the date of receipt of notification for the Commonwealth to cure breaches and deficiencies of its performance obligations under this Contract. For purposes of this paragraph, the phrase, "for cause" shall only mean: the financial base upon which Vendor relies for solvent Portal operations and its fee is not present (or is substantially diminished) in the future.

Mutual Non-Solicitation of Employees

Throughout the entire term of this Contract, including any renewal periods, and for six (6) months following the termination of the Contract, each party covenants and hereby agrees that it shall not hire, or represent or assist in any way any

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affiliated company or subsidiary of such party in the hiring of any person who was employed by the other party (the “employing party”) during the term of this Contract at any time during the period of such employee’s employment with the employing party and for six (6) months thereafter, to work for such party or any affiliated company or subsidiary of such party in the Commonwealth of Kentucky, without the prior written agreement of the employing party.

Force Majeure

The Vendor will not be liable for any excess cost to the Commonwealth if the delay or failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Vendor. Such causes may include, but are not restricted to, acts of god, fires, quarantine restriction, strikes, and freight embargoes. In all cases, failure to perform must be beyond the control and without fault or negligence of the Vendor. The Vendor shall take all possible steps to recover from such occurrences and to comply with the requirements of the Contract during such period.

Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract will be waived except by the written agreement of the parties. The granting of a forbearance or indulgence, regardless of the form, by either party shall not constitute a waiver of the above-referenced covenant, condition, duty, obligation, or undertaking to be kept by the specified party. Until the specified party has satisfied or completely performed said covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under the Contract, provided the party has not granted or agreed to a forbearance or indulgence. Any consent by any party to, or waiver of, a failure by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent failure.

Cure

Notwithstanding any provision in this Contract to the contrary, prior to termination of the Contract on the basis of Vendor’s breach, the Commonwealth will provide not less than thirty (30) days’ written notice of termination, which notice will specify the time, the specific provision of this Contract or reason that gives rise to the termination, and shall specify reasonable appropriate action that can be taken by the Vendor to avoid termination of the Contract. The Commonwealth shall provide sixty (60) days notice (or such shorter period as is specified by Commonwealth regulations) from the date of receipt of notification for the Vendor to cure breaches and deficiencies of its performance obligations under this Contract.

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Limitation of Liability

In the event of termination of this Contract for breach by the Vendor, Vendor’s liability for any damages based upon costs of cure, or for obtaining replacement supplies and services shall be limited to the reasonable costs incurred by the Commonwealth in obtaining a self-funded contract with terms and conditions similar to the Contract. Under no circumstances shall Vendor be required to purchase or be liable for the expense of equipment, hardware, or software for the new vendor.

e-Government Oversight Authority; Material Changes; Fee Establishment

Government Oversight Authority. The Commonwealth shall develop a formal governance structure for the e-Government Oversight Authority within sixty (60) days after the effective date of this Contract. During the interim period, the Commonwealth Office of Technology, Chief Information Officer, shall be the designated e-Government Oversight Authority for the Commonwealth. The e-Government Oversight Authority shall review and approve on behalf of the Commonwealth all material issues relating to oversight of the Commonwealth Portal. This will include, but is not limited to, approval on behalf of the Commonwealth of development/implementation priorities, all service level agreements, application architecture, applications deployed as no cost deliverables, and customer service fees. The e-Government Oversight Authority shall also establish all strategic policies governing the Commonwealth Portal.

Material Portal Changes. Vendor shall not make a planned material change in Portal operations without the prior written consent of the e-Government Oversight Authority, such consent not to be unreasonably withheld. A “material change” includes, but is not limited to, a change that materially increases the time required to respond to inquiries, or which materially adds to the complexity of system use, diminishes services provided to users, or results in a comparable impact on operations significantly noticeable by users, but excludes changes required to address emergency situations. Vendor shall provide the e-Government Oversight Authority at least thirty (30) days’ prior written notice of a planned material change in Portal operations.

Fee Establishment. In establishing or recommending approval of any fees related to the Commonwealth Portal, the Commonwealth agencies and the e-Government Oversight Authority may consider the following factors:

- ✎ The need to invest in the reasonable expansion of and improvement in

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Commonwealth Portal and information services.

- ✂ A commitment to the public policy requirement to provide electronic access to public records and electronic transactions at the most reasonable rate possible.
- ✂ That the rates to be charged may be adjusted to permit funding of special projects and enhancement of public service.
- ✂ That any revenue share with any agency be disclosed and made part of the fee or rate calculation.
- ✂ The recognition that the intent of the RFP and this Contract is to conduct portal operations on a self-sustaining basis primarily through pooled enhanced access fees.
- ✂ The need for the Kentucky Interactive to earn a reasonable profit on its services provided on behalf of the Commonwealth Portal, considering in particular any investments or monies advanced by Kentucky Interactive in connection with Commonwealth Portal development, expansion, and maintenance.
- ✂ Any other reasonable factor that in the opinion of the e-Government Oversight Authority should be considered.

Revenue Opportunities List

Kentucky Interactive shall recommend additional revenue generating opportunities for local governments and elected officials to the Ky.gov Governance group to ensure all possible opportunities for vendor revenue are exhausted prior to finalizing each SLA and/or Project Charter. In addition, the Vendor shall review the portfolio of Commonwealth and Vendor existing applications which have potential for revenue generation, report these to the governance group and the Ky.gov Governance group shall have the authority to request an existing application be modified for revenue generation, subject to the written, mutual agreement of the parties and further subject to existing portal resources and priorities. Should the agency/entity prohibit revenue generation, the Ky.gov Governance group may terminate the support of the application by the portal vendor.

Sharepoint/MOSS Modified Sand Box

Vendor shall provide, under the terms of this Contract, a mutually agreeable

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modified test/development server (i.e., a modified sandbox) utilizing the Sharepoint system (also known as the MOSS system) for use by agencies in developing, testing, and modifying internet, intranets and extranet websites. Upon the agency's written request, and upon the terms of this Contract, Vendor will move the item tested, developed or modified herein into production. The specifics of these projects will be defined in the applicable statements of work.

