

SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement (“Agreement”), dated Sep 17, 2015, is entered into between V Group Inc. (“Subcontractor”), located at 379 Princeton Hightstown Rd.Bldg 3.Suite 2A Cranbury, NJ 08512 Telephone # 609-371-5400 Tax ID # 52-2175892 and **OST, Inc.** a District of Columbia Corporation (“Prime Contractor” or “OST”), with offices at **2101 L St NW, Suite 800, Washington, DC 20037**, tax identification number **52-2175314** (together, the “Parties”).

1. OVERVIEW

The Prime Contractor is under contract 4400014660 (“Contract”) with the Commonwealth of Pennsylvania (“End Customer” or “Commonwealth”) acting through its Governor’s Office of Administration (“OA”), to supply Information Technology Staff Augmentation (“ITSA”) Services to the Commonwealth as its Managed Service Provider (“MSP”). The Subcontractor is an independent contractor interested in supplying personnel as a direct source of technical talent in order for the Prime Contractor to perform the contract. By entering into this Agreement, Subcontractor and Prime Contractor intend to be legally bound to the terms within. The relationship of Subcontractor and Prime Contractor is independent, and no employee-employer relationship exists between the parties. It will be a business decision of each Subcontractor whether to participate in **ANY** or **ALL** requests for Resources distributed to the Subcontractor. The term of the subcontract shall be from the date of final signature to September 30, 2017.

A. Scope

The tasks to be performed by Subcontractor for Prime Contractor under the terms of this Agreement are to assist the Prime Contractor in performing the contract. Staff Augmentation services are the goals of the Commonwealth of Pennsylvania, and OST is to provide personnel as directed. The categories of labor and ceiling prices are set forth in this document.

B. Definitions

The following terms are used throughout this contract:

- i. A Candidate is a person whose resume is submitted by a Subcontractor to fulfill a specific Requisition.
- ii. A Candidate Submission Form consists of information about the Candidate entered into PeopleFluent VMS, including the Candidate’s resume and the application form describing the Candidate.
- iii. A Resource is a Candidate who is engaged on assignment under this contract.
- iv. A Commonwealth Hiring Manager is a Commonwealth Full Time Employee (FTE) authorized by the Commonwealth to make hiring decisions under the Contract.
- v. A Requisition is a request for a Resource.
- vi. The ITSA Subcontracting Vendor Network consists of all Subcontractors with active Subcontracts under the ITSA Contract.
- vii. PeopleFluent VMS is the Vendor Management System (VMS) that the Parties and the End Customer will use to conduct and record major operations under this Agreement, including, among other things, publishing Requisitions to Subcontractors, receiving Candidate resumes from Subcontractors, recording Candidate evaluations by the End Customer, and selecting Resources.
- viii. Developed Works or Developed Materials are, except for Subcontractor’s internal communications relating to Services of this Agreement that are not delivered to the Commonwealth, all documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other literary works, works of authorship, or tangible material authored or prepared by Subcontractor in carrying out the obligations and services under this Agreement, without limitation. The terms are used herein interchangeably.

C. Performance Measures

The Prime Contractor shall use Performance Measures set forth in Paragraph 12 to determine the Subcontractor’s continued eligibility to participate in the Agreement.

D. Job Categories and Rates

The Resource(s) provided shall conform to the descriptions, prices and requirements set forth in the following Attachments to this Agreement:

Attachment A (“Subcontractor Vendor Rate Card”)

Attachment B (“Job Titles and Skill Categories”)

E. Modifications to Job Categories

The Prime Contractor and Commonwealth reserve the right to add, remove, and/or modify job titles, skill categories and position descriptions found in Attachment B, Job Titles and Skill Categories according to current market situations, such as moving previous skills to a more mature skill category, or adding new technologies to the appropriate skill category. The Prime Contractor and End Customer will monitor the changing technology environment and will make changes to job titles, skill categories and position descriptions, and may implement changes based on current market conditions.

The Prime Contractor will send notice to the Subcontractor at least thirty (30) days prior to the date that changes are to be effective.

F. Modifications to Rates

The pricing, as described in Attachment A, will remain as not-to-exceed rates for the initial twelve (12) months of the Prime Contract. Sixty (60) days prior to that date, the Commonwealth will meet with the Prime Contractor to conduct a review of the rate card based on market conditions and update pricing at the Commonwealth’s sole discretion. Following the first review, the Commonwealth and the selected Offeror will repeat this review process quarterly. The Commonwealth may update pricing at its sole discretion.

G. Exception Job Category and Rates

An exception job category may be used when an agency has a need for IT staff augmentation services that are not included in the current list of job titles and skill categories or rates. Exception job categories and rates must be approved by the requesting Commonwealth Agency’s CIO and the OA Contract Manager prior to the use of the category. Prior to the approval of an exception job category and rate, the agency must demonstrate they have made an effort to classify a Requisition under the current job titles and skill categories or rates, and the agency has requested the Prime Contractor to survey the network of qualified subcontractors to validate the job title, skill classification and rate.

2. TASK, STARTING DATE, TERM AND WORKPLACE

A. Tasks

The work (the "Tasks") to be performed by Subcontractor, providing the categories of labor available for the End Customer for Prime Contractor along with not-to-exceed rates, is described in Attachment A and Attachment B. The workplace for the Resource obtained under this Subcontract shall be at the End Customer site unless otherwise specified in the task order authorizing the work

B. Initial Term

The initial term of the Agreement shall be from the date of the final signature (“Effective Date”) to **September 30, 2017**, subject to the Prime Contractor’s option to extend the term of the Agreement in accordance with Paragraph C below.

