

# APPENDIX N

## STANDARD GRANT TERMS AND CONDITIONS FOR SERVICES

### 1. TERM OF GRANT

The term of the Grant shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Grant, subject to the other provisions of the Grant. The Effective Date shall be fixed after the Grant has been fully executed by the Grantee and by the Commonwealth and all approvals required by Commonwealth procurement procedures have been obtained. The Grant shall not be a legally binding Grant until after the Effective Date is affixed and the fully-executed Grant has been sent to the Grantee. The Grantee shall not start the performance of any work prior to the Effective Date set forth in the Grant and the Commonwealth shall not be liable to pay the Grantee for any service or work performed or expenses incurred before the Effective Date set forth in the Grant. No agency employee has the authority to verbally direct the commencement of any work under this Grant. The Commonwealth reserves the right, upon notice to the Grantee, to extend the term of the Grant for up to three months upon the same terms and conditions.

### 2. INDEPENDENT GRANTEE

In performing the services required by the Grant, the Grantee will act as an independent Grantee and not as an employee or agent of the Commonwealth. The Grantee will be responsible for all services in this Grant whether or not Grantee provides them directly. Further, the Grantee is the sole point of contact with regard to all agreement matters, including payment of any and all charges resulting from the agreement.

### 3. COMPLIANCE WITH LAW

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

### 4. ENVIRONMENTAL PROVISIONS

In the performance of the Grant, the Grantee shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to, the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended, 35 P.S. § 691.1 *et seq.*; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. § 6018.101 *et seq.*; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1 *et seq.*

### 5. POST-CONSUMER RECYCLED CONTENT; RECYCLED CONTENT ENFORCEMENT. (July 2022)

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Grant must meet the minimum percentage levels for total recycled content as specified by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Grantee may be required, after delivery of the Grant item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

### 6. COMPENSATION/EXPENSES

The Grantee shall be required to perform the specified services at the price(s) quoted in the Grant. All services shall be performed within the time period(s) specified in the Grant. The Grantee shall be compensated only for work performed to the satisfaction of the Commonwealth. The Grantee shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Grant.

## 7. INVOICES

Unless the Grantee has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Grantee shall send an **invoice itemized by line item** to the address referenced on the grant promptly after services are satisfactorily completed. The invoice should include only amounts due under the Grant agreement. The Grant number must be included on all invoices. In addition, the Commonwealth shall have the right to require the Grantee to prepare and submit a “Work In Progress” sheet that contains, at a minimum, the tasks performed, number of hours, hourly rate, and the Grant number or task order to which it refers.

## 8. PAYMENT (July 2022)

### a. PAYMENT.

- i. Payment Date. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
  - A. the date on which payment is due under the terms of the Grant;
  - B. 30 days after a proper invoice actually is received at the “Provide Service and Bill To” address if a date on which payment is due is not specified in the Grant (a “proper” invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or
  - C. the payment date specified on the invoice if later than the dates established by (a) and (b) above.
- ii. Delay; Interest. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Grant. If any payment is not made within 15 days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act of December 13, 1982, P.L. 1155, No. 266, 72 P.S. § 1507, (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ 2.31—2.40 (relating to interest penalties for late payments to qualified small business concerns).
- iii. Payment should not be construed by the Grantee as acceptance of the service performed by the Grantee. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications.

### b. OFFSET.

The Grantee agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Grantee or its subsidiaries to the Commonwealth against any payments due the Grantee under any Grant with the Commonwealth.

### c. PURCHASING CARD.

The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Grant. The Commonwealth’s purchasing card is similar to a credit card in that there will be a small fee which the Grantee will be required to pay and the Grantee will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Grantee. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Grantee or any other charges incurred by the Grantee, unless specifically stated in the terms of the Grant.

### d. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS (July 2021).

- i. The Commonwealth will make payments to the recipient through ACH. Within 10 days of the Grant award, the Grantee must submit or must have already established its ACH information in the Commonwealth’s Master Database. The Grantee will also be able to enroll to receive remittance information via electronic addenda and email (e-Remittance). ACH and e-Remittance information is available at
- ii. <https://www.budget.pa.gov/Services/ForVendors/Pages/Direct-Deposit-and-eRemittance.aspx> .
- iii. The recipient must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth’s ACH remittance advice to enable the recipient to properly apply the state agency’s payment to the respective invoice or program.

- iv. It is the responsibility of the recipient to ensure that the ACH information contained in the Commonwealth's Master Database is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments

## **9. TAXES**

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction Grantee 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 Grant.

