



pennsylvania
DEPARTMENT OF GENERAL SERVICES

**Invitation for Bid
for
Master Installment Purchase Agreement
and Payment Schedule Financing**

**Contract No.
DGS MASTER IPA 2023
Harrisburg, Pennsylvania**

TABLE OF CONTENTS

1. Notice to Bidders
2. Instructions to Financial Bidders
3. General Information
4. Financial Bid
5. Certification and Bid Signature Page
6. Responsiveness Checklist
7. Appendix A: Sample Master Installment Purchase Agreement and Payment Schedule with Sample GESA Contract

Note:

Please read all pages of this Bid Proposal. The Responsiveness Checklist is provided for your convenience and should not be returned to the Department. All other pages shall be completed and properly signed and/or sealed by Bidder in the appropriate place before being returned to the Department on or before the bid due date and time established in the Notice to Bidders. If the Bidder wishes to have a copy of their Bid Proposal, make the copy before submitting to the Department. The Department will not provide the Bidder with a copy.

NOTICE TO FINANCIAL BIDDERS

Department of General Services
Office of Energy and Resource Management
401 North Street, Harrisburg, Pennsylvania 17120

It is the responsibility of each bidder to ensure that its bid is received by the Department of General Services prior to the date and time set for the bid opening. **Bids received by the Department of General Services after the Bid Opening Date/Time will be rejected.**

IFB Date of Issue	01/30/2023
Financing	Master Installment Purchase Agreement and Payment Schedule
Project Location	Various locations throughout Pennsylvania
Agency	Department of General Services
Bid Opening Date and Time	02/28/2023 at 2:00 pm
Contract Numbers	DGS Master IPA 2023
Proposed Term of Financing	The financing term (duration) of the Agreement shall be for a twenty-four-month period, starting on the effective date of the Agreement (i.e., the date that the Agreement was fully executed by all parties)
Proposal Period	60 Days allowed from Bid Opening until Notice of Selection
Interest Rate Hold	Bid Interest rate shall be held by bidder/Financer for 120 days from the date and time of Bid Opening.
Mandatory Vendor Registration	All Bidders must be registered to and must have a current & active PA Vendor Number. Register at www.pasupplierportal.state.pa.us
Issuing Office	Department of General Services Energy & Resource Management Office ATTN: Becky Tomlinson / Bidder Services 401 North Street Room 403 North Office Building Harrisburg, PA 17120
Contact Personnel	Becky Tomlinson (717) 705-5946 retomlinso@pa.gov
Pre-Bid Conference	No pre-bid conference will be scheduled.

INSTRUCTIONS TO FINANCIAL BIDDERS

FAILURE TO COMPLY WITH THESE INSTRUCTIONS MAY RESULT IN THE REJECTION OF THE BID AS NOT RESPONSIVE.

SECTION 1. FINANCING TO BE PROVIDED. The financing to be provided is for GESA Contracts to Funding Agencies as described in the Invitation for Bid. The successful Bidder/Financial Provider (“Financer”) will be required to execute the Master Installment Purchase Agreement and Payment Schedule included in the bid documents.

SECTION 2. INTERPRETATION OF BIDDING DOCUMENTS.

- A. Requests for Interpretation (RFI) during the bid stage **shall be submitted in writing, via email**, to the name and address found in the Notice to Bidders. All RFIs related to the proposed Work or proposed contract documents must be received, in writing, by the Department, **no later than close of business five (5) days prior to the Bid Opening Date**. Only written RFIs received no later than five (5) days prior to the date fixed for the opening of bids will be considered by the Department. If a request is received within 5 days of the bid opening date, the Department may, in its sole discretion, answer the request. Requests via emails shall be considered “written” requests.
- B. **NEITHER THE DEPARTMENT NOR ANY REPRESENTATIVE OF THE FUNDING AGENCY SHOULD BE ASKED TO PROVIDE ANY ORAL INTERPRETATION TO ANY BIDDER RFI OF THE GESA CONTRACT DOCUMENTS. ANY CONVERSATION BETWEEN A BIDDER AND EITHER THE DEPARTMENT, OR A REPRESENTATIVE OF A FUNDING AGENCY, SHOULD NOT BE RELIED UPON BY ANY BIDDER, IS NOT BINDING UPON THE DEPARTMENT, AND SHALL NOT BECOME PART OF THE MASTER INSTALLMENT PURCHASE AGREEMENT UNLESS THE INFORMATION SUBSEQUENTLY APPEARS IN A WRITTEN BULLETIN.**
- C. The Department’s response to any RFI will be in the form of a written bulletin. The Department will forward all bulletins to all Bidders that obtained bidding documents for the Project. All bulletins become a part of the Master Installment Purchase Agreement, and all Bidders are bound by all bulletins issued on the project.