C. Option to Extend Agreement

The Parties may, by mutual consent, extend the term of the Agreement. Each extension shall be one (1) year from the expiration of the previous term, or for another period of time as directed by the End Customer. The prices for the extension period shall be set as specified in the Contract.

The total duration of this Agreement, including any extensions under this provision, shall not exceed the term of the ITSA Prime Contract.

D. Task Order Extension Rate Adjustment

The Prime Contractor, at its discretion, may extend an existing task order for a Resource.

If the not-to-exceed rates of the Contract have been adjusted since the original task order or initial extension was issued, the Prime Contractor will adjust the hourly rate on the extension by the same percent as the not-to-exceed rate was adjusted for the Job Category on the Requisition.

E. Purchase Orders

The Commonwealth may issue Purchase Orders against the Contract. These orders constitute the Prime Contractor's authority to make delivery. All Purchase Orders received by the Prime Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Prime Contractor is not permitted to accept Purchase Orders which require performance in excess of those performance time periods specified in the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.

The Prime Contractor shall not be liable to pay the Subcontractor for any supply furnished or work performed or expenses incurred before the Effective Date of this Agreement or before the Contractor has received a Purchase Order. No Commonwealth employee or Prime Contractor employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Agreement prior to the Effective Date or prior to the issuance of a Purchase Order. Purchase Orders may be issued using funds restricted to use within the current Commonwealth fiscal year. The start date and end date of performance authorized for the Resource will be included in the Engagement record in PeopleFluent VMS.

Resources' hours worked must not exceed the hours on the PO without agency approval. Hours which exceed the PO limit without an approved change to the PO will not be paid.

3. COMPENSATION TO SUBCONTRACTOR

The Prime Contractor shall pay to Subcontractor the hourly rate the Subcontractor offered for each Resource multiplied by the number of hours approved by the End Customer. This amount shall be all-inclusive and shall not be increased by any amount. The Prime Contractor and the End Customer will not pay for any costs in addition to the rate for the appropriate job title and skill category for a resource to perform his or her duties during an engagement with the Commonwealth. This includes, but is not limited to, training, certifications, parking, background checks and security badges.

No overtime premiums will be paid to the Subcontractor for work which is performed after normal business hours. All hours worked during an engagement will be paid in accordance with the rate for the appropriate job title and skill category for the resource's job title and skill category.

The Subcontractor shall be compensated only for work performed to the satisfaction of the Commonwealth. Satisfaction of the Commonwealth is indicated by the approval of timesheets by the Commonwealth Agency Hiring Manager.

Travel expenses will be paid in accordance with the Commonwealth Management Directive 230.10 only if preapproved by the agency and the Contract Manager. The travel expenses must be reflected on the PO in order to receive payment. The Commonwealth requires that the Subcontractor provide resources to meet Commonwealth needs at various locations requested by agencies without the need for significant travel on the part of the resource. Therefore, the Commonwealth will not reimburse the selected Offeror for travel, meals, lodging or other expenses except when the Commonwealth requires an engagement to travel outside the requested location. See the following webpage for a copy of the management directive: http://www.portal.state.pa.us/portal/server.pt?open=512&objID=711&PageID=228891&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/cop_general_government_operations/oa/oa_portal/omd/p_and_p/management_directives/management_administrative_support/items/md230_10.html.

Notwithstanding the foregoing, in no event shall the fees payable to Subcontractor on any task order exceed the designated maximum amount specified in each task order without the express written consent of Prime Contractor.

4. TIME REPORTING AND INVOICES

A. Time Reporting

Subcontractor shall require each Resource to report hours worked according to instructions from the End Customer. Resources shall record time in the timesheet module of the PeopleFluent VMS. Commonwealth Hiring Managers shall approve time in the timesheet module of the PeopleFluent VMS. Only time recorded in PeopleFluent VMS shall be considered as authorization for invoice from Prime Contractor to End Customer; and Subcontractor to Prime Contractor. No other method of recording time or approving time shall be accepted.

B. Invoices

Subcontractor is not required to submit invoices to Prime Contractor. The basis for any payment owed to the Subcontractor is the approved time and/or approved expenses in the PeopleFluent VMS system. Subcontractor shall have real-time access to all timesheets and expense reports entered into the VMS, including the status of the items to include “missing”, “submitted”, “approved”, or “rejected”. Subcontractor shall have access to generate reports in the PeopleFluent VMS to validate the hours approved for invoice.

All sums to be paid to the Subcontractor shall be captured via an invoice from the Prime Contractor to the Commonwealth. The Prime Contractor shall publish a schedule of invoices to Subcontractor. The delivery of invoices to the End Customer shall occur on at least a monthly basis. Timesheets not entered by Resources or timesheets not approved by the End Customer prior to the defined invoice delivery date shall NOT be invoiced until the next invoice delivery date following their approval. Payments shall not be required to the Subcontractor for any time or expenses that do not meet the invoice delivery date. Prime Contractor is not responsible for timesheets missing invoicing dates due to delays of approval from Commonwealth. Subcontractor is responsible for ensuring prompt and accurate time entry by Resources.