Intranet Portal Facilities and Services

Upon the mutual, written agreement of the parties, Vendor may provide a secure Intranet Employee to Government (E2G) portal, including applications and support services. This Intranet Portal functionality may mirror the functionality planned for the overall Commonwealth Portal. Applications may include basic Customer Relationship Management (CRM) tools/functionality available from Vendor and/or their business partner(s).

Mobile Device Application Development

Vendor will make commercially reasonable efforts, taking into account the existing portal resources and priorities, to develop and maintain a mobile version of the Commonwealth Portal. Content and presentation will be optimized for devices with small screens, limited browser capabilities, and limited bandwidth mobile connections.

Coordinated Testing Plan

Vendor will establish and maintain a written disaster recovery plan (hereafter "DRP") reasonably acceptable to the Commonwealth and will deliver to the Commonwealth a copy of the DRP within ninety (90) days after the effective date of this Contract. Vendor will provide the Commonwealth with copies of all substantial modifications to its DRP as they occur and coordinate testing of the DRP with the Commonwealth.

D&B Information

NIC Inc., NICUSA, Inc. and Kentucky Interactive are not "rated" by any credit reporting agency (such as Moody's, Standard & Poor's, or Fitch's Investor Services) other than Dun & Bradstreet because all NIC entities are debt-free and do not borrow money to fund operations in the form of public debt or loans. No credit means no credit rating. Instead, NIC entities fund operations with their profitable and growing cash flows. While NIC Inc. maintains a line of credit for emergencies, it has not had to use it in several years. As a result of being a zero-debt, financially strong company, KI believes KI is a very low-risk partner for the Commonwealth, particularly in light of the current national economic crisis and tight credit markets. Kentucky Interactive has completed the process of requesting a Dunn & Bradstreet rating, as indicated in its RFP response, but due

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to the fact that KI does not report stand-alone financial statements or balance sheets, except for confidential disclosures to state partners, KI has now learned it is not eligible for a Dunn & Bradstreet debt rating.

Because bill payment and cash management are centralized services for NIC's companies, we believe NIC's ratings have relevance here. NIC's Dun & Bradstreet ("D&B") D-U-N-S number is 07-081-6710. NIC Inc.'s most recent D&B rating is 5A2, which indicates an overall good credit appraisal. NIC Inc.'s most recent credit score percentile was 89, which represents a score better than 88% of businesses in the D&B database. Further, the D&B report states that NIC Inc. demonstrated a good financial condition supported by a satisfactory liquidity position and a satisfactory ratio of debt (zero debt) to equity relative to other companies in this line of business.

Kentucky Interactive has presented to the Commonwealth confidential audited annual financials each year during its prior engagement on Kentucky.gov and will continue to do so at the Commonwealth's request.

Financial Reporting and Audits

Vendor shall provide to the Commonwealth monthly income statements for the Portal and the Project. Vendor will also disclose quarterly financial statements (unaudited, but presented in accordance with Generally Accepted Accounting Practices ("GAAP")) and annual audited financial statements of Vendor (covering revenues of the Project), (for the sole purpose of demonstrating that Vendor has maintained positive net worth and such additional capital and liquidity as may be reasonably adequate for the operation of the Project) annual audited financial statements of its ultimate corporate parent, in all cases, on a confidential basis. In addition, Vendor will provide the Commonwealth with either (a) a copy of its annual operating audit or (b) a summary of any operating audit findings that affect Vendor. A competent and reputable CPA firm licensed and approved by the Kentucky State Board of Accountancy or a "Big Four" accounting firm will perform any such audit.

Vendor shall make changes requested by the Commonwealth to comply with recommendations made in any audit, which changes are reasonably agreed to by both the Commonwealth and Vendor.

System Development Lifecycle

Projects that are estimated to be 90 calendar days or greater in duration shall follow a structured System Development Life Cycle (SDLC). The SDLC for each such project will be developed by the Vendor and submitted for approval by the Commonwealth Office of Technology and the Ky.gov

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Governance group prior to project commencement. At a minimum, the SDLC shall:

- a. Specify major phases, tasks, timelines and area responsible (i.e. Vendor, Customer, etc.) for each,
- b. Require specific deliverables per phase along with over-arching project management responsibilities,
- c. Require a Vendor supported shared Project Artifacts Repository accessible via the Internet by the customer agency and other project stakeholders, and
- d. Require a standard project reporting format, structure, and frequency.

REVISIONS TO THE RFP LANGUAGE:

The following provisions are in lieu of, and not in addition to, the identically numbered provisions as contained in the RFP. For example, Section 20.110 contained herein, replaces Section 20.110 of the RFP in its entirety.

Section 20.110—Commonwealth E-Pay Gateway

The Commonwealth of Kentucky, as a part of its eGovernment initiative, developed the ePayment Gateway to act as a bridge between Commonwealth agency web-enabled applications, the Merchant Service Provider that processes payments initiated by the agency applications, and Kentucky’s Enhanced Management Administrative Reporting System (eMARS). The Commonwealth portal provider shall interface with this Gateway.

The Gateway was designed with the following goals:

- ✂ Provide a standard payment-processing interface to the Commonwealth’s Merchant Service Provider (MSP) as well as a virtual terminal that allows an agency without a Merchant Web Application to process payments. This helps minimize possible changes needed to each merchant web application in case the MSP changes
- ✂ Provide a system which allows for individual transactions to be easily traceable through the assigning of a unique ID to each
- ✂ Allow Merchants to reconcile real-time orders between agency applications and the Merchant Service Provider with payments made by the Merchant Service Provider to the Commonwealth’s bank
- ✂ Generate accounting documents to track all payments processed by the Merchant Service Provider

At the discretion of the Vendor and after consultation with Commonwealth Office of Technology (COT) and FAC, payment methods (credit cards, debit cards, ACH

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debits and electronic checks) for these transactions may be processed through the e-Payment gateway supported by FAC; or, for any non-executive branch cabinet, agency, board or commission, constitutional office or local government organization, transactions may be processed through Vendor's alternative Payment gateway supported by Kentucky Interactive. With the prior written approval of the Commonwealth, payments for transactions from any executive branch cabinet, agency, board or commission, or constitutional office may be processed through Vendor's e-Payment gateway. When Vendor's e-Payment gateway is selected, the parties shall finalize the scope and any technical specifications of such services through one or more SLA(s). The Commonwealth in no way guarantees any level of transaction or dollar volume by its agencies or affiliated organizations during the life of the Contract.