SECTION 3. SUBMISSION OF BIDS. All bids shall be submitted on forms prepared by the Department. Bidder should retain a copy for their own use. All entries on the bid must be in ink or typewritten, preferable in blue ink to indicate an original writing. In case of discrepancy between the words and numbers, the written words are the bid price. **Bid forms must be completed. If the Interest Rate, Market Index, Spread (basis points), and/or Other Fees on the GESA Financial Bid form are not completed, the Bid will be rejected as non-responsive.**

SECTION 4. SIGNING THE BID. The Bidder must sign the bid correctly as described in the bid documents. The signature must be an ORIGINAL and HAND-SCRIPTED signature. If the bid is submitted by a corporation, the bid should be signed by the President or Vice President and any one of the following officers of the Corporation: The Secretary, Assistant Secretary, Treasurer, or Assistant Treasurer. If not signed by the specified officers, the signing individual must be authorized to sign by the corporation's board of directors. If a person other than one of these officers executes the bid, a copy of the document authorizing that person to execute the bid must accompany the bid. **If the "Certification and Bid Signature Page" is left blank, the bid will be deemed void and the bid WILL BE REJECTED by the Department. The bidder will NOT be given any opportunity to sign the page after the time and date of the bid opening. A signature appearing any other place in the bid package shall not be sufficient to substitute for the lack of a signature on the Certification and Bid Signature page.**

SECTION 5. AWARD TO A DOMESTIC AND FOREIGN BUSINESS.

- A. No contract will be awarded to a domestic business unless the Bidder has complied with, or agreed to comply with, the registration requirements under the Business Corporation Law of 1988 (15 Pa. C.S. §1101-§4131) and/or the Pennsylvania Uniform Partnership Act of 2016 (15 Pa. C.S. §8411-§8486), and/or the Pennsylvania Uniform Limited Partnership Act of 2016 (15 Pa. C.S. §8611-§8695), and/or the Pennsylvania Uniform Limited Liability Company Act of 2016 (15 Pa. C.S. §8811-§8898), and/or the Fictitious Names Act (54 Pa. C.S. §301-§332).
- B. No contract will be awarded to a Bidder which is a foreign business unless the Bidder has complied with or agreed to comply with Chapter 4 (relating to Foreign Associations) of Title 15 Corporations and Unincorporated Associations (15 Pa. C.S. §402-§419).

SECTION 6. TIMELY DELIVERY OF BID PROPOSAL. The bidder must submit its bid to the Department prior to the time scheduled for bid opening, regardless of the method of delivery used. Any bid received after the time set for the bid opening will be returned to the bidder without being considered by the Department. The bid will not be returned if it is not possible to determine the identity and address of the bidder.

SECTION 7. DELIVERY OF BID IN CLEARLY MARKED ENVELOPE. All submitted bids shall be enclosed in a sealed envelope and marked plainly on the outside with the contract number, bid opening date and time. If the bid envelope is to be enclosed in another envelope for the purpose of express-type delivery, the exterior envelope shall be clearly marked as a bid and the contract number, bid opening date and time shall be shown on the exterior envelope.

- A. **Submission of Bid by Mail.** If submitted by mail, the envelope shall be sent to the address for receiving bids noted in the "Notice to Bidders" for the particular Project and should be sent Return Receipt Requested.
- B. **Submission of Bid by other than Mail.** If submitted other than by mail, the bid must be delivered to the address noted in the particular "Notice to Bidders" prior to the time stated therein.

- C. **Submission of Bid by Hand Delivery.** Photographic identification and proof of authorization will be required from individuals who are hand-delivering bids.

SECTION 8. WITHDRAWAL OR MODIFICATION OF A BID PRIOR TO BID OPENING.

- A. **Complete Withdrawal Before Bid Date or Time.** A Bid may be withdrawn by written notice or in person by a Bidder or its authorized representative (if their identity is established by photographic identification and proof of authorization, preferably on Bidder letterhead) and a receipt for the bid is signed prior to the exact hour and date set for the opening of bids.
- B. **Modification Before Bid Date or Time of a Bid of Bid Already Submitted but Not Opened.** If, before the time of the bid opening, a Bidder wishes to modify a bid already delivered to the Department, the Bidder or its authorized representative (if their identity is made known through photographic identification and proof of authorization) may request that the Department return the bid, but only if the Bidder/representative signs a receipt for the bid **before** the exact hour and date set for the opening of bids. The Bidder or their authorized representative may then modify the bid and resubmit the bid so long as the modified bid complies with the requirements set forth in these Instructions to Financial Bidders for GESA Projects. The Department will not, under any circumstances, open a bid before the bid opening date and time.

SECTION 9. BID OPENING PROCEDURE. Bids will be opened and read aloud publicly in the presence of one or more witnesses at the Issuing Office at the time designated in the Notice to Bidders. No inspection or photocopies of any Bid Proposal will be made at the bid opening. The amount of each bid, together with the name of each Bidder will be recorded. Such recorded information shall be considered unofficial and shall be open to public inspection after the bid opening. The bid tab, listing the Bidders and their bid amount, will formally be made available on DGS' Energy & Resource Management webpage typically within (3) three business days.