5. PAYMENTS

A. Electronic Payments

The Prime will make contract payments through the Automated Clearing House (ACH). Within 10 days of execution of the Agreement, the Subcontractor must submit or must have already submitted its ACH information to the Prime Contractor in a format specified by the Prime Contractor. It is the responsibility of the Contractor to ensure that the ACH information on file is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

B. Payment Terms

Payment to Subcontractor is subject to timely payment from the End Customer. Subcontractor shall select from one of the two following Payment Terms options:

- i. **Net-45 Option:** Prime Contractor shall use its best efforts to pay Subcontractors for all approved time and/or expenses that have been invoiced to the Commonwealth within 45 calendar days from the date of receipt and validation of such invoice by the End Customer.
- ii. **Net-15 Option:** Prime Contractor shall use its best efforts to pay Subcontractors for all approved time and/or expenses that have been invoiced to the Commonwealth within 15 calendar days from the date of receipt and validation of such invoice by the End Customer. This payment option is subject to a charge of one percent (1%) of the invoice amount to be retained by Contractor.

6. SMALL DIVERSE BUSINESS PARTICIPATION

The Prime Contractor has made commitments to Small Diverse Business (“SDB”) with the Department of General Services’ Bureau of Small Business Opportunities (“BSBO”) and shall complete a Prime Contractor’s Quarterly Utilization Report and submit it to OA and BSBO on or before the date which is ten (10) Business Days following the end of each calendar quarter during the Term.

Subcontractors registered with BSBO as an SDB shall receive Requisitions according to Section 7 of this Agreement.

BSBO is the sole entity responsible for determining the criteria for SDB and the sole entity responsible for certifying Subcontractors as SDB.

SDB Subcontractors are required to perform at least fifty percent (50%) of the work assigned to them under the Agreement. If an SDB Subcontractor exceeds or is close to exceeding the fifty percent (50%) threshold, the Prime Contractor shall consider that SDB as a Non-SDB under the terms of Section 7 of this Agreement.

Each SDB has a duty to report any change in status to the Prime Contractor and provide a date when any problem will be resolved to the satisfaction of the Commonwealth of Pennsylvania. In the interim period said Subcontractor may be ineligible to provide new resources under this Agreement. In the case that BSBO determines the Subcontractor has failed to or cannot otherwise remedy the problem, Subcontractor Resources may be removed from assignment at Prime Contractor's discretion. Failure to report a change in status shall be grounds for termination.

7. ELIGIBILITY TO RECEIVE REQUISITIONS

The ITSA Subcontracting Vendor Network will be administered by Prime Contractor. For each Requisition, Prime Contractor will first solicit Candidates only from Small Diverse Business (SDB) Subcontractors in Active Status as defined in the Performance Standards of Paragraph 12. Each Subcontractor is limited to submit the maximum number of Candidates per opening as indicated on a Requisition. The End Customer at its sole discretion may select a Resource from the Candidates submitted. If the End Customer does not select a Resource, then the Prime Contractor may re-solicit Candidates and may solicit from both SDB and non-SDB Subcontractors.

8. SPECIFIC RESOURCE REQUESTS/DIRECTED AWARDS

The End Customer may request a specific Resource from a Subcontractor. Requisitions for specific Resources will be distributed only to the Subcontractor that represents the requested Resource. SDB status is not a qualifying factor in the Specific Resource Request process, and the directed awards issued via the Specific Resource Request process are not considered in the Prime Contractor's achievement of SDB Commitments in Section 6. Specific Resource Requests must be approved by the requesting Commonwealth Agency's CIO or designee. Specific Resource Requests are granted in the following cases:

- i. The resource has performed as a subject matter expert on a custom application or within a similar business environment within the last five (5) years.
- ii. The resource has a specific skill set required by an agency, e.g., an organization implements a new software product and an agency needs support that is not covered under an existing software contract.
- iii. The resource is required due to an emergency situation.

9. CANDIDATE SUBMISSION REQUIREMENTS

Subcontractors must obtain Candidate's assurances that he or she is able to work for the entire duration of the Requisition prior to submittal.

Subcontractors shall obtain permission from each Candidate to submit the Candidate's resume and shall make reasonable efforts to ensure that the candidate is available for interview with and service to the End Customer.

Both the Candidate's commitment to work for the entire duration of the Requisition and Candidate's permission to submit shall be documented using a standard "Right to Represent" or "RTR" template provided by Prime Contractor and submitted by the Subcontractor with the Candidate Application Form.

Subcontractor must disclose if any candidate is a former employee of the Commonwealth. Any former Commonwealth employee must be in compliance with all applicable laws and policy, including specifically the Pennsylvania Public Official and Employee Ethics Act.

Commonwealth Requisitions may require the Subcontractor Resources to access confidential and/or secure data. Prior to the start of an engagement, Resources may be required to sign a confidentiality statement.

Resources may be required to purchase a security badge to gain access to buildings or work areas at the selected Subcontractor's expense.

Limitations on Subcontractor Tiers: All candidates submitted by Subcontractor must have a W-2 or 1099 relationship with Subcontractor, or be no more than one (1) contracting layer removed from Subcontractor. If instances of additional layering are discovered, Contractor will engage the candidate through the W-2 or 1099 Subcontractor. All employer and/or contracting details must be reported accurately within the VMS system.