## **10. WARRANTY**

The Grantee warrants that all services performed by the Grantee, its agents and subgrantees shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Grant, all services and parts are warranted for a period of one year following completion of performance by the Grantee and acceptance by the Commonwealth. The Grantee shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the Commonwealth.

## **11. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY**

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

## **12. OWNERSHIP RIGHTS**

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the performance of the Grant.

## **13. ASSIGNMENT OF ANTITRUST CLAIMS**

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

## **14. COMMONWEALTH HELD HARMLESS CLAUSE (July 2022)**

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

## **15. AUDIT PROVISIONS**

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

## **16. DEFAULT**

- a.** The Commonwealth may, subject to the provisions of Paragraph 17, Force Majeure, and in addition to its other rights under the Grant, declare the Grantee in default by written notice thereof to the Grantee, and terminate (as provided in Paragraph 18, Termination Provisions) the whole or any part of this Grant for any of the following reasons:
  - i.** Failure to begin work within the time specified in the Grant or as otherwise specified;
  - ii.** Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Grant terms;
  - iii.** Unsatisfactory performance of the work;
  - iv.** Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
  - v.** Discontinuance of work without approval;
  - vi.** Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
  - vii.** Insolvency or bankruptcy;
  - viii.** Assignment made for the benefit of creditors;
  - ix.** Failure or refusal within 10 days after written notice by the Grant Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;

- x. Failure to protect, to repair, or to make good any damage or injury to property;
- xi. Breach of any provision of this Grant;
- xii. Failure to comply with representations made in its application or agreement; or
- xiii. Failure to comply with applicable industry standards, customs and practice.

- b. In the event that the Commonwealth terminates this Grant in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Grantee shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical services included within the terminated part of the Grant.
- c. If the Grant is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Grantee to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Issuing Office, such partially completed work, including, where applicable, reports, working papers and other documentation, as the Grantee has specifically produced or specifically acquired for the performance of such part of the Grant as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Grant price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Grantee and Granting Officer. The Commonwealth may withhold from amounts otherwise due the Grantee for such completed or partially completed works, such sum as the Granting Officer determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Grantee's administrative remedies as set forth in Paragraph 19, the Grantee's exclusive remedy shall be to seek damages in the Board of Claims.

## **17. FORCE MAJEURE**

- a. Neither party will incur any liability to the other if its performance of any obligation under this Grant is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.
- b. The Grantee shall notify the Commonwealth orally within five days and in writing within 10 days of the date on which the Grantee becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Grant is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Grantee shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect either to cancel the Grant or to extend the time for performance as reasonably necessary to compensate for the Grantee's delay.
- c. In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Grantee, may suspend all or a portion of the Grant.

## 18. TERMINATION PROVISIONS

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

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Grant for its convenience if the Commonwealth determines termination to be in its best interest. The Grantee shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Grantee be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Grant. The Grantee shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Grant. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose.
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Grant for Grantee default under Paragraph 16, Default, upon written notice to the Grantee. The Commonwealth shall also have the right, upon written notice to the Grantee, to terminate the Grant for other cause as specified in this Grant or by law. If it is later determined that the Commonwealth erred in terminating the Grant for cause, then, at the Commonwealth's discretion, the Grant shall be deemed to have been terminated for convenience under the Subparagraph 18.a.

## 19. GRANT CONTROVERSIES

- a. In the event of a controversy or claim arising from the Grant, the Grantee must, within six months after the cause of action accrues, file a written claim with the Granting officer for a determination. The claim shall state all grounds upon which the Grantee asserts a controversy exists. If the Grantee fails to file a claim or files an untimely claim, the Grantee is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within 60 days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.
- b. If the Grantee or the Grant Officer requests mediation and the other party agrees, the Grant Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Grant Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Granting Officer and the Grantee. The Grant Officer shall send the written determination to the Grantee. If the Grant officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Grant Officer's determination shall be the final order of the purchasing agency.
- c. Within 15 days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Grantee may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Grantee shall proceed diligently with the performance of the Grant in a manner consistent with the determination of the Grant Officer and the Commonwealth shall compensate the Grantee pursuant to the terms of the Grant.