Section 30.150 Privacy, Confidentiality, and Ownership of Information

The Commonwealth is the designated owner of all data and documentation which it provides to the Vendor for use in the Portal operations ("Commonwealth Data and Documents") and the Commonwealth shall approve access to all Commonwealth Data and Documents. The Vendor shall not have ownership of Commonwealth Data at any time, and will act as a steward of all such data and documents. The Vendor shall retain ownership of all data related to its internal business operations. The Vendor shall comply with all applicable privacy policies established by governmental agencies or by Commonwealth or federal law. Privacy policy statements may be developed and amended from time to time by the Commonwealth, and will be appropriately displayed on the Commonwealth Portal (Ky.gov). The Vendor shall use commercially reasonable efforts to provide sufficient security to protect Commonwealth Data and customer agency data residing on Vendor's systems in connection with the operation of the Portal. The Vendor shall materially comply with the security and confidentiality procedures proposed in its response to Section 60.370 of the Request for Proposal under which this Contract was procured, including, without limitation, the procedures proposed to maintain the confidentiality of data in transit. The Vendor is not responsible for security for the networks, computer systems, telecommunications systems, and back-up systems operated by the Commonwealth, (including, without limitation, the Commonwealth Data Center and the Commonwealth Gateway) or to protect Commonwealth Data and customer agency data stored, cached or backed-up and residing on such systems.

Section 30.160— Identity Theft Prevention and Reporting Requirements

In the delivery and/or provision of Information Technology hardware, software, systems, and/or services through a contract(s) established as a result of this solicitation, the vendor(s) shall follow the procedures and requirements outlined

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in Section 30.150, above designed to prevent unauthorized access to “Identity Information” of Commonwealth citizens, clients, constituents and employees. “Identity Information” includes, but is not limited to, an individual’s first name or initial and last name in combination with any of the following information:

- ✂ Social Security Number;
- ✂ Driver’s License Number;
- ✂ System Access ID’s and associated passwords; and
- ✂ Account Information –such account number(s), credit/debit/ProCard number(s), and/or passwords and/or security codes.

The vendor(s) shall also immediately notify the contracting agency, the Office of Material and Procurement Services, and the Commonwealth Office of Technology upon learning of any unauthorized breach/access, theft, or release of Commonwealth data containing “Identity Information.”

For even a single knowing violation of these Identity Theft Prevention and Reporting Requirements, the vendor(s) agrees that the Commonwealth may terminate for default the contractor(s) and may withhold payment(s) owed to the vendor(s) in an amount sufficient to pay the cost of notifying Commonwealth customers of unauthorized access or security breaches.

Section 30.170 Software Development and Licensing

“Authorized Contractors” means contractors engaged by or on behalf of the Commonwealth to assist it in the Permitted Use of the Source Code and Portal Software, who have executed a written confidentiality agreement, in the form approved by Kentucky Interactive, LLC that protects the code from unauthorized use or disclosure.

“NIC Electronic Services” means services provided through hardware, software and network infrastructure hosted by NICUSA or its affiliates that enable applications developed for the Commonwealth Portal, to authorize and capture credit and debit cards for payments; to process all other forms of Electronic Funds Transfer, and to manage the registration, billing, and collection of funds, for certain Portal users of fee services and such other online services as may be from time to time developed by NICUSA or its affiliates outside of this Contract and made available to the Commonwealth through Kentucky Interactive.

“Permitted Uses” means use of the functionality of the software hosted on the Portal to permit users to access government information, governmental and other sites, and to perform certain Commonwealth of Kentucky governmental licensing, registration and similar transactions. The term “Permitted Uses” excludes any commercial sale, licensing or other transfer or use for commercial purposes.

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“Portal Software” means the application software modules created by Kentucky Interactive (or its affiliates) and deployed during the term of this Contract in the Commonwealth Portal and related user documentation, and includes any modifications or improvements to the Portal Software provided by Kentucky Interactive for use of the Portal; however Portal Software does not include software programs and related documentation licensed by Kentucky Interactive from third parties who are not affiliates of Kentucky Interactive. For the avoidance of doubt, the term “Portal Software” does not include any of the software, data, or information used in the NIC Electronic Services.

“Source Code” means the source code listings for a computer software program, and required compile instructions and, if code/data is encrypted, tools to access the code or data. Throughout this Contract where the term “software” “software application” or “Software” is used, such term means software in object code only, unless Source Code is specifically mentioned.

License Grant upon Termination for Cause or Expiration. Upon the termination of this Contract by the Commonwealth for Cause (as defined below), or upon expiration of this Contract upon completion of the full term, Kentucky Interactive shall grant to the Commonwealth a perpetual, For Use Only, fully paid-up, non-transferable, non-exclusive, license to host (in object code only), copy, modify, enhance, use, and execute the Portal Software for the Permitted Uses, subject to the limitations of this Contract. As used herein, the term “full term” shall mean the period ending at the natural expiration of the initial three (3) year term of the Contract, and at the end of any renewal term thereafter.

