

**LICENSE AGREEMENT FOR EXCLUSIVE SOFT DRINK CONCESSION  
AT THE PENNSYLVANIA FARM SHOW COMPLEX & EXPO CENTER**

THIS AGREEMENT, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the Commonwealth of Pennsylvania, Department of Agriculture, ("PDA") and \_\_\_\_\_ hereinafter referred to as LICENSEE.

WHEREAS, PDA had formally solicited proposals for a licensee as the exclusive soft drink concession for the Pennsylvania Farm Show Complex & Expo Center, 2300 North Cameron Street, Harrisburg PA 17110 ("FSC"); and

WHEREAS, PDA has determined that LICENSEE has submitted the most advantageous proposal and LICENSEE is willing to undertake the concession in connection therewith.

NOW THEREFORE, in consideration of terms and conditions contained in this LICENSE AGREEMENT, PDA AND LICENSEE agrees as follows:

**SECTION 1. LICENSE TERMS**

1.1 LICENSEE is hereby designated the "Official Soft Drink Provider" for the FSC, which includes such other rights and obligations as set forth herein, including: (i) the exclusive wholesale provider of soft drinks to (a) the official Food and Beverage Concessionaire of the FSC ("F&B Concessionaire") and (b) to any other food provider, caterer or entity approved by PDA to conduct business at the FSC that includes the sale or service of soft drinks (collectively referred to as "any other approved vendor") for resale to the public at the FSC; as well as (ii) installing and maintaining vending machines; and (iii) installing and maintaining soft drink dispensing equipment at the FSC, including, coolers, display cases and any other equipment necessary and customary for the sales of refrigerated pre-packaged single-serving containers (collectively referred to as "soft drink dispensing equipment").

1.1.1 In exchange, LICENSEE agrees to perform the undertakings set forth in this License Agreement in accordance with all the conditions, covenants, and representations contained in this License Agreement, the Solicitation for Proposals issued by PDA or a licensee as the exclusive soft drink concession for the FSC ("SFP") and LICENSEE's Proposal submitted in response thereto ("Proposal"). If, in the sole opinion of PDA, any beverage is offered by LICENSEE inconsistent with the terms herein or is otherwise deemed unsuitable for sale on the licensed premises, PDA shall request in writing that LICENSEE cease selling such and LICENSEE shall cease doing so immediately upon receipt of a written request from PDA.

1.1.2 PDA will not, during any term of this License Agreement: (a) designate any other soft drink as the "Official Soft Drink" of the FSC; (b) authorize or license the sale or vending of any other soft drink product at the FSC, except by mutual written agreement between PDA and LICENSEE.

1.1.3 Clause (b) of the preceding sentence may not apply to certain events which buy out the facility Food and Beverage Concessionaire to utilize the FSC, parking lots and are operated by third parties, such as farmer's markets or flea markets.

1.1.4 PDA reserves the right to designate milk or dairy beverages with designations of "official" status provided there is no reference to soft drinks as defined herein. Local or PA Preferred® tea and juice may be purchased by PDA or the F&B Concessionaire and is excluded from this contract.

1.1.5 PDA reserves the right during the annual Pennsylvania Farm Show to authorize designated vendors representing agricultural commodity producer groups to sell designated Pennsylvania-produced non-carbonated cold soft drinks as part of their fund-raising activities as part of the Food Court in the Giant Expo Hall and the Main Hall.

1.2 "Soft drink" is defined herein as non-alcoholic beverages including soda (carbonated and non-carbonated), power drinks, energy drinks, and bottled water (flavored and unflavored) in containers larger than 8 oz. Soft drink does not include hot or iced coffee, hot or iced tea, juices, milk or beverages made primarily from or with milk or dairy products, and apple cider.

1.3 LICENSEE shall have no rights or obligations hereunder with regard to products made available for purchase by PDA/FSC employees by vending or other dispensing equipment, or in areas of the FSC, which are made exclusively available to such employees, nor with regard to the free supply of drinking water, bottled or otherwise, to employees or volunteers of entities or parties who have rented the FSC and are engaged in setting-up, conducting or breaking-down an event being held at the FSC.