## **20. ASSIGNABILITY AND SUBGRANTING**

- a.** Subject to the terms and conditions of this Paragraph 20, this Grant shall be binding upon the parties and their respective successors and assigns.
- b.** The Grantee shall not subgrant with any person or entity to perform all or any part of the work to be performed under this Grant without the prior written consent of the Grant Officer, which consent may be withheld at the sole and absolute discretion of the Grant Officer.
- c.** The Grantee may not assign, in whole or in part, this Grant or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Granting Officer, which consent may be withheld at the sole and absolute discretion of the Grant Officer.
- d.** Notwithstanding the foregoing, the Grantee may, without the consent of the Grant Officer, assign its rights to payment to be received under the Grant, provided that the Grantee provides written notice of such assignment to the Grant Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Grant.
- e.** For the purposes of this Grant, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Grantee provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f.** Any assignment consented to by the Grant Officer shall be evidenced by a written assignment agreement executed by the Grantee and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Grant and to assume the duties, obligations, and responsibilities being assigned.
- g.** A change of name by the Grantee, following which the Grantee’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Grantee shall give the Grant Officer written notice of any such change of name.

## **21. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE (August 2018)**

The Grantee agrees:

- a.** In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b.** The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any of its employees.
- c.** Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the grant agreement, subgrant agreement, contract or subcontract.
- d.** Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts’ enforcement, and shall comply with any provision of law establishing organizations



as employees' exclusive representatives.

- e. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed shall satisfy this requirement for employees with an established work site.
- f. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.
- g. The Grantee and each subgrantee, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Grantee and each subgrantee, contractor and subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Grantee, any subgrantee, any contractor or any subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.
- h. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.
- i. The Grantor's and each subgrantee's, contractor's and subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the grant agreement through the termination date thereof. Accordingly, the Grantee and each subgrantee, contractor and subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the grant agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- j. The Commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

## 22. **CONTRACTOR INTEGRITY PROVISIONS (January 2015)**

It is essential that those who seek to contract with the Commonwealth observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

- a. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
  - i. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or c) the entities have a

- common proprietor or general partner.
- ii. **“Consent”** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
  - iii. **“Contractor”** means the individual or entity, that has entered into this contract with the Commonwealth.
  - iv. **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
  - v. **“Financial Interest”** means either:
    - A. Ownership of more than a five percent interest in any business; or
    - B. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - vi. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [\*Governor’s Code of Conduct, Executive Order 1980-18\*](#), the 4 Pa. Code §7.153(b), shall apply.
  - vii. **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- b. In furtherance of this policy, Contractor agrees to the following:
- i. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
  - ii. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
  - iii. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided by this contract.
  - iv. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of the contract signed by the Contractor.
  - v. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
    - A. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
    - B. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
    - C. had any business license or professional license suspended or revoked;
    - D. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

- E. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- vi. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- vii. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- viii. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- ix. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.
- x. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and

remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

**23. GRANTEE RESPONSIBILITY PROVISIONS (December 2020)**

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, 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.
- d. The failure of the Contractor to notify the Commonwealth 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.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. 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 Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- f. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

**24. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT (April 2019)**

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 *et seq.*, the Grantee understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Grant or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Grantee agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations.
- b. The Grantee shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from

all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the Grantee's failure to comply with the provisions of subparagraph a. above.

**25. HAZARDOUS SUBSTANCES (August 2018)**

The Grantee shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Grantee in the performance of the Grant. The Grantee must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 34 Pa. Code Section 301.1 *et seq.*

- a. Labeling. The Grantee shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Grantee is clearly labeled, tagged or marked with the information listed in Paragraph (i) through (iv):
- i. Hazardous substances:
    - A. The chemical name or common name,
    - B. A hazard warning, and
    - C. The name, address, and telephone number of the manufacturer.
  - ii. Hazardous mixtures:
    - A. The common name, but if none exists, then the trade name,
    - B. The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
    - C. The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
    - D. A hazard warning, and
    - E. The name, address, and telephone number of the manufacturer.
  - iii. Single chemicals:
    - A. The chemical name or the common name,
    - B. A hazard warning, if appropriate, and
    - C. The name, address, and telephone number of the manufacturer.
  - iv. Chemical Mixtures:
    - A. The common name, but if none exists, then the trade name,
    - B. A hazard warning, if appropriate,
    - C. The name, address, and telephone number of the manufacturer, and
    - D. The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

- b. Material Safety Data Sheet. The Grantee shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Grantee shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The Grantee shall also notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

## **26. COVENANT AGAINST CONTINGENT FEES**

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

## **27. APPLICABLE LAW**

This Grant shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Grantee consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Grantee agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

## **28. INTEGRATION**

The Grant, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee, or officer of either the Commonwealth or the Grantee has authority to make, or has made, any statement, agreement, or representation, oral or written, in connection with the Grant, which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Grant. No modifications, alterations, changes, or waiver to the Grant or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate Commonwealth form.