Specifically, subject to the above limitations, the For Use Only license gives the State the right to: (i) make copies of the Portal Software and Source Code, for archival, testing or back-up purposes, or for development of modifications and enhancements for the Permitted Uses; (ii) modify the Portal Software or Source Code as may be required or desirable for the maintenance or enhancement of the Portal Software for the Permitted Uses; (iii) load the Portal Software on any Commonwealth systems for the Permitted Uses; (iv) use Commonwealth employees or Authorized Contractors to maintain, repair, modify or enhance the Portal Software and Source Code for the Permitted Uses; and (v) allow Users access to the functions of the Portal Software (but not the Source Code) through the Portal solely for Permitted Uses. For the purposes of this Section “for Cause” means a material breach of this Contract by Kentucky Interactive, which breach is not cured within thirty (30) days from written notice from the Commonwealth, (or such longer cure period permitted by the Contract) which notice specifies the breach and specifies reasonable appropriate action that can be taken by Kentucky Interactive to avoid termination of the Contract.

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Option of the Commonwealth After Termination. Upon the termination by either party of the Contract pursuant to the terms thereof (other than termination by the Commonwealth for Cause or expiration at the end of the full term), the Commonwealth may, at its sole option, purchase a license to the Portal Software upon the payment of a mutually agreed to license fee. Such license shall be a perpetual, personal, fully paid-up, non-exclusive, non-transferable, For Use Only license, to host (in object code only), copy, modify, enhance, use, and execute the Portal Software and Source Code for the Permitted Uses, and such license agreement will contain limitations on use and disclosure similar to those contained in this Contract.

Escrow. During the term of the Contract, a copy of the Source Code and object code and documentation for the Portal Software will be escrowed by Kentucky Interactive, and the deposit updated quarterly or whenever a new version of the Portal Software is implemented on the Commonwealth Portal by Kentucky Interactive.

If permitted by the third party license, a copy of any third party software will be provided in the escrow and released in accordance with the escrow agreement.

Maintenance After Termination. Upon termination of the Contract, and at such time as Kentucky Interactive is no longer operating the Portal, any license to Source Code, Portal Software and Documentation becomes an “as is” license, and neither Kentucky Interactive nor its Affiliates are responsible for the operation of the Portal Software, or any modifications made by the Commonwealth or Third Parties.

Section 30.180 Perpetual Licensing Agreement

Commercial Off-The-Shelf (COTS) software provided by the Vendor to the Commonwealth shall be licensed under a perpetual license, whenever the third party vendor of such COTS software makes a perpetual license available without additional cost to the Vendor under its standard licensing terms. Kentucky Interactive will work with the Commonwealth to determine if the transfer of the COTS software to the Commonwealth is possible according to the license agreements of the third party upon termination of the Contract. All continuing software licensing and software assurance costs will also be transferred to the Commonwealth at such time. Notwithstanding any provision in this Contract to the contrary, Kentucky Interactive’s obligations with respect to COTS software shall be limited to transferring to the Commonwealth such license, warranties and indemnifications as permitted under Kentucky Interactive’s contract with the COTS software vendor. Any such transfer shall occur upon completion of the full

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term of the Contract, or upon termination of the Contract “for cause.”

Section 30.190 Access to Source Code (Escrow Code) via Software Escrow

The selected vendor(s) shall incorporate a “software escrow” provision that shall govern the process for maintaining the latest version of the software being provided under the contract(s). Any and all software components required to ensure ky.gov is operational and associated documentation including hardware requirements shall be referred to as “escrow code” enabling the Commonwealth to maintain and support this critical system, with a qualified and independent third-party (hereinafter “escrow agent”). Vendor will use commercially reasonable efforts to require any third party providing software which is developed specifically for the Vendor for use in the Portal and not based upon pre-existing software (“Custom Software”) to provide a copy of the current source code for such Custom Software for the escrow required under this Section, and the Commonwealth’s use of such source code will be subject to the terms and conditions of the third party license agreement. Notwithstanding any provision to the contrary, COTS software shall not be required to be escrowed unless permitted under the terms of the applicable third party license agreement.

The escrow agent shall be selected and mutually agreed upon by the Commonwealth and the Vendor(s), within thirty (30) days of contract(s) award. If such a condition is triggered, the escrow agent shall turn over the escrowed software to the Commonwealth in accordance with the procedures set out in the escrow agreement.

The conditions for triggering the escrow (also known as “escrow conditions”) shall include: (1) if the Vendor(s) ceases to do business (whether by bankruptcy, insolvency, merger, sale, assignment of assets, or any other reason); during the term of the Contract and Vendor or its successor does not continue performance of the Contract; (2) if the Contract is terminated because of an uncured material breach by Vendor or expires at the end of the full Contract term; (3) by mutual agreement of the parties to the Contract. As used herein, the term “full Contract term” shall mean the period ending at the natural expiration of the initial three (3) year term of the Contract, and at the end of any renewal term thereafter. Once the escrowed software is turned over to the Commonwealth, the Commonwealth shall have the right to modify the Portal Software in accordance with the license, for the use of the Commonwealth.

Within forty-five (45) days of contract(s) award, and on a quarterly basis thereafter, during the life of the contract(s), the Vendor(s) shall provide a copy of the latest available licensed Portal Software i.e. “escrow code” and related documentation to the independent escrow agent, for escrow. If the contract(s) is

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modified to make additional purchases from the Vendor(s), the Vendor(s) shall, within thirty (30) days of the effective date of the contract(s) modification, provide a copy of this additional “escrow” Portal Software and related documentation to the escrow agent, to supplement the escrow. The escrow shall also include a copy of any software and related documentation developed by third parties and provided under this contract(s), to the extent that the Vendor(s) is legally authorized to share a copy of such software for the purposes of escrow. Vendor shall be entitled to remove from escrow-superseded code and code no longer in use by the Commonwealth Portal. Failure to comply with these conditions shall be considered a material breach of the contract(s) and may result in adverse action against the Vendor(s), including payments being withheld, contract(s) suspension, or termination.