SECTION 10. REJECTION OF BID. The Department reserves the right to reject any or all bids or parts thereof. A bid may be rejected if it shows any omission, alterations of form, additions or deductions not called for, conditional language or uninvited alternate bids, or irregularities of any kind. The Department reserves the right, however, to waive technical defects or irregularities on bids. The Department may reject the bid of any Bidder failing to meet the requirements of these Instructions to Financial Bidders or any other requirements of Bidders set forth in the Bidding Documents.

SECTION 11. WITHDRAWAL OF BIDS AFTER BID OPENING. Within three (3) days after the opening of the bids, but before award, a Bidder may request permission to withdraw its entire bid if it submits a request, by email or mail, to the Issuing Office. The request must be addressed to the Director of the Energy and Resource Management Office. The request will not be considered received unless it is directed as set out in this section. With the request for withdrawal, the Bidder must submit evidence that the reason for withdrawal is a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error.

SECTION 12. EXPERIENCE QUESTIONNAIRE AND FINANCIAL STATEMENT PROVIDED ON REQUEST. At the Department's request, or if specifically required by the bid, Bidders shall file an experience questionnaire and financial statement with the Department on the form provided by the Department. The questionnaire and statement shall be certified to be true and correct by an affidavit sworn to or affirmed before a Notary Public, or other officer empowered to administer oaths or affirmations. Falsification of any requested information shall result in a rejection of the bid as not responsible, forfeiture of the bid bond and/or cancellation of the Contract Award.

SECTION 13. COLLUSIVE BIDS WILL BE REJECTED. The bids of any Bidder or Bidders who engage in collusive bidding will be rejected. Any Bidder who submits more than one bid in such manner as to make it appear that the bids submitted are on a competitive basis from different parties will be considered a collusive Bidder. Submission of collusive bids will result in a Bidder being rejected as not responsible for subsequent projects. Nothing in this Section prevents a Bidder from superseding a bid by submitting a subsequent bid, delivered prior to bid opening, which expressly revokes the previous bid.

SECTION 14. BID PROTEST PROCEDURE. The Commonwealth Procurement Code (62 P.C. §1711.1, as amended) governs the protest procedure, which is summarized below. In the event this general description conflicts with the statute, the statutory language controls.

- A. **Who may File.** Any Bidder or prospective Bidder who is aggrieved in connection with the bid or the award of a contract resulting from the bid may file a protest.
 1. "Prospective Bidder" is an entity that has not submitted a bid in response to the Notice to Bidders.
 2. "Bidder" is an entity that has submitted a bid in response to the Notice to Bidders.
- B. **Time Limits.**
 1. If a protest is filed by a Prospective Bidder, a protest must be filed prior to the Bid Opening Date and time established in the Notice to Bidders by either e-mail or regular mail.
 - a. **E-MAIL.** Prospective Bidders may complete and submit a Protest Form. The Form is available under the Invitation Documents tab in the Package Invitation to Bid for the Project. The Form, along with any supporting documentation, must be e-mailed, as indicated on the Bid Protest Form.
 - b. **MAIL.** Prospective Bidders may file a protest, in writing, with the Issuing Office, Department of General Services, 401 North Street, Room 403 North Office Building, Harrisburg, PA 17120.
 2. If a protest is filed by a Bidder, the protest must be filed within seven (7) days after the protesting Bidder knew or should have known of the facts giving rise to the protest, **except** in no event may a protest be filed later than 7 days after the Bid

Tabulation is available in e-Builder and posted to the DGS website. Bidders must file protests by either:

- a. **E-MAIL.** Bidders may complete and submit a Protest Form. The Form is available in e-Builder under the Invitation Documents tab in the Package Invitation to Bid for the Project. The Form, along with any supporting documentation, must be e-mailed, as indicated on the Bid Protest Form to e-Builder, or
 - b. **MAIL.** Protest may be filed, in writing, with the Issuing Office, Department of General Services, 401 North Street, Room 403 North Office Building, Harrisburg, PA 17120,
3. Filed – shall be defined as the date upon which the Issuing Office receives the written protest.
 4. If the Bidder fails to file a bid protest or files an untimely protest, then they shall be deemed to have waived the right to protest the solicitation or award of the contract in any forum. Untimely protests will be disregarded by the Department.
- C. The Department may cancel an invitation for bids or may reject all bids at any time prior to the time a contract is executed by all parties when it is in the best interests of the Commonwealth. The Bidder may not submit a protest relating to cancellation of the bid or rejection of all bids.
 - D. A protest shall state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.
 - E. The full text of the Bid Protest Procedure can be found at 62 Pa. C.S §1711.1 *et seq.*

SECTION 15. BIDDER CERTIFIED NOT UNDER DEBARMENT. The Bidder must certify that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Bidder cannot so certify, then the Bidder agrees to submit along with the bid a written explanation of why such certification cannot be made.