## **29. CHANGES**

The Commonwealth reserves the right to issue change orders at any time during the term of the Grant or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Grant and actual quantities; 2) to make changes to the services within the scope of the Grant; 3) to notify the Grantee that the Commonwealth is exercising any Grant renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Grant to extend the completion date beyond the Expiration Date of the Grant or any renewals or extensions thereof. Any such change order shall be in writing signed by the Granting Officer. The change order shall be effective as of the date appearing on the change order unless the change order specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Grant, nor, if performance security is being furnished in conjunction with the Grant, release the security obligation. The Grantee agrees to provide the service in accordance with the change order. Any dispute by the Grantee regarding the performance required under any change order shall be handled through Paragraph 19, "Grant Controversies".

For purposes of this Grant, “change order” is defined as a written order signed by the Grant Officer directing the Grantee to make changes authorized under this clause.

**30. RIGHT TO KNOW LAW (April 2019)**

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the granting Commonwealth agency.
- b. If the Commonwealth needs the Grantee’s or subgrantee’s assistance in any matter arising out of the RTKL related to this Grant Agreement, it shall notify the Grantee or subgrantee using the legal contact information provided in the Grant Agreement. The Grantee or subgrantee, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires Grantee’s or subgrantee’s assistance in responding to a request under the RTKL for information related to this Grant Agreement that may be in Grantee’s or subgrantee’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), Grantee or subgrantee shall:
  - i. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in Grantee’s or subgrantee’s possession arising out of this Grant Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - ii. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Grant Agreement.
- d. If Grantee or Subgrantee considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that Grantee or subgrantee considers exempt from production under the RTKL, Grantee or Subgrantee must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of Grantee or subgrantee explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from Grantee or subgrantee in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, Grantee or subgrantee shall provide the Requested Information within five business days of receipt of written notification of the Commonwealth’s determination.
- f. If Grantee or Subgrantee fails to provide the Requested Information within the time period required by these provisions, Grantee or Subgrantee shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee’s or Subgrantee’s failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse Grantee or subgrantee for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. Grantee or subgrantee may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Grantee or subgrantee shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee’s or subgrantee’s failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, Grantee or subgrantee agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth’s disclosure of Requested Information pursuant to the RTKL.

- i. The Grantee's or Subgrantee's duties relating to the RTKL are continuing duties that survive the expiration of this Grant Agreement and shall continue as long as the Grantee or Subgrantee has Requested Information in its possession.

**31. ENHANCED MINIMUM WAGE PROVISIONS (July 2022)**

- a. **Enhanced Minimum Wage.** Grantee/Lessor agrees to pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this Grant/Lease, and for any employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate shall be increased by an annual cost-of-living adjustment per the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
  - i. Exempt from the minimum wage under the Minimum Wage Act of 1968;
  - ii. Covered by a collective bargaining agreement;
  - iii. Required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
  - iv. Required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** Grantee/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- e. **Records.** Grantee/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- g. **Subcontractors.** Grantee/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.



**DEPARTMENT OF HUMAN SERVICES  
ADDENDUM TO  
STANDARD TERMS AND CONDITIONS**

**A. APPLICABILITY**

This Addendum supplements the Standard Terms and Conditions. Certain terms contained herein may not be applicable to all the services which may be provided through Department contracts or agreements.

**B. CONFIDENTIALITY**

The parties shall not use or disclose any information about a recipient of the services to be provided under this Agreement for any purpose not connected with the parties' contract responsibilities except with written consent of such recipient, recipient's attorney, or recipient's parent or legal guardian.

**C. INFORMATION**

During the period of the Contract, upon request, Contractor shall make immediately available to the Department all information obtained by Contractor through work on the Contract. If requested, the Contractor shall deliver to the Department background material prepared or obtained by Contractor incident to the performance of the Contract. Background material is defined as original work, papers, notes and drafts prepared by Contractor to support the data and conclusions in final reports, and includes completed questionnaires, materials in electronic data processing form, computer programs, other printed materials, pamphlets, maps, drawings and all data directly related to the services being rendered.

**D. CERTIFICATION AND LICENSING**

Contractor will have all licenses, certifications and permits from Federal, State and Local authorities permitting it to carry on its activities under the Contract.

**E. PROGRAM SERVICES**

Definitions of services, eligibility of recipients for service and other limitations in this Agreement are subject to modification by amendments to Federal, State and Local laws, regulations and program requirements without further notice Grantee.

**F. PRO-CHILDREN ACT OF 1994**

Contractor shall comply with the requirements of the Pro-Children Act of 1994; Part C-Environment Tobacco Smoke that requires that smoking not be permitted in any portion of an indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health care services, day care and education to children under the age of 18, if the services are funded by Federal programs whether directly or through State and Local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug and alcohol treatment.