1.4 LICENSEE shall not retail or distribute product to consumers. LICENSEE shall have the exclusive right to supply soft drink products directly to the FSC's exclusive F&B Concessionaire, and any other approved vendor, for resale to the public at the FSC through LICENSEE's vending machines installed and maintained at the FSC and through soft drink dispensing equipment. The FSC's F&B Concessionaire will perform the duties necessary to stock LICENSEE's vending machines with LICENSEE's products and is responsible for vending machine refunds to customers, through financial arrangements made directly with LICENSEE. If desired, LICENSEE may propose to restructure the details of those arrangements with F&B Concessionaire, subject to PDA's approval.

1.5 BEVERAGE DISPENSING UNITS AND LOCATIONS: Beverage dispensing units shall be located throughout the facility as event needs dictate. Portable beverage chilling & dispensing equipment shall include:

- 10 countertop coolers for multi-use portables
- 25 round portable coolers to be used for catering events and large functions
- 10 portable carts to be used for selling beverage at temporary stands
- 30 large double door coolers onsite year round
  - All coolers must be capable of being locked.
  - All coolers must be upright and on caster wheels.
- 30 additional large double door coolers to be onsite December through April 12, 2023
  - All coolers must be capable of being locked.
  - All coolers must be upright and on caster wheels.

1.6 TEMPORARY LOCATIONS: Throughout the event year, numerous temporary food and beverage service locations are made available for visitors to the FSC. These can/could be located anywhere throughout the facility or sometimes located in the parking lots. Additionally, the six (6) food and beverage locations in the Large Arena are used at various times throughout the year for the provision of food and beverage services. LICENSEE will be responsible to provide beverage dispensing units to all temporary locations when and as needed.

1.7 PRICING: LICENSEE shall provide PDA'S F&B Concessionaire, and any other approved vendor, soft drinks at the lowest available price offered by distributors in the area, to like concessionaires or according to national account pricing, but subject to the price quotes for the initial term of this agreement set forth in that portion of the Proposal titled Monetary Proposal. LICENSEE may honor AGREEMENTS with companies with whom LICENSEE has existing national contracts that stipulate unit prices. With regard to any other pricing issues not covered by the foregoing, LICENSEE shall charge such prices and rates as are agreed upon in writing with FSC. With PDA's prior approval, LICENSEE, through F&B Concessionaire, may from time to time offer soft drink products without charge to Complex patrons for promotional purposes.

1.8 CONTAINERS: PDA prefers aluminum cans to be used for soft drinks. No glass containers may be used in vending machines.

1.9 FINANCIAL AND OTHER CONSIDERATION: LICENSEE shall pay to PDA, as compensation for the rights granted under this LICENSE AGREEMENT an annual license fee of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), as well as any and all payments and investments in facilities or equipment improvements to the FSC ("investments") set forth in LICENSEE's Proposal submitted in response to the SFP in the portion titled "MONETARY PROPOSAL," which is attached hereto as Addendum No. 1.

1.9.1 Any payment or investment due hereunder shall be made by July 1 for each year this Agreement is in effect. If payment or investment is made for a partial year, if ever applicable, the amount shall be prorated on a per day basis. With the consent of PDA, unsatisfied investment obligations may be carried forward as cumulative obligations in the following year(s).

1.9.2 The initial annual license fee for the year encompassing July 1, 2023 through June 30, 2024, shall be paid upon the date of the execution of this agreement by LICENSEE.

1.9.3. The annual fee shall remain constant for the initial three (3) year term of this agreement and each additional one (1) year renewal term, if renewed.

1.9.4 Investments shall be defined as set forth in the SFP under "Monetary Proposal" and their value shall be computed as the value of the facilities or equipment improvements minus administrative fees (which include design, engineering and all fees incurred for necessary governmental approvals).

1.9.5 For the first year of this agreement, improvements as outlined in the Monetary Proposal shall be completely installed and operational within six (6) months following execution of this agreement or within such timeframe as mutually agreed upon between PDA and the LICENSEE. For each successive year of the agreement, improvements shall be completely installed and operational on or before October 1 of each year, unless otherwise agreed in writing.

1.9.6 All facilities improvement, equipment or equipment improvements proposed as investments shall, upon completion, become the sole and exclusive property of PDA.

1.9.7 All facilities or equipment improvements proposed as investments must be submitted and approved by the FSC's Executive Director for final approval prior to commencing work. All administrative fees, including design and consulting fees, for investments undertaken pursuant to the Proposal and/or this agreement shall be borne by the LICENSEE and shall not be included as part of the investment value. LICENSEE shall provide, at its sole expense, all licenses, permits, equipment, supplies, materials, merchandise, transportation, and labor necessary for the satisfactory completion of any investments and a copy of any required licenses, permits or government approvals shall be provided to PDA.