10. CANDIDATE SUBMISSION PROCESS

Prime Contractor shall release all Requisitions to Subcontractors using PeopleFluent VMS.

Each Requisition will indicate a Candidate submission deadline. Subcontractors must submit Candidate resumes through PeopleFluent by **6:00 PM EST/EDT** on the day of the deadline. Candidates submitted after the deadline shall be rejected without further review. The standard deadline shall be on the third working day following the release of the Requisition. End Customer may determine a shorter submission deadline, such as one business day, at End Customer's discretion.

11. BACKGROUND CHECK

A. Requirement for Background Check

The Subcontractor must, at its expense, arrange for a background check for all Resources placed on assignment, as well as the employees of any of its subcontractors, who will have access to Commonwealth locations and/or data, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure for Pennsylvania Access to Criminal History ("PATCH") found at <https://epatch.state.pa.us/Home.jsp>. The background check must be conducted prior to initial access and on an annual basis thereafter.

Before the Commonwealth will permit access to the Subcontractor's Resources, the Subcontractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that an employee of the Subcontractor or an employee of a subcontractor of the Contractor has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Subcontractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Subcontractor to comply with the terms of this Section on more than one occasion or Subcontractor's failure to cure any single failure to the satisfaction of the Commonwealth may result in the Subcontractor being deemed in default of its Agreement

Unauthorized access by any employees or resources placed by the Subcontractor may result in immediate removal of such employees or resources and civil actions or criminal prosecutions.

The Commonwealth specifically reserves the right of the Commonwealth to conduct or require background checks over and above that described herein.

B. Certification of Background Check

Before the scheduled date for each Resource to start work with the End Customer, Subcontractor shall certify to Prime Contractor that the Resource has passed the background check, or shall notify Prime Contractor that the Resource has failed the background check. Results of the Background Check must be uploaded to the Resource's record in PeopleFluent VMS.

If any Resource fails the background check, the Resource shall be ineligible to work for the End Customer, and Prime Contractor shall cancel the selection of the Resource.

C. Audit of Background Checks

Subcontractor shall maintain records of background checks and make them available to Prime Contractor for inspection at the discretion of Prime Contractor.

If Prime Contractor determines that any Resource failed the background check, Prime Contractor shall immediately remove the Resource from work with the End Customer.

D. False Certification, Failure to Notify, and Termination of Agreement

Failure to notify Prime Contractor that a Resource has failed a background check or falsely certifying that a Resource has passed the background check shall be grounds for termination of the Agreement.

12. PERFORMANCE STANDARDS

A. Removal of Resources within Five (5) Business Days

If a Subcontractor Resource begins work at End Customer, and the End Customer determines within the first week (5 business days) that the Subcontractor Resource does not have the skills or capabilities necessary to complete the job as requested in the original Requisition, the End Customer may request that the resource be replaced immediately, and Contractor shall not pay for the work conducted by the unacceptable Subcontractor Resource. Contractor shall also require that the Subcontractor's replacement Resource be provided at no charge for the first 5 days of work after replacing the inadequate resource. Further, in the event the Subcontractor is unable to provide an adequate replacement employee and it is necessary for the Contractor to obtain a replacement employee from another subcontractor, Subcontractor shall reimburse the cost of the third party replacement employee pursuant to an invoice which shall be issued by the Contractor for the equivalent of the first five (5) days of the replacement's approved time.

B. Performance Evaluation Periods

Prime Contractor shall review the performance of Subcontractor quarterly.

C. Performance Evaluation Requirements

Subcontractor shall meet the following requirements:

- (1) Subcontractor shall actively participate by submitting Candidates to Requisitions.
- (2) Subcontractor shall meet deadlines for Candidate Submission Forms.
- (3) For each Requisition, Subcontractor shall only submit a Candidate who possesses the qualifications that End Customer identifies as "Required."
- (4) Subcontractor shall use reasonable efforts to ensure the truthfulness of each Candidate Submission Form.
- (5) Subcontractor shall use reasonable efforts to ensure that each Candidate meets scheduled interviews.
- (6) Subcontractor shall use reasonable efforts to ensure that each selected Resource reports for work as scheduled.
- (7) Subcontractor shall ensure timely and accurate submission of weekly timesheets by each Resource of Subcontractor.
- (8) Subcontractor shall use reasonable efforts to ensure End Customer satisfaction with the job performance of each Resource.
- (9) Subcontractor shall ensure that each Resource provides Prime Contractor with two weeks advance notice of resignation.

D. Performance Violations

Prime Contractor will measure Subcontractor performance against the requirements in Section C above on a quarterly basis. Subcontractor violations of the required performance metrics will be addressed in accordance with the penalties and performance sanctions identified and as enumerated in the Major and Minor Violations listing below:

i. Major Violations

- (1) Each time Subcontractor submits a Candidate who does not possess all qualifications defined as "Required" by the End Customer. An acceptable pass rate for possession of the required qualifications is 95% or more (90% or more for Urgent requests) of the resumes submitted will reflect the required qualifications.