Section 30.205—Sale/Release of Citizen, Constituent, and Business Records

The Vendor(s) shall state in their proposal that they understand that under no circumstance shall any customer information collected through the portal registration process, application transactions and/or by any other means be sold or provided free of charge for use by the Vendor(s)/subcontractors or any other third party. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting the Vendor from providing such data free of charge (i) as required for Portal operations, maintenance and auditing; (ii) as permitted under the privacy policy, (iii) as necessary to enforce applicable Portal terms of use, or (iv) as otherwise required by law.

Section 30.210—Portal Availability and Location

The Commonwealth portal shall be operational and available to customers twenty-four (24) hours a day, seven days a week, 365 days per year and all infrastructure components of the portal shall be housed at the Commonwealth Data Center. The only exception will be for pre-defined systems administration and maintenance. Individual applications may be unavailable based on the individual agency legacy application operational schedule. Scheduled portal downtime must be coordinated with and approved by the Commonwealth with a minimum of fourteen (14) days advance notice prior to performing the scheduled downtime. Scheduled downtime shall be scheduled during off-peak hours. The Commonwealth normally schedules Internet downtimes from 2:00 a.m. to 4:00 a.m. on Sunday mornings.

Notwithstanding the foregoing, in the event of an emergency, in which Vendor reasonably believes that Portal integrity or data security could be compromised, or as otherwise permitted by the Commonwealth, Vendor may make the Portal or certain Portal applications unavailable, and will promptly notify the

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Commonwealth of such, while following procedures agreed to between the parties. The parties agree that Vendor shall not be responsible or liable to the Commonwealth or any other government agencies for any downtime caused by the Commonwealth, or the systems, network and software supplied by the Commonwealth, including, without limitation, the Commonwealth Data Center, the Commonwealth Gateway, as well as the E-Pay Gateway and E-Pay.

Section 30.225 – Commonwealth e-Payment Gateway

All payments with credit/debit cards processed through Ky.gov shall interface with and utilize this single Commonwealth Gateway for payment processing. Refer to Attachment 1, Item 4 for additional technical information about this facility.

Notwithstanding the foregoing, at the discretion of the Vendor and after consultation with Commonwealth Office of Technology (COT) and FAC, payment methods (credit cards, debit cards, ACH debits and electronic checks) for these transactions may be processed through the e-Payment gateway supported by FAC; or, for any non-executive branch cabinet, agency, board or commission, constitutional office or local government organization transactions may be processed through Vendor’s alternative Payment gateway supported by Vendor. With the prior approval of the Commonwealth, payments for transactions from any executive branch cabinet, agency, board or commission, or constitutional office may be processed through Vendor’s e-Payment gateway. When Vendor’s e-Payment gateway is selected, the parties shall finalize the scope and any technical specifications of such services through one or more SLA(s). The Commonwealth in no way guarantees any level of transaction or dollar volume by its agencies or affiliated organizations during the life of the Contract.

Section 30.230—Vendor(s) Revenue Sharing Requirement

The Commonwealth shall share in all net revenues, a minimum of 5%, collected by the Contractor(s) or from the Commonwealth Portal, to be paid quarterly into an account designated by the Commonwealth.

The revenue shall be restricted for use within the Executive Branch of government.

Any increase in the Commonwealth’s share of net revenues from the Portal above 5% shall be determined upon written mutual agreement between the parties.

Net Revenue Calculation/Revenue Sharing. Pursuant to the terms of this Section, Vendor shall pay the Commonwealth five percent (5%) of all net

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revenues collected by Vendor from the Commonwealth Portal, to be paid quarterly into an account designated by the Commonwealth in writing. As used in this section, net revenue is defined as gross revenues of the Commonwealth Portal less certain expenses, including statutory fees and any fees charged to Vendor by the Commonwealth or its agencies in support of the e-Government Portal (i.e. for example, Commonwealth Data Center hosting and support fees) merchant fees, call center costs and shipping charges.

Reduced to a formula, the Commonwealth's revenue share can be described as follows:

Net revenue = gross revenue – cost of sales

Cost of sales = statutory fees and fees charged by the Commonwealth to Vendor, merchant fees, call center costs and shipping charges

Revenue share = net revenue x 5%

Section 30.245—Hosting Turn Over Plan

At the conclusion of this contract(s), or at the end of any Contract(s) period should the Commonwealth not elect to renew, it will be necessary to turn over all operation and support of the portal to Commonwealth staff (or the Commonwealth's agent). A turn- over would also be necessary in the event that the Vendor(s) was cited for non-performance, which non-performance is not cured within the applicable cure period, under the terms of the Contract(s) resulting from this RFP. It is essential that both Vendor(s) and Commonwealth staff are prepared to transition the operation and support of the portal to the Commonwealth at any time. Accordingly, prior to production use of any facilities resulting from this contract(s) (new development or transitioned facility), the Vendor(s) shall develop and provide a Hosting Turn-Over Plan, to be approved by the Commonwealth. This plan shall be updated annually for the duration of the Contract(s). This plan shall describe, in detail, the process the Vendor(s) will use to turn over all hosting services and support to Commonwealth staff (or the Commonwealth's agent) whenever necessary. The Hosting Turn-Over Plan shall:

1. Identify and document all equipment that the Commonwealth would have to purchase in order to duplicate the Vendor's secure server configuration.
2. Specify all software that would need to be acquired and the licensing terms and pricing for acquiring the necessary software, whether from the Vendor(s) or any other software provider.
3. Include documentation as to how the software and hardware should be configured in order to successfully operate the portal.

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4. Specify staff resources the Vendor(s) is willing to commit to ensure a successful turn over.

5. Estimate the Commonwealth staffing requirements to support the system, i.e. skill levels, FTE's etc.

At the end of the turn over (or transition) period, all Commonwealth records, including working papers and operational documentation required for the operation of the Portal, shall be made available by Vendor under the terms and conditions of this Contract, and as provided in the Hosting Turn-Over Plan. Vendor shall be permitted to maintain an archival copy of Portal transaction data and other data pertinent to its operations, which it may use to enforce or defend its Contract rights. If Vendor retains any data subject to the Commonwealth's confidentiality laws, Vendor agrees that it will comply with such laws in its retention of the data, and that the obligation to so comply will survive termination of the Contract authorized herein.