1.10 TERMS AND RENEWALS: The initial term of this License Agreement shall be from the date of its execution, to June 30, 2026. It may be renewed (subject to conditions set forth herein and mutual agreement of the parties) for up to two (2) additional successive annual terms. Each such successive annual term is to begin July 1 and expire July 30, limited to a total of two (2) terms, with a final termination date of June 30, 2028.

1.11 INGRESS AND EGRESS: PDA grants to LICENSEE free ingress and egress through and over property under the jurisdiction of PDA, subject to any terms and conditions set forth herein, for the

purpose of fulfilling its obligations hereunder and for all approved activities necessary to enabling and promoting, the sale of its soft drinks, included the installation, operation and maintenance of vending machines for use by the public and any and all necessary soft drink dispensing equipment to be utilized by the F&B Concessionaire and any other approved vendor, as well as necessary to accomplish the investments undertaken in the Proposal.

**1.12 REPORTING AND RECORDKEEPING:** On or before of July 15<sup>th</sup> of each year of this License Agreement, LICENSEE shall provide PDA, through the FSC Executive Director, a report detailing the volume of all products sold for use at the FSC, the value of said products, and any/all equipment or investment provided in the preceding fiscal year. LICENSEE shall keep proper and complete books and records of accounts of its operation under this License Agreement. Internal control procedures implemented by LICENSEE shall be adequate to ensure that all product sales are accounted for and accurately recorded. LICENSEE shall permit PDA's authorized agents, upon request, to examine and audit records relative to this agreement without delay. Records shall be retained by LICENSEE for a period of three (3) years beyond the termination of this agreement, unless earlier disposal is approved by PDA in writing.

**1.13 SOFT DRINK DISPENSING EQUIPMENT:** LICENSEE shall provide new, like-new or used/re-conditioned soft drink dispensing equipment, acceptable to the PDA, for the dispensing of soft drink products, including any cooling equipment, coolers or other necessary equipment, at any/all approved locations throughout the FSC. LICENSEE shall keep the equipment provided by the LICENSEE in a clean, sanitary, and presentable condition. LICENSEE shall maintain all equipment provided by the LICENSEE in good repair, at LICENSEE'S own expense. LICENSEE shall provide F&B Concessionaire and any other approved vendor with maintenance, repair or replacement of equipment provided by the LICENSEE in such a manner as to ensure that scheduled soft drink sales are uninterrupted. In the event of maintenance, repair or replacement that does not impact the ability to conduct uninterrupted soft drink sales, such maintenance, repair or replacement services shall be provided not later than forty-eight (48) hours after telephone notice to the LICENSEE of the need for such maintenance, repair or replacement. In the event of maintenance, repair or replacement that impacts the ability to conduct uninterrupted soft drink sales,, services shall be provided not later than twenty-four (24) hours after telephone notice to the LICENSEE of the need for such maintenance, repair or replacement. Materials or parts used for maintenance and/or repairs shall be the same material, an approved equal, or of better quality than the original material or part. LICENSEE agrees to periodic inspections of the equipment and LICENSEE agrees to correct any defects which do not interrupt scheduled soft drink sales within a reasonable amount of time, but in no event not more than ten (10) days. Furthermore, if said defects, as determined by PDA, would result in a condition hazardous to a consumer, F&B Concessionaire, or PDA personnel or facilities, said defects shall be corrected by LICENSEE immediately. LICENSEE understands and agrees that, if the maintenance and/or repair work on the equipment provided by the LICENSEE are not accomplished by LICENSEE as required by the foregoing License Agreement provisions, PDA may, at its option, accomplish the work and invoice LICENSEE for same. LICENSEE shall make full payment to PDA for said invoice within thirty (30) days after the date of said invoice.