- (2) Each time Subcontractor submits a Resume without using the ITSA Resume Template, available at <http://paitsa.ostglobal.com>. An acceptable pass rate for this criterion is at least 95% (90% for Urgent requests) of the resumes will be submitted using the ITSA Resume Template.
- (3) Each time a Subcontractor fails to return Government-furnished property to the End Customer within 5 days following the end of an engagement.
- (4) Each time the Subcontractor does not complete the Resource's background check within a three (3) business day period after an engagement is accepted, and does not notify Prime Contractor of the status of such background check and delays related thereto.
- (5) Each time a Candidate fails to participate in a scheduled and accepted interview.
- (6) Each time a Resource fails to begin an assignment (i.e., false start) as scheduled.
- (7) Each time a Resource is deemed unsatisfactory by the End Customer within the first five days of an assignment.

ii. Minor Violations

- (1) Each time the End Customer requests removal of a Resource after five days of an assignment due to unsatisfactory performance.
- (2) Each time a Resource resigns without two weeks advance notice unless the resignation is caused by reasonably unforeseeable circumstances such as death or serious illness.
- (3) Each time a Resource is rated below satisfactory by the End Customer.
- (4) Each time the Resource works beyond the number of available hours on the purchase order.
- (5) Each time a Resource submits a timesheet that is late or inaccurate.
- (6) Whenever a Subcontractor fails to pay its employee Resources in accordance with its established payroll practices.
- (7) Whenever Subcontractor fails to pay its lower-tier subcontract vendors within the agreed-upon payment terms.
- (8) Whenever the Subcontractor allows its Small Diverse Business (SDB), tax status, or insurance status to lapse for more than two weeks without notice to the Prime Contractor.

E. Scoring of Accumulated Violations and Conversion to Inactive Status

A Subcontractor that accumulates

- 5 Minor Violations OR
- 2 Major Violations OR
- 1 Major Violation and 3 Minor Violations

during the life of the contract will incur the following:

- **First Time** – Prime Contractor shall counsel Subcontractor on ways to improve performance, and a warning will be placed into the Subcontractor's file;
- **Second Time** – Prime Contractor shall place Subcontractor on an inactive status for 3 months; Before resuming active status, the Subcontractor must demonstrate to the satisfaction of Prime Contractor that the violations have been resolved that were the cause of the three-month suspension.
- **Third Time** – Prime Contractor shall terminate the Subcontractor Agreement unless urgent and compelling circumstances exist to justify retaining Subcontractor in place with whatever fines and penalties that may be owed by Subcontractor to Prime Contractor. Following a six-month termination period, Subcontractor may request reinstatement as an approved vendor, provided that Subcontractor can demonstrate to the satisfaction of Prime Contractor that corrective actions have been implemented that will reasonably show the violations will not recur in future performance.

- Fines/Penalties: Any fine or penalty assessed on the Prime Contractor by the Commonwealth of Pennsylvania as a result of the Subcontractor's performance shall be directly flowed down to the Subcontractor to pay, in accordance with the remittance instructions provided. Such fines or penalties will be identified in the Requisition and Subcontractor's task order to the extent such fines or penalties are known by the Prime Contractor.

F. Active and Inactive Status

Active status means that Subcontractor is eligible to receive Requisitions, submit Candidates, and supply Resources.

Inactive status means that Subcontractor is not eligible to receive Requisitions or submit Candidates.

13. COVENANTS

A. Covenant Not to Disclose Confidential Information

During the Term and following termination of this Agreement, the Subcontractor agrees that, without the prior written consent of the Prime Contractor, it will not use or disclose to any person, firm, association, partnership, entity or corporation, any confidential information concerning: (i) the business operations or internal structure of the Prime Contractor; (ii) the Customers of the Prime Contractor; (iii) the financial condition of the Prime Contractor; and (iv) other confidential information pertaining to the Prime Contractor, including without limitation, trade secrets, technical data, marketing analyses and studies, operating procedures, customer and/or inventory lists, or the existence or nature of any of the Prime Contractor's agreements (other than this Agreement and any other option or compensation related agreements involving the Subcontractor); provided, however, that the Subcontractor shall be entitled to disclose such information: (i) to the extent the same shall have otherwise become publicly available (unless made publicly available by the Subcontractor); (ii) during the course of or in connection with any actual or potential litigation, arbitration, or other proceeding based upon or in connection with the subject matter of this Agreement; (iii) as may be necessary or appropriate to conduct the Subcontractor's duties hereunder, provided the Subcontractor is acting in good faith; or (iv) as may be required by law or judicial process.

B. Covenant Not to Hire Other ITSA Resources or Prime Contractor Staff

Subcontractors shall not solicit for employment or hire any Resource of any other Subcontractor or the Prime Contractor already placed in a position under the Contract, without written consent of the other Subcontractor or the Prime Contractor, as the case may be.

During the Term and for a period of one (1) year from the date of termination of this Agreement, Subcontractor shall not, without the express written consent of the Prime Contractor, directly or indirectly solicit or induce any of the Prime Contractor's ITSA professional staff (not including placed Resources) to leave such employ or service for employment with the Subcontractor or any business with which the Subcontractor is affiliated. This shall not preclude an employee of the Prime Contractor or another Subcontractor from independently seeking employment with the Subcontractor to this Agreement in response to employment advertisements posted in the general media and not based on direct or indirect solicitation from the Subcontractor.

This Agreement in no way prohibits Subcontractors from bidding on any Commonwealth solicitation.