SECTION 16. REIMBURSEMENT OF COSTS OF INSPECTOR GENERAL INVESTIGATION. The Financer shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Financer and the Commonwealth which result in the suspension or debarment of the Financer. Such costs shall include, but 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 which do not result in the Financer's suspension or debarment.

SECTION 17. CURRENT LIST OF SUSPENDED AND DEBARRED ENTITIES. The Financier/Contractor may obtain the current list of suspended and debarred Entities by referring to the Department of General Services' Construction and Public Works website.

SECTION 18. ASSIGNMENT OF ANTITRUST CLAIMS. The Financer/Contractor and the Commonwealth recognize that, in actual economic practice, overcharges by the Financer's/Contractor's consultants, resulting from the violations of State or Federal antitrust laws, are, in fact, borne by the Commonwealth. As part of the consideration for the award of this contract, and, intending to be legally bound, the Financer/Contractor assigns to the Commonwealth all right, title and interest in, and to, any claims contractor now has, or may hereafter acquire, under State or Federal antitrust laws relating to the goods or services, which are the subject of this contract.

SECTION 19. AWARD OF MASTER INSTALLMENT PURCHASE AGREEMENT AND PAYMENT CONTRACT (i.e., CONTRACT). If the Department awards a Master Installment Purchase Agreement and Payment Schedule, it will be made to the responsible Bidder with the lowest Interest Rate, Market Index, Spread (basis points), and/or Other Fees, within sixty (60) days from the Bid Opening Date. The 60-day period may be extended by written consent of the lowest responsible Bidder(s). Notice of Award of Contract will be made by letter mailed to the Financer and will be effective upon the date DGS mailed the Notice of Award. If the lowest Bidder withdraws its bid, declines to extend the bid or refuses the Award of Contract, the Department may award the Installment Purchase Agreement to the next lowest responsible Bidder or reject all bids and re-bid the Financing. **There will be no Contract with the Commonwealth until all parties have fully executed the Master Installment Purchase Agreement and Payment Schedule.**

SECTION 20. EXECUTION OF MASTER INSTALLMENT PURCHASE AGREEMENT AND PAYMENT SCHEDULE. Within ten (10) days after receipt of the Master Installment Purchase Agreement, the successful Bidder, must:

- A. Sign and return the Master Installment Purchase Agreement and Payment Schedule to the Department of General Services, Room 403, 401 North Street, Harrisburg, Pennsylvania 17120; in care of the Energy and Resource Office, or emailed to the GESA administrator and
- B. After all Commonwealth signatures (handwritten or electronic) are obtained and the Installment Purchase Agreement is fully executed, the Department will forward a written notification to the successful bidder.
- C. Understand and agree that a stamped "APPROVED ELECTRONICALLY" or similar wording by the Commonwealth on the Installment Purchase Agreement signature page constitutes a valid, binding contract with the Commonwealth and represents that all approvals required by Commonwealth contracting procedures have been obtained.

SECTION 21. FAILURE TO EXECUTE INSTALLMENT PURCHASE AGREEMENT. Failure or refusal of the Financer to properly execute the Master Installment Purchase Agreement within the 10-day time will be viewed as a refusal to accept the Award. If the successful Bidder refuses to accept the award or properly execute the Master Installment Purchase Agreement within the 10-day time, the Department may award the Master Installment Purchase Agreement to the next lowest responsible Bidder or reject all bids and re-bid the Financing.

SECTION 22. VETERAN'S PREFERENCE. The Department strongly encourages that, all things being equal, contractors give preference in employment on projects of the Department to veterans of the Armed Services of the United States of America.

SECTION 23. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT. During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

- A. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. 35.202 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 contract or from such activities provided for under this contract. As a condition of accepting and executing this contract, 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 of Pennsylvania through contracts with outside contractors.
- B. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania 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 A above.

SECTION 24. ENHANCED MINIMUM WAGE PROVISIONS. During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

1. **Enhanced Minimum Wage.** Contractor 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 Contract, and for an 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.
2. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate shall be increased by an annual cost-of-living adjustment using 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.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;

- c. 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
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Contractor 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.
5. **Records.** Contractor 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.
6. **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.
7. **Subcontractors.** Contractor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

SECTION 25. RIGHT-TO-KNOW LAW. During the term of this contract, the Energy Financing Provider/Financer (referred to as “Contractor” in this Section) agrees as follows:

1. 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.
2. 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.
3. 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:
 - a. 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

- b. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
4. 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.
5. 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.
6. 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.
7. 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
8. Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
9. 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.

10. 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.