**G. MEDICARE/MEDICAID REIMBURSEMENT**

1. To the extent that services are furnished by contractors, subcontractors, grantees, subgrantees or related organizations and services are in whole or in part claimed by the Commonwealth for Medicare or Medical Assistance reimbursement, Contractor shall comply with 42 C.F.R. Part 420, including:
  - a. Preservation of books, documents and records until the expiration of five years after the services are furnished under the Contract.
  - b. Full and free access to (i) the Commonwealth, (ii) the U.S. Inspector General, (iii) the U.S. Department of Health and Human Services, and their authorized representatives.

2. By submitting a Proposal, Contractor certifies under penalty of law that it has not been precluded from participation or terminated from any federally funded health care program and shall notify the Department immediately should a preclusion or termination occur.

#### **H. PROPERTY AND SUPPLIES**

1. Contractor shall obtain all supplies and equipment for use in the performance of the Contract at the lowest practicable cost and shall purchase by means of competitive bidding when required by law.
2. Title to property furnished in-kind by the Department shall remain the property of the Department.
3. Department property shall, unless otherwise approved in writing by the Department, be used only for the performance of the Contract.
4. If Contractor is indemnified, reimbursed or otherwise compensated for any loss, destruction or damage to Department Property, it shall use the proceeds to replace, repair or renovate the property involved, or shall credit such proceeds against the cost of the work covered by the Contract, or shall reimburse the Department, at the Department's direction.

#### **I. COVENANT AGAINST CONTINGENT FEES**

Contractor warrants that no person or agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial or agencies maintained by Contractor for the purpose of securing business). For breach of this warranty, the Department shall have the right to void the Contract without liability or, in its discretion, to deduct from the consideration otherwise due, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

#### **J. CONTRACTOR RESPONSIBILITY TO EMPLOY DHS CLIENTS**

1. The Contractor's Contractor Partnership Program (CPP) submittal and RFA CPP requirements become part of the Agreement. Contractor shall submit any proposed changes to the Office of Income Maintenance CPP Division. If the Contract is assigned to another contractor, the new contractor must maintain the CPP requirements of the original Agreement.
2. Contractor shall, within 10 days of receiving the Effective Date of the Contract, register in the Commonwealth Workforce Development System (CWDS).
3. As specified in RFA, Contractor must submit Quarterly Employment Reports to the Office of Income Maintenance Central Office of Employment and Training – CPP Division. Contractor may not revise, alter, or re-create the Quarterly Employment Report form. On a quarterly basis, Contractor shall provide information on the use and outcomes of hiring strategies and demonstrating good faith efforts to hire TANF beneficiaries.
4. If Contractor is non-compliant, the CPP Division will contact the Contract Administrator to request corrective action.

#### **K. AUDIT CLAUSE**

This Agreement is subject to audit in accordance with the attached Audit Clause.

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# SUBRECIPIENT / CONTRACTOR AUDITS

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## AUDIT CLAUSE A/B – SUBRECIPIENT

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The Commonwealth of Pennsylvania, Department of Human Services (DHS), distributes federal and state funds to local governments, non-profit, and for-profit organizations. Federal expenditures are subject to federal audit requirements, and federal and state funding passed through DHS are subject to DHS audit requirements. Any federal statute prescribing specific policies or specific requirements that differ from the standards provided herein shall govern. The DHS provides the following audit requirements in accordance with the Commonwealth of Pennsylvania, Governor’s Office, Management Directive 325.09, as amended January 10, 2022.

**Subrecipient** means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards received directly from a federal awarding agency (see 2 CFR Part 200 § 200.93). For purposes of this audit clause, a subrecipient **is not** a contractor as defined in 2 CFR Part 200 § 200.23.

Subrecipients must comply with all federal audit requirements and any other applicable law or regulation, as well as any other applicable law or regulation that may be enacted or promulgated by the federal government.

### **A. Federal Audit Requirements**

#### **Federal Audit Requirements Specific to Local Governments and Nonprofit Organizations**

If a local government or nonprofit organization expends federal awards of \$750,000 or more during its fiscal year, received either directly from the federal government, indirectly from a pass-through entity, or a combination of both, to carry out a federal program, it **is required** to have an audit conducted in accordance with the provisions outlined in 2 CFR Part 200.501, *Audit Requirements*.