14. OWNERSHIP OF MATERIALS RELATED TO TASKS

All Developed Works shall be owned according to the provisions set forth in the Prime Contract, Commonwealth IT Terms and Conditions Section 36 (OWNERSHIP RIGHTS) hereby incorporated by reference.

15. SUBCONTRACTOR WARRANTIES

Subcontractor warrants that Subcontractor's performance of the Tasks called for by this Agreement, does not and shall not violate: (1) any applicable law, rule, or regulation; (2) any contracts with third parties; (3) or any third-party rights in any patent, trademark, copyright, trade secret, or any other proprietary or intellectual property right.

The Subcontractor further warrants that they will conform to the provisions set forth in the Prime Contract, Commonwealth IT Terms and Conditions Section 49 (WARRANTIES) hereby incorporated by reference. The link to search contracts for the Commonwealth of Pennsylvania is as follows: <http://www.emarketplace.state.pa.us/BidContracts.aspx>.

16. TERMINATION

- A. This Agreement shall terminate without any breach by Subcontractor upon termination of the Contract by the End Customer.
- B. Prime Contractor may terminate this Agreement, without any breach by Subcontractor, if directed to do so by the End Customer.
- C. Prime Contractor may also terminate this Agreement immediately upon Subcontractor's material breach of Paragraphs 9, 11, 13, 14, 15, 18, 25, 27 or pursuant to the procedures for Performance Standards in Paragraph 12
- D. Subcontractor may terminate this Agreement at its convenience upon thirty (30) days written notice to Prime Contractor.
- E. In the event of termination under this paragraph, Prime Contractor's liability shall be limited to amounts due for hours already approved by the End Customer.

17. DISPUTE RESOLUTION

In the event of a dispute under this Agreement, the Parties shall use their best efforts to resolve the dispute by negotiation.

Any dispute arising to this contract, or the breach thereof, that cannot be resolved through negotiation, shall be finally resolved by BINDING ARBITRATION to be administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration will be conducted in the English language in the Commonwealth of Pennsylvania in accordance with the United States Arbitration Act. The Parties shall select a single Arbitrator by mutual consent. There shall be no affiliation, either actual or perceived, between either of the Parties and the arbitrator. The arbitrator shall be obligated to enforce the terms hereof, including without limitation, the limitation of liability terms hereof.

If a dispute is taken to arbitration, the cost shall be apportioned to the Parties by the arbitrator.

18. INDEMNIFICATION

Subcontractor hereby agrees to indemnify, defend and hold harmless Prime Contractor and any partner, principal, employee or agent thereof (each of the foregoing being hereinafter referred to individually as an "Indemnified Party") from and against any and all claims, liabilities, losses, expenses (including attorney's fees and legal expenses related to such defense), fines, penalties, taxes or damages (collectively "Liabilities") asserted by any third party against any Indemnified Party for personal injury or real or tangible personal property damage to the extent such Liabilities arise out of or result proximately from the negligence or willful misconduct of Subcontractor in providing any product or services under this Agreement.

Prime Contractor or End Customer shall promptly notify Subcontractor of any third-party claim subject to indemnification hereunder and Subcontractor shall conduct the defense or settlement of any such third-party claim at Subcontractor's sole expense with counsel of Subcontractor's choosing and Prime Contractor shall cooperate with Subcontractor in connection therewith.

19. NON-EXCLUSIVITY

During the term of this Agreement, Prime Contractor will engage the services of other individuals or companies that compete with Subcontractor or offer services similar to those offered by Subcontractor, and any such engagement shall not be a breach of this Agreement.

20. INDEPENDENT SUBCONTRACTOR

Subcontractor's relationship with Prime Contractor is that of an independent Subcontractor, and nothing in this Agreement shall be construed as creating a partnership, joint venture or employer-employee relationship. Neither Subcontractor nor any other Subcontractor will be entitled to any of the benefits which Prime Contractor may make available to its employees, such as group insurance, profit-sharing, or retirement benefits. Subcontractor shall be solely responsible for complying with all applicable local, state and federal laws governing employees and self-employed individuals, including but not limited to obligations such as payment of federal, state and local taxes, social security, disability and other contributions attributable to the rendition of product or service hereunder to Prime Contractor.

Subcontractor shall indemnify, hold harmless and defend Prime Contractor from any and all claims, liabilities, damages, taxes, fines or penalties sought or recovered by any governmental entity, including but not limited to the Internal Revenue Service or any state taxing authority, arising out of Subcontractor's alleged failure to pay such taxes or make such contributions.

Nothing in this Agreement shall be deemed to constitute Subcontractor or Prime Contractor the agent of the other. Neither Subcontractor nor Prime Contractor shall be or become liable or bound by any representation, act or omission whatsoever of the other.

21. NONASSIGNABILITY

Subject to the terms and conditions of this Section, the Agreement is binding upon the parties and their respective successors and assigns.

The Subcontractor may not assign, in whole or in part, the Agreement or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Prime Contractor, which consent may be withheld at the sole and absolute discretion of the Prime Contractor.

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

Any assignment consented to by the Prime Contractor shall be evidenced by a written assignment agreement executed by the Subcontractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Agreement and to assume the duties, obligations, and responsibilities being assigned.

Notwithstanding the foregoing, the Subcontractor may, without the consent of the Prime Contractor, assign its rights to payment to be received under the Agreement, provided that the Subcontractor provides written notice of such assignment to the Prime Contractor together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Agreement

A change of name by the Subcontractor, following which the Subcontractor's federal identification number remains unchanged, is not considered to be an assignment. The Subcontractor shall give the Prime Contractor written notice of any such change of name.