**1.14 VENDING MACHINES:** LICENSEE shall provide standard, commercial soft drink vending machines in new, like-new or used/re-conditioned equipment, with cashless (credit/debit card only) payment systems and non-resettable totalizers. PDA and F&B Concessionaire must be provided with a means of reading the counters on a random basis. All machines must operate on grounded 110-volt electrical service. PDA and F&B Concessionaire shall be informed in advance of the requirements for the installation of any such vending machines, including power requirements and other needs. PDA shall not be responsible for the cost of any site preparation for the installation of any machine, including extending electric service to locations not already provided with such service. It is understood and agreed that costs of such installation shall be borne by LICENSEE. LICENSEE shall, in full cooperation of the F&B Concessionaire, provide a notice, prominently posted at each vending area informing patrons where requests for vending

machine refunds may be made and such notice shall be approved by PDA prior to posting. Licensee shall be responsible to maintain four (4) vending machines at the following locations:

- Cross Roads Hallway
- Maclay Street Lobby
- Cameron Street Lobby
- Keystone Cross Roads meeting area.

1.15 LICENSED BUSINESS MARKS: LICENSEE shall be licensed to utilize the FSC name and logo in conjunction with media advertising and/or promotional materials reciting that LICENSEE's product(s) is/are the "Official Soft Drink" of the FSC or a reasonable equivalent, in a manner acceptable to PDA and approved by PDA prior to any such use. Notwithstanding, and in addition to any remedies for breach of this agreement, PDA shall be entitled to seek injunctive relief through the courts of the Commonwealth of Pennsylvania for any breach in connection herewith despite the existence or adequacy of any remedy at law.

1.16 SIGNAGE AND ADVERTISING: Permanent or temporary advertising or signage for LICENSEE'S soft drink products may be displayed in the FSC only with PDA's approval as to form, size, location and duration, except that LICENSEE shall be permitted to include its trademark and brand names on its dispensing equipment without approval. No such signage or advertising, once erected, shall be altered or removed without PDA's approval. Any signs authorized by PDA for specific locations or events which remain in excess of any authorization shall become the property of PDA, if not removed by LICENSEE after reasonable notice.

1.17 DELIVERIES: Deliveries shall occur during normal work hours on Monday through Friday and on weekends or holidays at such a time as to ensure that commercial vehicles involved shall depart before 11:00 a.m. Additional deliveries may be made by arrangement with the FSC Executive Director or his designee.

## **SECTION 2. GENERAL TERMS & CONDITIONS**

2.1 INCORPORATION: The Solicitation for Proposals and all attachments (SFP), as well as Licensee's proposal and all its components, addendums and accompanying correspondence (Proposal), except as may be inconsistent or modified herein or inconsistent with the SFP, are made a part of this agreement as if set forth fully herein. If any discrepancies in interpretation arise, the terms of the any executed License Agreement are the first point of reference, the SFP is the second, and the Proposal is the third.

2.2 DUE DILIGENCE OF LICENSEE: PDA does not guarantee any number of visitors to FSC, any specific number of events or activities, or sales of LICENSEE's products at FSC. LICENSEE acknowledges that it has relied upon its own due diligence in assessing the prospects of revenue generation by its undertaking herein.

2.3 NOTICES & PAYMENTS: All notices, documents, approval requests or payments to PDA which may be required or desired to satisfy LICENSEE's undertakings hereunder shall be delivered to Pennsylvania Farm Show Complex & Expo Center, Attn: Executive Director, 2300 North Cameron Street, Harrisburg, PA 17110-9443. Notices to LICENSEE shall be delivered as follows: [INSERT CONTACT INFO]

2.4 INTEREST: Any payments due hereunder which are not paid on or before the due date shall bear interest at 18% per annum until paid, computed from the first business day falling after the due date. Any payments received shall first be applied against interest due with the remaining portion being applied against the oldest payment due.

2.5 TERMINATION OF LICENSE AT EXPIRATION OF TERM: LICENSEE or PDA may terminate this AGREEMENT at the end of the initial or any successive term by notification to the other party in writing at

least six (6) months prior to the end of the then current term of its intention not to renew LICENSE for an additional term.

2.6 TERMINATION FOR CAUSE: If the LICENSEE shall fail to make payments or investments due to the PDA as and when the same shall be due, or shall fail to keep proper records or accounts or shall otherwise fail to perform or breach any of the terms, conditions or covenants of this agreement, then the PDA may at its option declare this agreement terminated by giving thirty (30) days' written notice to the LICENSEE specifying the effective date of termination, after which immediate possession may be taken and a substitute soft drink provider utilized. Notwithstanding any other provision in this License Agreement regarding injunctive relief and/or liquidated damages, PDA shall also upon such termination have the right to recover against the LICENSEE any sum or sums due or any damage suffered by the reason of the LICENSEE'S breach or breaches of any covenants of this agreement.