Section 30.260— Account Staffing Requirements

The Vendor shall provide a Portal Manager for managing the Commonwealth relationship. The Portal Manager will serve as the primary point of contact between the Commonwealth teams and the Vendor and the Vendor's sub-contractors. This designated point of contact shall be accessible 24 hours a day to assist the Commonwealth with emergency situations. If the primary point of contact is not available, a secondary point of contact must be provided. The primary contact person must be available on an as needed basis to discuss contract, service and equipment related issues. The Portal Manager shall be available through local and/or toll-free service. Once assigned to the Commonwealth project, the Portal Manager will not be removed from the project without the prior written consent of the Commonwealth, which consent shall not be unreasonably withheld, except consent is not required if the removal is for "cause" or negative performance reasons. If Vendor removes the Portal Manger for "cause" or for negative performance reasons, it shall provide the Commonwealth with prior written notice of the same. The Commonwealth shall have the right to request the removal and replacement of the Contractor Portal Manager.

Section 60.350—Portal Availability and Routine Maintenance

The Commonwealth portal shall be operational and available to customers twenty-four (24) hours a day, seven days a week, 365 days per year. The only exception will be for pre-defined systems administration and maintenance. Individual applications may be unavailable based on the individual agency legacy application operational schedule. Scheduled portal downtime must be

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coordinated with and approved by the Commonwealth with a minimum of fourteen (14) days advance notice prior to performing the scheduled downtime. Scheduled downtime shall be scheduled during off-peak hours. The Commonwealth normally schedules Internet downtimes from 2:00 a.m. to 4:00 a.m. on Sunday mornings. Vendors shall describe their approach and experience on portal availability and the scheduling of routine maintenance downtime.

Notwithstanding the foregoing, in the event of an emergency, in which Vendor reasonably believes that Portal integrity or data security could be compromised, or as otherwise permitted by the Commonwealth, Vendor may make the Portal or certain Portal applications unavailable, and will promptly notify the Commonwealth of such, while following procedures agreed to between the parties. The parties agree that Vendor shall not be responsible or liable to the Commonwealth or any other government agencies for any downtime caused by the Commonwealth, or the systems, network and software supplied by the Commonwealth, including, without limitation, the Commonwealth Data Center, the Commonwealth Gateway, as well as the E-Pay Gateway and E-Pay.

Section 60.370— Security and Authentication Services Sections

Vendors shall fully describe their approach to portal security, including but not limited to, the use of firewall hardware and software and how these would be configured in their network. The Vendor(s) shall submit a narrative response to each of the labeled sections on the diagram explaining how their proposal addresses that element of the security infrastructure. Vendors shall describe how they would:

1. Assure confidentiality of data:
 - a. In transit – provide the ability to execute secure, authenticated, two-way transactions as well as ensuring that all other data is encrypted beyond the reasonable threat of a successful brute force attack.
 - b. In storage – ensure that confidential data in databases from which public data is being extracted will not be compromised.

2. Assure integrity of data – determine how to maintain data integrity and users’ confidentiality and privacy; handle legal issues with regard to misuse or fraud and options for resolution.

3. Maintain access control – determine method needed to prohibit users from accessing data or computer facilities unless such access was expressly approved by the data owner agency and the Commonwealth’s Portal Manager.

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4. Provide authentication – determine how to provide flexible and robust user authentication services, which may include web authentication, privilege management and extra-net access management services. In some instances, the state would expect only weak authentication with user registration in order to access portal services. Where additional security and control is required, multi-factor, strong authentication services may be appropriate.

5. Provide audit capabilities – implement date-time stamp and an audit trail for identifying all network security breaches and attempted breaches; implement penetration analysis and intrusion detection policies to ensure that the portal remains as secure as possible over time.

The Vendor(s) shall provide a minimum threshold of network, server, and transaction security concerning each part of the diagram in the Sample Network Topology Diagram. For transmissions between a customer and the portal, the Commonwealth requires data confidentiality, i.e. through the use of a standardized and widely distributed tool such as Secure Socket Layer (SSL). For transmissions between the portal and a Commonwealth Merchant Services facility, the Commonwealth requires data confidentiality, integrity, and non-repudiation of the transaction. The Commonwealth mandates that the transaction be protected in transit through the use of either private leased-lines, or virtual private networks (VPNs). Full audit trails shall be maintained throughout the entire transaction lifetime. For transmissions between portal developers and the portal, all authentications must be strong and dual-factor involving some form of hard token or biometric device. Access control shall also be strictly enforced and audited. A rigorous change management and configuration management process shall be designed to insure security and availability. Data transmissions between the portal and agency data bases will depend on the physical layout proposed by the Vendor(s), but at a minimum should include extensive access control, authentication, and confidentiality tools.

Any and all remote administration of the portal hardware, operating system, or application software shall require the use of strong, dual-factor authentication techniques such as token based or challenge-response methods. As future business-to-business and business-to-consumer e-Government transaction models are developed, there may be a need to support client side Public Key Infrastructure (PKI) certificates both for access control and for authentication. Describe in specific terms how the proposed solution will facilitate the use of this technology.

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The Vendor(s) shall take into consideration that the number of potential customers for some future portal services could be quite large. Vendor(s) proposals shall adequately describe how their proposed solutions for security and authentication will scale to varying levels of use of portal services.

It is the Commonwealth's intent for a business or individual to need only one digital certificate from the Commonwealth. Therefore, the portal Vendor(s) and the Commonwealth must utilize the same PKI infrastructure. The Vendor(s) shall be required to use the Commonwealth's existing process for server certificates and PKI for any Commonwealth applications requiring this capability. The Vendor(s) shall be required to authenticate users of the Commonwealth's applications. Vendors shall describe how they would meet this requirement and ensure that portal transactions can be authenticated.