22. LIQUIDATED DAMAGES

In the event that OST is assessed liquidated damages by the Commonwealth due to Subcontractor's deficient, negligent, or substandard performance, OST will flow down any such liquidated damages assessment to Subcontractor for payment. In the event that Subcontractor is supporting a Major Deliverable, as defined in the Requisition and Subcontractor's purchase order, and Subcontractor's performance causes the delay of the Major Deliverable beyond the terms of the deliverable schedule, liquidated damages for non-completion of the Major Deliverable by the scheduled due date will be assessed at 0.3% of the total price of the Major Deliverable at the prime task order level for each calendar day following the scheduled completion date up to a maximum of thirty (30) days, provided the Commonwealth will permit any such delay. Such liquidated damages assessment may be resolved by offset from Subcontractor payments due.

23. NOTICES

All notices permitted or required under this Agreement shall be in writing and shall be by personal delivery, a nationally recognized overnight courier service, facsimile transmission or certified or registered mail, return receipt requested. Notices shall be deemed given upon the earlier of actual receipt or one (1) day after deposit with the courier service, receipt by sender of confirmation of electronic transmission or five (5) days after deposit with the U.S. Postal Service. Notices shall be sent to the addresses listed below, or to such other address as either party may specify in writing.

If to Prime Contractor:

OST Inc.
2101 L St NW, Suite 800
Washington, DC 20037

If to Subcontractor:

[See address listed at end of Agreement]

24. SEVERABILITY

In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

25. CONSTRUCTION AND GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the provisions of all applicable laws and regulations of the Commonwealth of Pennsylvania. However, by executing this Agreement, the Subcontractor agrees that it has and will continue to abide by the intellectual property laws of the United States of America.

This Contract shall be interpreted in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without giving effect to its conflicts of law provisions. Contractor and Subcontractor agree that the courts of the Commonwealth of Pennsylvania and the federal courts of the Middle District of Pennsylvania shall have exclusive jurisdiction over disputes under this Contract and the resolution thereof. Any legal action relating to this Contract must be brought in Dauphin County, Pennsylvania, and the parties agree that jurisdiction and venue in such courts is appropriate.

26. INTEGRATION

This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by each of the parties hereto.

27. FLOW DOWN PROVISIONS

The flow-down clauses below mean that the Prime Contractor is responsible to the Commonwealth, and Subcontractor shall be responsible to Prime Contractor. By entering into this Agreement, the Subcontractor agrees to be bound by all IT Contract Terms and Conditions as defined in the Prime Contract and which by their nature are required to be flowed down to a subcontractor, which include but are not limited to the following:

A. General Terms and Conditions

- i. If the Contractor must perform work at a Commonwealth facility outside of the daily operational hours set forth by the Commonwealth, it must make arrangements with the Commonwealth to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access, unless the Commonwealth fails to provide access as set out in the RFP.
- ii. Except as set out in this Contract, the Contractor shall not offer for sale or provide Commonwealth agencies with any hardware or software (i.e., personal computers, file servers, laptops, personal computer

packaged software, etc.). Contractor may recommend the use of tools such as hardware and software, without requiring agencies to purchase those tools. Software tools that are NOT on statewide contract will be acquired through separately procured purchase agreements, and the Contractor shall not be considered for award of such agreements if it has recommended their use.

- iii. Subcontractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (OA/OIT) (located at: <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=416&PageID=210791&mode=2>), including the accessibility standards set out in IT Bulletin ACC001, IT Accessibility Policy. The Contractor shall ensure that Services procured under this Contract comply with the applicable standards. In the event such standards change during Contractor's performance, and the Commonwealth requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

iv. **Other Contractors**

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its Services with such additional work as may be required. 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. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

B. Insurance

Subcontractor shall provide a Certificate of Insurance evidencing the following requirements:

Subcontractor shall, at its own expense, maintain insurance coverage at the minimum amounts set forth below. All required insurance is to be placed with insurers with a current A.M. Best Financial Strength rating of no less than "A" and a Financial Size Category (FSC) of "X", unless otherwise approved, in writing, by OST Contracts Representative. OST reserves the right, upon written notice to Subcontractor, to require any other insurance coverage which OST considers reasonably necessary or appropriate under the circumstances of this Subcontract and, any applicable Work Order. Required insurance coverage includes:

- i. Workers' Compensation Insurance in accordance with the amounts specified by the laws of the states in which the Services are to be performed under this Subcontract;
- ii. Commercial General Liability Insurance with a Combined Single Limit of \$2,000,000; and
- iii. Professional Liability Insurance, providing coverage for claims arising out of the performance of professional services, resulting from any error, omission or negligent act of the Subcontractor, in an amount no less than \$1,000,000 per occurrence and aggregate.

The insurance policies shall be endorsed to provide at least thirty (30) days prior written notice to OST of any cancellation and Subcontractor will advise OST of any material change in coverage affecting the contract.