#### **Federal Audit Requirements Specific to For-Profit Organizations**

A for-profit organization **is required** to have an audit if it expends a total of \$750,000 or more in federal funds under one or more Department of Health and Human Services (DHHS) federal awards. Title 45, CFR 75.501(i) incorporates the thresholds and deadlines of 2 CFR Part 200 as amended, and provides for-profit organizations with two options regarding the type of audit that will satisfy the audit requirements:

1. A financial audit conducted in accordance with generally accepted *Government Auditing Standards* (The Yellow Book), revised; or
2. An audit that meets the requirements contained in 2 CFR Part 200.

#### **Federal Audit Requirements Applicable to Local Governments and Nonprofit Organizations, and to For-Profit Organizations**

If a subrecipient expends **total federal awards of less than \$750,000** during its fiscal year, it is exempt from these **federal** audit requirements, but is required to maintain auditable records of federal or state funds that supplement such awards. Records must be available for review by appropriate officials. **Although an audit may not be necessary under the federal requirements, DHS audit requirements may be applicable.**

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## SUBRECIPIENT / CONTRACTOR AUDITS

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### AUDIT CLAUSE A/B – SUBRECIPIENT

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#### **B. DHS Audit Requirements**

**Subrecipients must meet the following DHS audit requirements:**

Where a Single Audit or program-specific audit is conducted in accordance with the federal audit requirements referenced above, DHS will accept such audit provided that:

1. A full copy of the audit report is submitted as detailed below; **and**
2. The subrecipient shall ensure that the audit requirements are met for the terms of this contract; i.e., the prescribed Agreed-Upon Procedures (AUP) Report(s) and applicable schedule requirement(s). The incremental cost for preparation of the AUP Report(s) and the schedule cannot be charged to federal funding streams.

**In the absence of a federally required audit**, the entity is responsible for following the annual audit requirements described below, which are based upon the program year specified in this agreement.

#### **DHS Audit Requirements Specific to Subrecipients**

Subrecipients that **expend \$750,000 or more in combined state and federal funds, but less than \$750,000 in federal funds**, during the program year are required to have an audit of those funds made in accordance with generally accepted *Government Auditing Standards* (The Yellow Book), revised, as published by the Comptroller General of the United States. Where such an audit is not required to meet the federal requirements, the costs related to DHS audit requirements may not be charged to federal funding streams.

If in connection with the agreement, a subrecipient **expends \$500,000 or more in combined state and federal funds, but less than \$750,000 in combined state and federal funds**, during the program year, the subrecipient shall ensure that, for the term of the contract, an independent auditor conducts annual examinations of its compliance with the terms and conditions of this contract (compliance attestations). These examinations shall be conducted in accordance with the American Institute of Certified Public Accountants' Statements on Standards for Attestation Engagements, No. 18, Attestation Standards: Clarification and Recodification (SSAE 18) and shall be of a scope acceptable to the DHS. The initial compliance attestation shall be completed for the program year specified in the contract and conducted annually thereafter. The incremental cost for preparation of the compliance attestation reports cannot be charged to federal funding streams.

The subrecipient shall submit the compliance attestation reports (if applicable) to the DHS within 90 days after the program year has been completed. When the compliance attestation reports are other than unmodified, the subrecipient shall submit to the DHS, in addition to the compliance attestation reports, a plan describing what actions the subrecipient will implement to correct the situation that caused the auditor to issue other than an unmodified report, a timetable for implementing the planned corrective actions, and a process for monitoring compliance with the timetable and a contact person who is responsible for the resolution of the situation.

If the subrecipient enters into an agreement with a subcontractor(s) for the performance of any primary contractual duties, the audit requirements are applicable to the subcontractor(s) with

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## SUBRECIPIENT / CONTRACTOR AUDITS

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### AUDIT CLAUSE A/B – SUBRECIPIENT

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whom the subrecipient has entered into an agreement. Consequently, the audit requirements should be incorporated into the sub-contractual document as entered by the subrecipient.

A subrecipient that **expends less than \$500,000 combined state and federal funds** during the program year is exempt from DHS audit requirements but is required to maintain auditable records for each contract year. Records must be available for review by appropriate officials of the DHS or a pass-through entity.

#### GENERAL AUDIT PROVISIONS

A subrecipient is responsible for obtaining the necessary audit and securing the services of an independent, licensed certified public accountant, or other independent governmental auditor.

DHS, other state agencies, and federal agencies, or their authorized representatives, may perform additional financial and/or performance audits. If an audit of this contract is to be performed, the subrecipient will be given advance notice. The subrecipient shall maintain books, records, and documents that support the services provided, that the fees earned are in accordance with the contract, and that the subrecipient has complied with the contract terms and conditions. The subrecipient shall make available, upon reasonable notice, at the office of the subrecipient, during normal business hours, for the term of this contract and the retention period set forth in this Audit Clause, any of the books, records, and documents for inspection, audit, or reproduction by any state or federal agency or its authorized representative.