The Vendor(s) shall also be required to support applications that require PKI capability, where the digital certificates are not issued by the Commonwealth (i.e., local government or higher education). Vendors shall describe how they would provide PKI capability to applications for these organizations.

For payment transactions made through Internet sites, the Vendor(s) shall ensure that card numbers, name, address, and expiration dates are secured through encryption, authentication, and other standard payment card operating procedures to ensure that card information remains secure. The Vendor(s) shall prohibit users from accessing Commonwealth data unless such access is expressly approved by the Commonwealth. The Vendor(s) shall maintain and ensure data integrity, and user confidentiality and privacy.

The proposals shall describe how the Vendor(s) will interface with existing Commonwealth directory servers for authentication if an application required this capability.

Vendors should also note that the Commonwealth's access control and security environment is evolving. It is likely that access to certain network segments will be more restrictive in the future. The Vendor(s) shall have to adapt systems and transport changes as the environment evolves.

The Commonwealth hereby agrees that the procedures proposed by Vendor in its response to the RFP satisfy the requirements of this Section 60.370. Such procedures are incorporated fully herein by reference, and Vendor agrees that it will materially comply with those procedures. Each party understands that the procedures may be required to evolve as the environment evolves.

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IV. Terms and Conditions

Section 40.000—Final Agreement

The Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

Section 40.010—Agencies to Be Served

This contract shall be for use by the following agencies of the Commonwealth of Kentucky:

All State Agencies

Section 40.020—Political Subdivisions

Under Kentucky Statutes, political subdivisions of this State including cities, counties and school districts may participate in All State Agency Master Agreements to the same extent as agencies of the Commonwealth.

Section 40.030—Contract Provisions

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

Section 40.040—Term of Contract and Renewal Options

The initial term of this Contract shall be for a period of **three (3) years** from the effective date of the Award of Contract.

This Contract may be renewed at the completion of the initial Contract period for **three (3) additional one (1) year periods** upon the mutual agreement of the Parties. Such mutual agreement shall take the form of an addendum to the Contract under Section 40.060—Changes and Modifications to the Contract.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the

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Commonwealth.

Section 40.050—Multiyear Contracts

If this Contract is for a term that extends beyond the end of the biennium in which the Contract was made, payment and performance obligations for succeeding fiscal years are subject to the availability of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance of the Contract beyond the biennium, the Contract for such subsequent year(s) may be canceled and the Contractor shall be reimbursed in accordance with Section 40.240—Provisions for Termination of the Contract.

Section 40.060—Changes and Modifications to the Contract

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

Section 40.070—Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in Section 40.060—Changes and Modifications to the Contract.

Section 40.080—Contract Conformance

If the Commonwealth Buyer determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

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Section 40.090—Assignment

The Contractor shall not assign the Contract in whole or in part or any payment arising therefrom without the prior written consent of the Commonwealth Buyer. Any purported assignment is void.

Section 40.100—Notices

After the Award of Contract, all programmatic communications with regard to day-to-day performance under the Contract are to be made to the Agency technical contact(s) identified below:

Tommy Case
 Division of IT Governance
 Office of Enterprise Technology
 120 Glens Creek Road
 Frankfort, KY 40601
 502-564-1250
 Tommy.Case@ky.gov

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Commonwealth Buyer.

Section 40.110—Payment

The Commonwealth will make payment within thirty (30) business days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person or his representative.

Section 40.120—Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

Section 40.130—Subcontractors

The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely

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responsible for performance of the entire Contract whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

Section 40.140—Contractor Affiliation

"Affiliate" shall mean a branch, division, or subsidiary that is effectively controlled by another party. If any affiliate of the Contractor shall take any action that, if done by the Contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

Section 40.150—Commonwealth Property

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connection with the performance of this Contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

Section 40.160—Insurance

The Contractor shall provide professional liability insurance for its professional employees, public liability, property damage, and workers' compensation insurance, insuring, as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the Contractor's operations under the terms of this Contract. In the event any carrier of such insurance exercises cancellation, notice of such cancellation shall be made immediately to the Commonwealth Buyer.

Section 40.170—Confidentiality of Contract Terms

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of the Contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of the Contract by all Parties, terms of the Contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Contractor shall have an appropriate agreement with its Subcontractors

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extending these confidentiality requirements to all Subcontractors' employees.

Section 40.180—Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- Information which the Commonwealth has released in writing from being maintained in confidence;
- Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- Information, which, after disclosure, becomes part of the public domain as defined above, thorough no act of the Contractor.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

Section 40.190—Advertising Award

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

Section 40.200— Patent or Copyright Infringement

The Contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

The Commonwealth agrees to notify the Contractor promptly, in writing, of any such claim, suit or proceeding, and at the Contractor's expense give the Contractor proper and full information needed to settle and/or defend any such claim, suit, or proceeding.

If, in the Contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the

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Contractor's obligation to satisfy any final award, the Contractor may, with the Commonwealth's written consent, substitute other equally suitable equipment, materials, and information, or at the Contractor's options and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

The Commonwealth agrees that the Contractor has the right to defend, or at its option, to settle and the Contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the Contractor to the Commonwealth under this agreement. The Contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the Contractor.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the Contractor's written consent.

The Contractor shall have no liability for any infringement based upon:

- the combination of such product or part with any other product or part not furnished to the Commonwealth by the Contractor
- the modification of such product or part unless such modification was made by the Contractor
- the use of such product or part in a manner for which it was not designed

Section 40.210—Permits, Licenses, Taxes and Commonwealth Registration
The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

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Section 40.220—Contract Claims

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

Section 40.230—Rights and Remedies

The rights and remedies of the Commonwealth provided in Section 40 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

Section 40.240—Provisions for Termination of the Contract

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312. <http://www.lrc.ky.gov/kar/200/005/312.htm>

Section 40.250—Bankruptcy

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

Section 40.260—Conformance with Commonwealth & Federal Laws/Regulations

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state or federal court in Franklin County, Kentucky.