Prior to commencement of work, the Subcontractor shall furnish OST with a Certificate of Insurance evidencing Subcontractor's compliance with the insurance requirements stated herein. The Certificate must include the contract and/or work order number and includes the following:

All policies (except for the Workers' Compensation insurance policy) shall name OST, its corporate affiliates, subsidiaries, officers, directors and any employee or agents as Additional Insureds and shall stipulate that the insurance afforded to such Additional Insureds shall apply as primary insurance and that no other insurance carried by any of them shall be called upon to contribute to a loss covered thereunder.

All policies shall contain waivers of insurer's subrogation rights in favor of OST.

C. Subcontractor Responsibility

- i. The Subcontractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Agreement, that neither the Subcontractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority.
- ii. The Subcontractor must also certify, in writing, that as of the date of its execution of this Agreement, it has no tax liabilities or other Commonwealth obligations.
- iii. The Subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the Subcontractor shall have an obligation to inform the Prime Contractor if, at any time during the term of the Agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- iv. The failure of the Subcontractor to notify the Prime Contractor of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- v. The Subcontractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Subcontractor's compliance with the terms of this or any other agreement between the Subcontractor and the Commonwealth, which results in the suspension or debarment of the Subcontractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Subcontractor shall not be responsible for investigative costs for investigations that do not result in the Subcontractor's suspension or debarment.
- vi. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No. (717) 783-6472
FAX No. (717) 787-9138

D. Offset Provision for Commonwealth Contracts

The Subcontractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Subcontractor or its subsidiaries to the Commonwealth against any payments due the Prime Contractor for services provided by the Subcontractor under this Agreement.

E. Taxes-Federal, State, and Local

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this Section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

F. Limitation of Liability

The parties agree that any damages assessed or claimed under this Subcontract will be limited to direct damages, liabilities, expenses, and costs, including reasonable attorney fees. In no event shall either party be

liable for any special, consequential, incidental, or indirect damages, including, but not limited to, loss of use, lost profits, or punitive damages, even if the party has been advised of the possibility of such damages.

G. Virus, Malicious, Mischievous or Destructive Programming

The Subcontractor agrees that they will conform to the provisions set forth in the Prime Contract, Commonwealth IT Terms and Conditions Section 32 (Virus, Malicious, Mischievous or Destructive Programming) hereby incorporated by reference.

H. Patent, Copyright, Trademark, and Trade Secret Protection

The Subcontractor agrees that they will conform to the provisions set forth in the Prime Contract, Commonwealth IT Terms and Conditions Section 33 (Patent, Copyright, Trademark, and Trade Secret Protection) hereby incorporated by reference.

I. Sensitive Information

The Subcontractor agrees that they will conform to the provisions set forth in the Prime Contract, Commonwealth IT Terms and Conditions Section 34 (Sensitive Information) hereby incorporated by reference.

J. Officials Not to Benefit

No official or employee of the Commonwealth and no member of its General Assembly who exercises any functions or responsibilities under this Contract shall participate in any decision relating to this Contract which affects their personal interest or the interest of any corporation, partnership, or association in which they are, directly or indirectly, interested; nor shall any such official or employee of the Commonwealth or member of its General Assembly have any interest, direct or indirect, in this Contract or the proceeds thereof.

K. The Americans with Disabilities Act

During the term of this Agreement, the Subcontractor agrees as follows:

- i. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101, et seq., the Subcontractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Subcontractor agrees to comply with the General Prohibitions Against Discrimination, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through Contracts with outside Contractors.
- ii. The Subcontractor shall be responsible for and agrees to indemnify and hold harmless the Prime Contractor and Commonwealth of Pennsylvania from losses, damages, expenses claims, demands, suits, and actions brought by any party against the Prime Contractor or Commonwealth of Pennsylvania as a result of the Subcontractor's failure to comply with the provisions of subsection (a) above.

L. Examination of Records and Single Audit Act of 1984

The Subcontractor agrees to comply with the terms of the Prime Contract regarding the Examination of Records by the Prime Contractor or End Customer.

The Contractor shall preserve and make available its records for a period of three (3) years from the date of final payment under this Contract.

M. Environmental Protection

In carrying out this Agreement, the Subcontractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including the Clean Streams Law, Act of June 22, 1937, as amended; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended.

N. Nondiscrimination Clause/Sexual Harassment Clause

The Subcontractor Agrees:

- i. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person

- acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- ii. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color, or any other class protected under federal or state law.
 - iii. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
 - iv. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
 - v. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the “Initial Contract Compliance Data” form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the “Monthly Contract Compliance Report for Construction Contractors”, each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
 - vi. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
 - vii. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

O. Subcontractor Integrity Provisions

Subcontractor agrees to be bound by the Contractor Integrity Provisions of the Prime Contract hereby incorporated by reference.

P. Right-to-Know Law

Subcontractor agrees to cooperate with the Prime Contractor and End Customer to support requests made under the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) as it applies to the Prime Contract. Subcontractor will furnish any requested documentation or information under the provision set forth in the Prime Contract.

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28. SIGNATURES

In Witness Whereof, the parties hereto have caused to be signed by their duly authorized representatives, as of the day and year first above mentioned.

Subcontractor

Prime Contractor

By (Signature): _____

By (Signature): _____

Name: Monika Rohila

Name: David I. Maurstad

Title: President

Title: Senior Vice President

Date:

Date:

Address for Notices:
379 Princeton Hightstown Road
Building 3, Suite 2A
Cranbury, NJ 08512

Address for Notices:
2101 L Street NW, Suite 800
Washington, DC 20037