Except when a longer period is stated in the contract, the subrecipient shall preserve all books, records, and documents related to this contract for a period of time that is the greater of five years from the time when the contract expires and all questioned costs or activities have been resolved to the satisfaction of DHS, or as required by applicable federal laws and regulations. Any records that support the services provided, that the fees earned are in accordance with the contract, and that the subrecipient has complied with contract terms and conditions must be maintained. If this contract is completely or partially terminated, subrecipient shall preserve the records relating to and make available for a period of five years from the date of any resulting final settlement.

Audit documentation and audit reports must be retained by the subrecipient's independent auditor for a minimum of five years from the date of issuance of the audit report, unless the subrecipient's auditor is notified in writing by DHS, other state agencies, or federal agencies to extend the retention period. Audit documentation must be made available upon request to authorized representatives of DHS, other state agencies, or federal agencies.

The subrecipient shall retain and shall make available or provide to DHS at DHS's option those records that relate to litigation of the settlement of claims arising out of performance or expenditures under the contract until such litigation, claim, or exceptions have reached final disposition.

Except for documentary evidence delivered pursuant to litigation or the settlement of claims arising out of the performance of the contract, the subrecipient may retain records as required by this Audit Clause using photographs, microphotographs, or other authentic reproductions of such records after the expiration of two years following the last day of the month of reimbursement to the contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by DHS.

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# SUBRECIPIENT / CONTRACTOR AUDITS

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## AUDIT CLAUSE A/B – SUBRECIPIENT

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### SUBMISSION OF AUDIT REPORTS TO THE COMMONWEALTH

#### A. Federally Required Audit Reports

##### Local Governments and Nonprofit Organizations

Submit an electronic copy of the audit report package to the Federal Audit Clearinghouse, which shall include the elements outlined in 2 CFR Part 200, Subpart F – *Audit Requirements* (Subpart F).

In addition, the subrecipient must send a copy of the confirmation from the Federal Audit Clearinghouse to the resource account [RA-BAFMSingleAudit@pa.gov](mailto:RA-BAFMSingleAudit@pa.gov).

##### For-Profit Organizations

Submit an electronic copy of the audit report package, which shall include the elements outlined in 2 CFR Part 200, Subpart F – *Audit Requirements* (Subpart F) to the resource account [RA-BAFMSingleAudit@pa.gov](mailto:RA-BAFMSingleAudit@pa.gov).

#### B. DHS Required Audit Reports and Additional Submission by Subrecipients

1. Independent Accountant’s Report on Applying Agreed-Upon Procedures – which consist of the following procedures for the funding provided by this agreement for the contract year ending within the entity’s fiscal year end under audit:

- (a) Verify by comparison of the amounts and classifications that the supplemental financial schedules listed below, which summarize amounts reported to DHS for fiscal year ended {CONTRACT YEAR END}, have been accurately compiled and reflect the audited books and records of (Auditee). Also verify by comparison to the example schedules that these schedules are presented, at a minimum, at the level of detail that directly mirrors the budget page (Rider 3) of the contract. The Schedule of Revenues and Expenditures should mirror the line items on the budget pages of the contract and include a budget and an actual expenditure column pertaining to this period.

Program Name/ Contract Number      Referenced Schedule/Exhibit

(List each individual schedule for all contracts in which the auditee participated.)

- (b) Inquire of management regarding adjustments to reported revenues or expenditures, which were not reflected on the reports submitted to DHS for the period in question.
- (c) Based on the procedures detailed in paragraphs (a) and (b) above, disclose any adjustments and/or findings and identify which have (have not) been reflected on the corresponding schedules.

(List each separately. Indicate whether it has/has not been reflected on the schedule.)

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## SUBRECIPIENT / CONTRACTOR AUDITS

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### AUDIT CLAUSE A/B – SUBRECIPIENT