SECTION 26. OFFSET PROVISION. During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

The Contractor agrees that the Commonwealth of Pennsylvania (Commonwealth) may offset the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

SECTION 27. CONTRACTOR INTEGRITY PROVISIONS. During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

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.

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

1. **"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.
2. **"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.
3. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.
4. **"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.
5. **"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.

6. **“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.
7. **“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:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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 if 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.

6. 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)*.
7. 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.
8. 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.

9. 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.
10. 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.

SECTION 28. CONTRACTOR RESPONSIBILITY PROVISIONS. During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

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.

GENERAL INFORMATION

1. PURPOSE

- A. The purpose of this Invitation for Bids (“IFB”) issued by the Commonwealth of Pennsylvania, acting through the Department of General Services (DGS), is to solicit competitive sealed bids from financial entities (“bidders”) for financing of multiple Commonwealth of Pennsylvania Guaranteed Energy Savings Act projects (“GESA projects”) for a set term.
- B. The financing arrangement takes the form of a Master Installment Purchase Agreement and Payment Schedule (“Agreement”) entered between the awarded bidder (“Financer”) and DGS providing for, among other things:
 1. Entering into a Master Installment Purchase Agreement and Payment Schedule for purchases on an installment payment basis for financing of Guaranteed Energy Savings Act (GESA) projects by DGS on behalf of itself and GESA projects by other Commonwealth of Pennsylvania Agencies. DGS and other Commonwealth of Pennsylvania Agencies are referred to individually as “Funding Agency” and collectively as “Funding Agencies”, and
 2. Payment to the Financer by Funding Agencies pursuant to a Master Installment Purchase Agreement and Payment Schedule between the Financer and DGS. A sample Master Installment Purchase Agreement and Payment Schedule (“**Appendix A**”), in substantial form, shall be entered into between the Financer and DGS as a result of the award of this IFB.
- C. This IFB, the resulting Agreement and related documents in no way conveys exclusive financing rights to the Financer. The Commonwealth of Pennsylvania reserves the right to obtain financing outside of this IFB as it freely desires, in addition to financing to be provided under any Agreement that should result from this IFB.

2. SCOPE OF SERVICE

- A. **TERMS OF THE MASTER INSTALLMENT PURCHASE AGREEMENT:** The Agreement provides for the Tax-Exempt lease financing of GESA projects upon Financer and Funding Agencies entering a Schedule, as stipulated in the appended sample Agreement. The rate of interest to be charged for each financing (i.e., each GESA project that is the subject of a Schedule) will be determined and fixed on the acceptance date of the lease using the interest rate provided in the awarded bid and adjusted per the Index as defined in the awarded bid. Bids must clearly identify and define the bidder’s proposed Index.

Payments will generally be calculated based on a level payment basis using a single fixed rate of interest for a maximum of a twenty (20) year term. Payments may be monthly, semi-annually, or annually and will continue for the specified financing term or until prepaid in accordance with the Agreement.

The financing term (duration) of the Agreement shall be for a twenty-four-month period, starting on the effective date of the Agreement (i.e., the date that the Agreement was fully executed by all parties) or until a total of **\$100,000,000** has been financed through the Agreement, whichever occurs first. The Commonwealth may opt to extend the Agreement for an additional twelve-month period or increase the amount to be financed by up to an additional **\$30,000,000**, or both, upon mutual written agreement between the Financer and the DGS.

Upon establishment of a project and award to a GESA Contractor under DGS' GESA Program, the applicable Funding Agency will submit and enter a Schedule with Financer. The Commonwealth of Pennsylvania Agency that enters into the Schedule is bound by the terms and provisions of the Master Installment Purchase Agreement and Payment Schedule and is the entity responsible for making payments to the Financer in accordance with the Schedule and Agreement.

Under the terms of the Agreement, Lessor will review the credit worthiness of each Funding Agency that submits a Schedule for financing under the Agreement and will have the ability to reject any Funding Agency that does not meet the Lessor's lending/leasing financial criteria. It is the intent of the terms of the Agreement to provide financing to "like or similar" credits, meaning that each qualifying applicant will be eligible for, and that payment will be subject to, an annual State appropriation.

2. ENERGY PROJECTS TO BE FINANCED

- A. Energy projects to be financed consist of equipment or services that reduce energy consumption or operating costs as may be permitted by the Pennsylvania's Guaranteed Energy Savings Act, 62 Pa. C.S. §§ 3751 – 3758. Each GESA project financed will be equal to or greater than \$100,000 and is subject to Financer's approval based on Financer's lending/leasing financial criteria.