2.7 RIGHTS UPON TERMINATION: Upon termination of this License Agreement for any reason, any equipment or personal property of LICENSEE remaining on FSC more than ten (10) days after the effective date of termination shall be considered abandoned and immediately become the property of PDA.

2.8 LIQUIDATED DAMAGES: LICENSEE'S failure to comply with any provision of this agreement, including any addenda hereto, will subject LICENSEE to liquidated damages, notwithstanding any other provision in this agreement regarding other remedies available under contract, at law or in equity. If LICENSEE violates any provision of the agreement, LICENSEE shall be issued a written notification stating the violation and a date by which it must be corrected or action ceased. If LICENSEE has not corrected the violation or ceased the action by the stated date, the liquidated damages shall be \$500 per day from that day forward until corrected or ceased. Liquidated damages assessed hereunder shall be paid by LICENSEE to PDA within thirty (30) days of the date of written notification from PDA to LICENSEE. This provision in no way constitutes a waiver of PDA'S full range of other legal rights or contractual remedies hereunder.

2.9 COMPLIANCE WITH ALL APPLICABLE LAWS: LICENSEE shall comply with all laws, regulations, ordinances or codes of any federal, state, county or municipal government with regard to all activities and/or undertakings pursuant to this agreement. Any and all information relevant to this agreement will be shared with any other governmental entity or agency charged with enforcing laws in the Commonwealth of Pennsylvania, if requested by the entity or agency.

2.10 USE & CONDITION OF THE FSC PREMISES: LICENSEE shall have the right to use the FSC premises only for the purposes described herein and only in compliance the terms of this agreement. Any vehicle(s) involved in the activities of LICENSEE at the FSC and/or its undertakings pursuant to this agreement must be parked only in a location approved by the FSC Executive Director. LICENSEE accepts the condition of the premises and agrees at termination of this AGREEMENT for any reason to return premises to PDA in a condition acceptable to PDA. LICENSEE shall not make any alterations to the FSC without prior written approval of PDA. In addition, LICENSEE shall not deface or mutilate the walls, floors, ceiling, equipment, landscaping, or other parts of the FSC in any manner.

2.11 IMPROVEMENTS: All improvements made to the FSC premises by LICENSEE become the property of PDA at the termination of this agreement for any reason, free of any and all encumbrances, unless otherwise specified herein. If such improvements are part of the investments pursuant to LICENSEE'S Proposal, said permanent improvements shall become a part of the licensed premises and shall be become the sole and exclusive property of PDA upon completion of construction or installation of the investment.

2.12 WORKERS: LICENSEE and all persons acting on behalf of LICENSEE at the FSC shall be professional, courteous and respectful in all interactions with employees, vendors, guests, patrons and the public, and in all work performed pursuant to this agreement, and shall carry identification which clearly and accurately states their affiliation with LICENSEE. In the event of any failure to do so, PDA may at its sole discretion require that LICENSEE preclude an employee or person acting on behalf of LICENSEE from

returning to the FSC. Possession or consumption of alcohol or illegal drugs, sexual harassment, criminal conduct or any conduct deemed inappropriate to the activities or functioning of the FSC, by any employees, or person while acting on behalf of LICENSEE pursuant to this agreement may result in immediate and/or permanent expulsion of that employee or person from the FSC in connection with the activities undertaken pursuant to this agreement.

2.13 EQUIPMENT STORAGE: LICENSEE may store its equipment for this operation at locations approved by PDA, on or in the FSC during non-operating periods, provided this agreement is not terminated and is in effect. If LICENSEE should store any equipment on the FSC premises, said storage shall be at LICENSEE'S sole risk and PDA shall assume no financial responsibility for loss or damage to LICENSEE'S equipment from acts of vandalism, loss, fire, flood, theft, damage, or acts of God.

2.14 RENOVATIONS AT FSC: During the term of this agreement, the PDA may undertake renovations, repair or construction project/projects in and around the FSC. In such event, some or all of the soft drink vending areas of the premises may be unavailable during the course of said project. LICENSEE shall not be entitled to make any claims of any kind against PDA based upon any failure to realize revenues due to such renovations, repair or construction.