Section 40.270—Recycling

The Contractor is required to comply with the recycling requirements of 200 KAR 5:330.

Section 40.280—Funding Limitations

If any or all responses received exceed the amount of funding available, then the Finance and Administration Cabinet, Office of Procurement Services, reserves the right to cancel this RFP.

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Section 40.290—Accessibility

Contractor hereby warrants that the products or services to be provided under this Contract comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor further warrants that the products or services to be provided under this Contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the Contractor's products or services may be covered by that act. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

V. Price

The following fees shall be applicable to the services provided under this Contract, including for projects and/or services that fall outside of the self-funded model, such as, for example, in the event an agency application becomes such a priority that it cannot wait for Contractor's web application development resources funded through the self-funded model.

Professional Services	Fully Loaded Hourly Rates
Project Management	\$78.00
Analysis, Design, and Creative Services	\$60.00
Web Application Development Services	\$78.00
Marketing Services	\$78.00
Security Services	\$72.00
Integration Services	\$72.00
Operation Support	\$78.00

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Don Speer
Printed name

Executive Director
Title

Signature

Date

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To the extent that this contract or grant involves the use of American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (“ARRA”) funds, the following terms and conditions apply. As used in this Section, “Contractor/Grantee” means the contractor or grantee receiving ARRA funds from the Commonwealth of Kentucky (“Commonwealth”) under this agreement.

- 1. The Contractor/Grantee specifically agrees to comply with each of the terms and conditions contained herein.*
- 2. Contractor/Grantee understands and acknowledges that the federal stimulus process is still evolving and that new requirements for ARRA compliance may still be forthcoming from federal government and the Commonwealth of Kentucky. Accordingly, Contractor/Grantee specifically agrees that both it and subcontractors/subgrantees will comply with all such requirements during the contract period.*

AVAILABILITY OF FUNDING

Contractor/Grantee agrees that programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed appropriations once the temporary federal funds are expended.

BUY AMERICAN REQUIREMENT

Contractor/Grantee agrees that in accordance with ARRA, Section 1605, neither Contractor/Grantee or its subcontractors/subgrantees will use ARRA funds for a project for the construction, alternation, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor/Grantee understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

CONFLICTING REQUIREMENTS

Contractor/Grantee agrees that, to the extent ARRA requirements conflict with Commonwealth of Kentucky requirements, the ARRA requirements shall control.

FALSE CLAIMS ACT

Contractor/Grantee agrees that it shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subgrantee, subcontractor or other person has committed a false claim under the False Claims Act or

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has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

ENFORCEABILITY

Contractor/Grantee agrees that if Contractor/Grantee or one of its subcontractors/subgrantees fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the Commonwealth of Kentucky may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the Commonwealth of Kentucky under all applicable state and federal laws.

INSPECTION OF RECORDS

Contractor/Grantee agrees that it shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor/Grantee or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

JOB POSTING REQUIREMENTS

Section 1512 of the ARRA requires states receiving stimulus funds to report on jobs created and retained as a result of the stimulus funds. Contractors/Grantees who receive ARRA funded contracts are required to post jobs created and retained as a result of stimulus funds on the Commonwealth of Kentucky Job Bank at: <https://e3.ky.gov/>

PROHIBITION ON USE OF ARRA FUNDS

Contractor/Grantee agrees that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

REPORTING REQUIREMENTS

Pursuant to Section 1512 of the ARRA, state agencies receiving ARRA funds must submit a report to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain the information outlined below.

Accordingly, Contractor/Grantee agrees to provide the Commonwealth with the following information in a timely manner:

- a. The total amount of ARRA funds received by Contractor/Grantee during the

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- Reporting Period;
- b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
 - c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:
 - i. the name of the project or activity;
 - ii. a description of the project or activity;
 - iii. an evaluation of the completion status of the project or activity; and
 - iv. an estimate of the number of jobs created and the number of jobs retained by the project or activity;
 - d. For any subcontracts or subgrants equal to or greater than \$25,000:
 - i. The name of the entity receiving the subaward;
 - ii. The amount of the subaward;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or
 - v. Catalog of Federal Domestic Assistance (CFDA) number;
 - vi. Program source;
 - vii. An award title descriptive of the purpose of each funding action;
 - viii. The location of the entity receiving the subaward;
 - ix. The primary location of the subaward, including the city, state, congressional district and country; and
 - x. A unique identifier of the entity receiving the sub-award and the parent entity of Contractor/Grantee, should the entity be owned by another.
 - xi. The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; and 2) \$25M or more in annual gross revenue from Federal awards.
 - e. For any subcontracts or subgrants of less than \$25,000 or to individuals, the information required in 4 may be reported in the aggregate and requires the certification of an authorized officer of Contractor/Grantee that the information contained in the report is accurate.
 - f. Any other information reasonably requested by the Commonwealth or required by state or federal law or regulation.

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov.

SEGREGATION OF FUNDS

Contractor/Grantee agrees that it shall segregate obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled

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with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

SUBRECIPIENT REQUIREMENTS

Contractor/Grantee agrees that it shall include these standard terms and conditions, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

WAGE REQUIREMENTS

Contractor/Grantee agrees that, in accordance with Section 1606 of the ARRA, both it and its subcontractors shall fully comply with this section in that, notwithstanding any other provision of law, and in a manner consistent with the other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in the Commonwealth of Kentucky are located at: <http://www.gpo.gov/davisbacon/ky.html>

WHISTLEBLOWER PROTECTION

Contractor/Grantee agrees that both it and its subcontractors/subgrantees shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractor/Grantees of ARRA funds, including the Commonwealth of Kentucky, and all contractors and grantees of the Commonwealth of Kentucky, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. Contractor/Grantee agrees that it and its subcontractors/subgrantees shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.