3. INTEREST RATE AND PAYMENT

- A. The Funding Agency whose name appears on respective Schedules will make installment payments directly to the Financer in equal monthly, semi-annual, or annual installments based on the interest rate in Financer's bid and as adjusted per the Index provided in the bid and as defined in the Agreement.
- B. Payments will be through an Automated Clearing House.
 - A. The Department will make all payments the Contractor through an Automated Clearing House (ACH).
 - B. The Professional, within ten (10) days of receiving the Agreement, must include their ACH information in their user profile in the Commonwealth's PA Supplier Portal.
 - C. The Professional must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's

ACH remittance advice to enable the Professional to properly apply the Project's payment to the invoice submitted.

- D. It is the Professional's responsibility to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

4. ESCROW FEES

- A. There shall be no fee for a construction escrow.



BID SUBMISSION
**MASTER INSTALLMENT
PURCHASE AGREEMENT AND
PAYMENT SCHEDULE FINANCING**
Department of General Services
401 North Street
Harrisburg, PA 17125

Do not write in space below
Date: _____
Bid Opening Witness: _____
Legal Review: _____

CONTRACT NO. DGS MASTER IPA 2023

**INVITATON FOR BIDS
FOR
MASTER INSTALLMENT PURCHASE AGREEMENT FINANCING**

Bidder Name and Address:

Bidder Phone #:

Bidder Email:

Bidder Federal ID #:

Vendor ID #:

BULLETIN INFORMATION: Bidder acknowledges receipt of the following Bulletin(s) and agrees they are part of this Bid Proposal.

Bulletin # ___ Issue Date: _____

Bulletin # ___ Issue Date: _____

Bulletin # ___ Issue Date: _____

Bulletin # ___ Issue Date: _____

Bulletin # ___ Issue Date: _____

Bulletin # ___ Issue Date: _____

BID SUBMISSION

INTEREST RATE AND MARKET INDEX

Funding Placement	Private
Repayment Period (commencing 12 months after final completion)	Up to 18 years depending on the specifics of the GESA project being financed
Payment Structure (commencing 12 months after final completion)	Monthly or Annually (indicate which)
*Interest Rate	
*Market Index	
*Spread (basis points)	
*Other fees (if applicable and include explanation)	

*These items are required to be completed. If they are not completed and shown on this form, the Bid may be rejected as non-responsive.

BID SUBMISSION

BIDDER ORGANIZATIONAL INFORMATION

BIDDER ORGANIZATION (Check applicable box)

The Bidder is a corporation, limited liability company, or partnership organized and existing under the laws of Pennsylvania and has been granted a certificate of authority to do business in Pennsylvania as required by the Business Corporation Law of 1988, as amended.

OR

The Bidder is a corporation organized and existing under the laws of _____ and **has or has not** (circle one) been granted a certificate of authority to do business in Pennsylvania as required by the Business Corporation Law of 1988 (15 Pa. C.S. §4121-§4131), as amended.

OR

The Bidder is a limited liability company organized and existing under the laws of _____ and **has or has not** (circle one) registered to do business in Pennsylvania as required by the Limited Liability Company Law of 1994 (15 Pa. C.S. §8981-§8982), as amended.

OR

The Bidder is a limited partnership organized and existing under the laws of _____ and **has or has not** (circle one) registered to do business in Pennsylvania as required by the Partnership Code (15 Pa. C.S. §8581-§8590), as amended.

OR

The Bidder is an individual or partnership trading under a fictitious or assumed name and **has or has not** (circle one) registered under the Fictitious Names Act (54 Pa. C.S. §301-§332), as amended.

BIDDER RESIDENCE INFORMATION

Bidder has a bona fide establishment in Pennsylvania at which it was transacting business when the Notice to Bidders for this Project was issued?

If **“Yes”**, insert address below if different than address on page 1:

If **“No”**, insert Bidder’s office address if different than address on page 1.

BID SUBMISSION

Certification and Bid Signature

After examination of the contract documents including the Master Installment Purchase Agreement and Payment Schedule and issued Bulletins, which are made a part hereof as if fully set forth, the undersigned (hereinafter "Bidder"), submits this Bid Proposal and certifies by signing that:

1. Bidder is the only person(s) interested in this Bid as principal and this Bid Proposal is submitted without collusion with any person, firm or corporation; and
2. Bidder will execute the Installment Purchase Agreement within ten (10) days after receipt of the documents; and
3. Bidder agrees to provide the funding to complete the work set forth in future GESA Contract documents and Investment Grade Audits. It is understood that the first payment of the Payment Schedule is not due until twelve (12) months after the financed GESA Projects are completed; and
4. Bidder agrees that DGS reserves the right to reject this and any or all Bid Proposals, or any part thereof or to waive technicalities required for the best interests of the Commonwealth; and
5. Bidder understands and acknowledges that all information provided by, and representations made by, the Bidder in the Bid Proposal are material and important and will be relied upon by the Issuing Office in awarding the contract(s). Any misstatement shall be treated as fraudulent concealment from the Issuing Office of the true facts relating to the submission of this bid. A misrepresentation shall be punishable under 18 Pa. C.S. § 4904; and
6. Bidder agrees that the Commonwealth of Pennsylvania may offset all or a portion of any and all payments that may become due and owing under the contract for this project against any and all debts owed to any other Commonwealth of Pennsylvania agency; and
7. The bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid; and
8. To the best knowledge of the person signing the bid, Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last three (3) years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as disclosed by the Bidder in its bid; and.
9. To the best of the knowledge of the person signing the Bid Proposal for the Bidder and except as otherwise disclosed by the Bidder in its bid, the Bidder has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Bidder that is owed to the Commonwealth; and.
10. The Bidder is not currently under suspension or debarment by the Commonwealth, or any other state, or the federal government; and