2.15 INTEGRATION: This agreement, including all referenced or incorporated documents or exhibits, constitutes the entire agreement between the parties. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this agreement. Except as provided herein, no modifications, alterations, changes, or waiver of any agreement terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

2.16 APPLICABLE LAW: This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. Contractor 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. Contractor 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.

2.17 ASSIGNMENT: LICENSEE agrees not to assign any rights this License Agreement, in whole or part without, first obtaining the written consent of PDA. In the event PDA consents to any such assignment, LICENSEE shall remain primarily liable for the payment of all fees due and other conditions herein provided, unless otherwise expressly provided in the written consent of PDA. No assignment made by LICENSEE without consent shall vest any right in the assignee regarding the activities or undertakings on FSC premises addressed herein.

2.18 BANKRUPTCY & INSOLVENCY: If LICENSEE becomes insolvent, fails in business, files for a receiver, or has a receiver appointed by the court; or a creditor of LICENSEE attaches or executes a judgment against LICENSEE'S equipment, materials, or facilities at the licensed premises or on collateral pledged to PDA; and LICENSEE cannot demonstrate or prove to PDA'S satisfaction the ability to continue to operate in compliance with the conditions of this AGREEMENT, all the fees reserved for the full term of this AGREEMENT shall become due and collectible immediately, this AGREEMENT shall terminate and any portions of the FSC premises occupied by LICENSEE pursuant to the License Agreement shall be immediately surrendered to PDA. If LICENSEE files a petition in bankruptcy, LICENSEE shall notify PDA of same at the time of filing.

2.19 HEADINGS: The section and paragraph headings herein are for convenience only and are intended to have no legal force or effect.

2.20 APPROVAL: This AGREEMENT shall be effective upon execution by PDA and the LICENSEE.

2.21 INSURANCE: Throughout the term of this AGREEMENT, LICENSEE shall maintain at its own expense through insurance companies acceptable to the DEPARTMENT and authorized to do business in the COMMONWEALTH:

- a. Workers Compensation Insurance sufficient under the laws of Pennsylvania to cover all of its employees, or the employees of its contractors, working at the premises.
- b. Comprehensive General Liability Insurance with a minimum of \$250,000 per person and \$2,500,000 per occurrence personal injury and property damage combined.
- c. Products Liability Insurance with a minimum of \$2,000,000 aggregate limit.
- d. Fire and Extended Coverage Casualty Insurance on all equipment owned by the Licensee located at the Farm Show Complex with a minimum limit of the fair market value of all equipment or the replacement cost, whichever is greater.
- e. The above listed liability insurances shall name the Commonwealth of Pennsylvania, Department of Agriculture as additional insured and the coverage shall be on an occurrence basis.
- f. The Licensee must provide the Commonwealth with current certificates of insurance as delineated above. These certificates must contain a provision that coverage afforded under the policies will not be changed or cancelled until the Commonwealth has received at least 30 days prior written notice.

2.22 INDEMNITY: LICENSEE shall, at all times, save and hold harmless and indemnify the Commonwealth of Pennsylvania, its agencies, departments, officers and employees, from and against all losses, damages, expenses, claims, demands, suits and actions, including all claims for personal injuries and property damages, arising out of or caused in any manner by LICENSEE's activities or undertakings pursuant to this agreement, except as may be occasioned by the negligence of the Commonwealth of Pennsylvania, its agencies, departments, officers or employees.

2.23 THIRD PARTY RIGHTS: With the exception of the indemnity provision above, this agreement does not create or confer any rights in or on persons or entities not a party to this agreement.

2.24 COMMONWEALTH EXHIBITS: Included in and made part of this agreement are the following Commonwealth of Pennsylvania addendums in which the term "contractor" shall refer to the LICENSEE.