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2. Independent Accountant’s Report on Applying Agreed-Upon Procedures – which consist of the following procedures for the entity’s fiscal year end under audit. All Local Governments and Nonprofit Organizations who are submitting a single audit in accordance with 2 CFR Part 200, Subpart F, and For-Profit Organizations who are submitting a single audit in accordance with Title 45, CFR 75.501(i), are also required to include in their single audit reporting package a supplemental schedule, which is to be subjected to an Agreed-Upon Procedures engagement. The schedule, for which an example is included in this audit clause as Enclosure I, is a reconciliation of the expenditures listed on the Schedule of Expenditures of Federal Awards (SEFA) to the Federal award income received from the Pennsylvania Department of Human Services (DHS), as noted in the revenue audit confirmation received from the Commonwealth of Pennsylvania. The procedures to be performed on the reconciliation schedule are as follows:
- (a) Agree the expenditure amounts listed on the reconciliation schedule under the “Federal Expenditures per the SEFA” column to the audited Schedule of Expenditures of Federal Awards (SEFA).
  - (b) Agree the receipt amounts listed on the reconciliation schedule under the “Federal Awards Received per the audit confirmation reply from Pennsylvania” column to the subrecipient Federal amounts that were reflected in the audit confirmation reply from the Office of Budget, Comptroller Operations.
  - (c) Recalculate the amounts listed under the “Difference” and “% Difference” columns.
  - (d) Agree the amounts listed under the “Difference” column to the audited books and records of the subrecipient.
  - (e) Agree the “Detailed Explanation of the Differences” to the audited books and records of the subrecipient.
  - (f) Based on the procedures detailed in paragraphs (a) through (e) above, disclose any adjustments and/or findings which have not been reflected on the corresponding schedules (List each separately.).

#### PERIOD SUBJECT TO AUDIT

A federally required audit, conducted in accordance with Subpart F, or Title 45, CFR 75.501(i), as appropriate, encompasses the fiscal period of the subrecipient. **Therefore, the period of the federally required audit may differ from the official reporting period as specified in this agreement.** Where these periods differ, the required supplemental schedule(s) of Revenues and Expenditures and the related Independent Accountant’s Report on Applying Agreed-Upon Procedures must be completed for the official annual reporting period of this agreement that ended during the period under audit and shall accompany the federally required audit.

#### CORRECTIVE ACTION PLAN

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## **SUBRECIPIENT / CONTRACTOR AUDITS**

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### **AUDIT CLAUSE A/B – SUBRECIPIENT**

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The subrecipient shall prepare a corrective action plan (CAP) to address all findings of noncompliance, internal control weaknesses, and/or reportable conditions disclosed in the audit report. For each finding noted, the CAP should include: (1) a brief description identifying the findings; (2) whether the subrecipient agrees with the finding; (3) the specific steps taken or to be taken to correct the deficiency or specific reasons why corrective action is not necessary; (4) a timetable for completion of the corrective action steps; (5) a description of monitoring to be performed to ensure that the steps are taken; and (6) the responsible party for the CAP.

#### **REMEDIES FOR NONCOMPLIANCE**

The subrecipient's failure to provide an acceptable audit may result in the DHS not accepting the report and initiating actions against the subrecipient that may include the following:

- Disallowing the cost of the audit.
- Withholding a percentage of the contract funding pending compliance.
- Withholding or disallowing administrative costs.
- Suspending subsequent contract funding pending compliance.
- Requiring a corrective action plan.
- Terminating the contract if the failure is not corrected within the time period approved by DHS.
  
- Assessing liquidated damages up to the amount of \$200 for each calendar day and portion of each calendar day for which each required audit or compliance attestation report is submitted beyond its required due date. Audits submitted without required AUP reports will not be considered acceptable and will be subject to liquidated damages.

#### **TECHNICAL ASSISTANCE**

Technical assistance on the DHS' audit requirements and the integration of those requirements with the federal Single Audit requirements will be provided by:

Department of Human Services  
Bureau of Financial Operations  
Division of Audit and Review  
Audit Resolution Section  
1st Floor, Forum Place  
555 Walnut Street  
P.O. Box 2675  
Harrisburg, Pennsylvania 17105-2675  
Email: [RA-pwauditresolution@pa.gov](mailto:RA-pwauditresolution@pa.gov)



# SUBRECIPIENT / CONTRACTOR AUDITS

## AUDIT CLAUSE A/B – SUBRECIPIENT

SUBRECIPIENT / CONTRACTOR AUDITS										
AUDIT CLAUSE A/B – SUBRECIPIENT										
ENCLOSURE I										
Entity Name										
Year Ended (ORGANIZATION'S FINANCIAL STATEMENT DATE)										
SUPPLEMENTAL SCHEDULE										
RECONCILIATION										
Federal Awards Passed through the Pennsylvania Department of Human Services										
Expenditures per the SEFA to Revenue Received per the Pennsylvania Audit Confirmation Reply										
CFDA Name	CFDA Number		Federal Expenditures per the SEFA		Federal Awards Received per the audit confirmation reply from Pennsylvania		Difference		% Difference	Detailed Explanation of the Differences
			\$		\$		\$		%	