11. The Bidder has not, under separate contract with the Issuing Office, made any recommendations to the Issuing Office concerning the need for the services described in the bid or the specifications for the services described in the bid; and
12. Bidder, by submitting its bid, authorizes all Commonwealth agencies to release to the Commonwealth information related to liabilities to the Commonwealth including, but not limited to, taxes, unemployment compensation, and workers' compensation liabilities; and
13. Until the awarded Bidder receives a fully executed and approved written Master Installment Purchase Agreement from the Issuing Office there is no legal and valid contract, in law or in equity, and the Bidder should not begin to perform Work; and
14. Bidder agrees to comply with the Non-Discrimination Sexual Harassment Clause in the Master Installment Purchase Agreement and is aware that implementation of nondiscrimination and equal opportunity is the policy of the Commonwealth of Pennsylvania. DGS has established a method of administration to assure that all contracting agencies and contractors are accorded equal employment opportunity without regard to race, color, national origin, ancestry, religious creed, age or sex; and
15. The person(s) signing this bid certifies that the information in this Bid Proposal is true and correct to the best of their knowledge and that the person(s) is authorized to represent the Bidder in connection with this certification

I state that _____ (Name of Bidder) submits this Bid Proposal and understands and acknowledges that the above representations (1 through 15) are material and important, and will be relied upon by the Department of General Services in awarding the Installment Purchase Agreement for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Department of General Services of the true facts relating to the submission of this bid.

[Signature Page Immediately Follows]

BIDDER IS A PARTNERSHIP:

Witness:

By:

General Partner

Date

BIDDER IS A LIMITED LIABILITY COMPANY:

Attest:

By:

Manager/General Partner

Date

OR

BIDDER IS A CORPORATION:

Attest:

By:

Secretary/Treasurer

(Vice) President

Date

RESPONSIVENESS CHECKLIST

This checklist is only provided as a courtesy to assist bidders in submitting a responsive bid. Compliance with the checklist does not guarantee a responsive bid. The checklist should not be returned to the Department since it will not be used to review the bid package.

	YES	NO
Bidder has acknowledged receipt of any Bulletins under "BULLETIN INFORMATION"		
Bidder has ensured the Master Installment Purchase Agreement Financial Bid form is fully complete		
Bidder has completed the Bid Signature Page		
Bidder has ensured that the Bid Signature Page is signed by authorized person		

APPENDIX A

**Sample Master Installment Purchase Agreement and Payment
Schedule with Sample GESA Contract**

**SAMPLE
MASTER INSTALLMENT PURCHASE AGREEMENT
AND
PAYMENT SCHEDULE**

This **Master Installment Purchase Agreement and Payment Schedule** ("Master IPA") is entered into this ____ day of _____ 20____ between the ---Name of Financial Provider---, ("Financer"), and the Commonwealth of Pennsylvania ("Commonwealth"), acting through the Department of General Services "DGS").

WITNESSETH:

WHEREAS, under DGS' GESA Program, the Commonwealth desires to enter into Guaranteed Energy Savings Contracts ("GESA Contract" substantially in the form of **Exhibit B** and as further defined below) with contractors ("GESA Contractor") for the implementation of Energy Conservation Measures ("ECM") at the facility(s) of each applicable Funding Agency;

WHEREAS, along with DGS, other Commonwealth of Pennsylvania Agencies (a.k.a. "Funding Agency" and collectively, "Funding Agencies") participate in DGS' GESA Program by entering into GESA Contracts as administered under DGS' GESA Program;

WHEREAS, funding for each individual GESA Contract shall be initiated by a Funding Agency submitting and entering a Schedule with Financer for review and approval;

WHEREAS, for each Schedule, the Financer will provide financing for the applicable GESA Contract and receive payments from the applicable Funding Agency in accordance with the terms of this Agreement and the applicable Schedule thereunder;

WHEREAS, for each Schedule, the applicable GESA Contractor will implement/construct the related ECMs and adhere to all terms of the applicable GESA Contract; and

WHEREAS, for each Schedule, the applicable Funding Agency will approve payments to be made to the applicable GESA Contractor for work satisfactorily completed by such GESA Contractor during the implementation/construction of the related ECMs and make payments to the Financer in accordance with the terms of this Agreement and the applicable Schedule; and

WHEREAS, the relationship between the parties shall be a continuing one and items of ECMs may be added to the ECMs from time to time by execution of additional Schedules by the parties hereto and as otherwise provided herein; and

WHEREAS, the DGS is authorized under law to enter into this Agreement and the Schedules hereto for the purposes set forth herein; and

WHEREAS, each Funding Agency is authorized under Title 62, Procurement, Pennsylvania Consolidated Statue, to enter into Schedules under this Agreement for the purposes set forth in this Agreement and the applicable Schedule thereunder.