- Exhibit A: CONTRACTOR INTEGRITY
- Exhibit B: NON-DISCRIMINATION/SEXUAL HARASSMENT
- Exhibit C: AMERICANS WITH DISABILITIES ACT
- Exhibit D: CONTRACTOR RESPONSIBILITY
- Exhibit E: RIGHT TO KNOW LAW
- Exhibit F: WORKERS PROTECTION AND INVESTMENT CERTIFICATION FORM

2.25 DISPUTES: In the event of a controversy or claim arising from this License Agreement, LICENSEE must, within six months after the cause of the action accrues, file a written claim with the PDA for a determination. The claim shall state all grounds upon which the LICENSEE asserts a controversy exists. If LICENSEE fails to file a claim or files an untimely claim, LICENSEE is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within thirty (30) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program. If LICENSEE requests mediation and PDA agrees, PDA shall promptly make arrangements for mediation to occur within ninety (90) days of receipt of the claim. If mediation is not agreed to or if resolution is not reached through mediation, PDA shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within one hundred and twenty (120) days of receipt of the claim, unless extended by consent of Licensee, and the failure to issue a determination within that time will be deemed a denial. PDA's determination shall be the final order of the Commonwealth. Within fifteen (15) days of the mailing date of the determination denying the claim or within 135 days of filing a claim, if no extension is agreed to by the parties, whichever comes first, LICENSEE may file a statement of claim with the Commonwealth Board of Claims. Pending a final



judicial resolution of a controversy or claim, LICENSEE shall proceed diligently with the performance of the License Agreement in a manner consistent with the determination of PDA.

2.26 CONTACTS WITH MEDIA: LICENSEE shall not issue any news releases concerning this License Agreement or any activities or undertakings hereunder without the prior written approval of the PDA.

2.27 SEVERABILITY: If a court of competent jurisdiction or governmental regulatory agency determines any portion of the License Agreement to be invalid, it shall be severed and the remaining portions of this License Agreement shall control.

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IN WITNESS WHEREOF, the parties hereto, with intention of being legally bound, hereby have caused this AGREEMENT to be executed by their duly authorized representative(s) the day and year first above written:

**LICENSEE:** \_\_\_\_\_

\_\_\_\_\_ Federal Identification No.

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ Print Name

\_\_\_\_\_ Title (President or Vice President)

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ Name

\_\_\_\_\_ Title (Secretary or Treasurer)

Note: The above officers of the LICENSEE, if a corporation, must sign and specify their title. In lieu thereof, please enclose a letter stating what authority, e.g. bylaws, board minutes, etc., the signatory has to execute on behalf of the LICENSEE.

**COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF AGRICULTURE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Secretary or Authorized Designee

**APPROVED AS TO FORM AND LEGALITY:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of Chief Counsel, Department of Agriculture

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of General Counsel

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of Attorney General

# Exhibit A

## CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("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.

**1. DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

**a. "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.

**b. "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.

**c. "Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.

**d. "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.

**e. "Financial Interest"** means either:

(1) Ownership of more than a five percent interest in any business; or

(2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

**f. "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.

**g. "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.

**2.** In furtherance of this policy, Contractor agrees to the following:

**a.** 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.

**b.** 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.

**c.** 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 in this contract.

**d.** 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 Contractor.

**e.** Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

(1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

(2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

(3) had any business license or professional license suspended or revoked;

(4) 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

(5) 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.

**f.** 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).

**g.** 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.

**h.** 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.

**i.** 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.

**j.** 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.

## **Exhibit B**

### **NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

The Contractor agrees:

1. 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 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.
2. Neither the 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, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. Neither the 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 contract.
4. Neither the 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.

5. The Contractor and each 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 contracted services are performed shall satisfy this requirement for employees with an established work site.

6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each 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 Contractor and each 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 contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. 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.

9. The Contractor's and each subcontractor'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 and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

10. 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.

## **Exhibit C**

### ***PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT***

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

**1.** Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq., the contractor 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 contractor 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 through contracts with outside contractors.

**2.** The contractor 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 contractor's failure to comply with the provisions of paragraph 1.

## **Exhibit D**

### ***CONTRACTOR RESPONSIBILITY PROVISIONS***

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.

**1.** 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.

2. 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.
3. 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.
4. 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.
5. 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.
6. 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.

## **Exhibit E**

### **RIGHT TO KNOW LAW 8-K-1570, REV. 2/1/2010**

- 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 contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, 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 the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
  - 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor 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 the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor 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, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor 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, the Contractor 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 the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor

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

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**Exhibit F**  
**Worker Protection and Investment Certification Form**



**WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM**

A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania’s Unemployment Compensation Law, Workers’ Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

**CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee’s compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

<i>Signature</i>	<i>Date</i>
<i>Name (Printed)</i>	
<i>Title of Certifying Official (Printed)</i>	
<i>Contractor/Grantee Name (Printed)</i>	



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