NOW THEREFORE, the parties intending to be legally bound, agree as follows:

1. DEFINITIONS

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“Acceptance Certificate” means, with respect to each Financing Package, the Acceptance Certificate attached to and made a part of the related Schedule and substantially in the form of **Exhibit C** attached to this Agreement.

“Acquisition Amount” means, with respect to each Financing Package, the amount specified in the related Schedule and represented by the applicable Funding Agency to be sufficient for the purpose of acquiring and installing the ECMs listed in such Financing Package.

“Agreement” means this Master Installment Purchase Agreement and Payment Schedule, including the exhibits hereto, together with any amendments and modifications to the Agreement that is executed by the Financer and Commonwealth.

“Commencement Date” means, for each Financing Package, the date when the applicable Funding Agency’s obligation to make payments, including the interest portion, to the Financer commences under such Financing Package.

“Contractor” means, Financer for Sections 21 through 29 of this Agreement and for **Exhibit E** of this Agreement.

“Escrow Account” means, with respect to each Financing Package, the account established and held by the Escrow Agent pursuant to the related Escrow Agreement.

“Escrow Agent” means, with respect to each Financing Package, the Escrow Agent identified in the related Escrow Agreement, and its successors and assigns.

“Escrow Agreement” means, with respect to each Financing Package, an Escrow and Account Control Agreement in form and substance acceptable to and executed by the Financer, the applicable Funding Agency and the applicable Escrow Agent, pursuant to which an Escrow Account is established and administered.

“GESA Contract” means, with respect to each Financing Package, the GESA Contract attached to and made a part of the related Schedule and substantially in the form of **Exhibit B** attached to this Agreement.

“Financing Package” means an individual Schedule (**Exhibit A**), as executed by Financer and the Commonwealth, acting through the applicable Funding Agency, and the terms of this Agreement, which are incorporated by reference, the applicable GESA Contract (**Exhibit B**), applicable Acceptance Certificate (**Exhibit C**), and applicable Payment Schedule (**Exhibit D**). **Exhibits A, B, C, and D, together, shall constitute a separate and independent Financing Package under this Agreement.**

“Original Term” means the period from the Commencement Date for each Financing Package until the end of the fiscal year of the applicable Funding Agency in effect at such Commencement Date.

“Payment Schedule” means, with respect to each Financing Package, the Payment Schedule attached to and made a part of the related Schedule and substantially in the form of **Exhibit D** attached to this Agreement.

“Renewal Terms” means the renewal terms of each Financing Package, each having a duration of one year and a term coextensive with the applicable Funding Agency’s fiscal year, as specified in the Schedule applicable thereto.

2. FINANCER’S PRIOR APPROVAL OF SCHEDULES; FUNDING AND PAYMENT FOR EACH GESA CONTRACT

- A. For each potential Financing Package under this Agreement, the applicable Funding Agency shall advise the Financer of its desire to enter into a GESA Contract with the applicable GESA Contractor for the related ECMs with the related details, including, but not limited to, costs and expected delivery date of such ECMs. By execution of this Agreement, the Financer has made no commitment to enter into any Financing Package with any Funding Agency. Nothing herein shall obligate the Financer to enter into any Schedule with any Funding Agency until the Financer has approved such financing. If the Financer, in its sole discretion, determines that it will enter into a Schedule with the applicable Funding Agency for the financing of the related ECMs, the Financer shall furnish to such Funding Agency the proposed terms of such financing in accordance with this Agreement.
- B. For each Financing Package, to assure the availability of moneys to pay the applicable GESA Contractor, the cost of the applicable GESA Contract for, inter alia, the implementation/construction of the related ECMs, the Financer will, at the request of the Commonwealth, deposit the Acquisition Amount into the applicable Escrow Account with the applicable Escrow Agent, to be held in a non-interest bearing account, and disbursed by such Escrow Agent in accordance with the terms of the applicable Escrow Agreement.
- C. For each Financing Package, the related ECMs will be implemented/constructed by the applicable GESA Contractor at the location specified in the applicable GESA Contract. The applicable GESA Contractor will submit Applications for Payment in accordance with the applicable GESA Contract, and once the Applications for Payment are reviewed/approved by the applicable Funding Agency, such Funding Agency will request disbursement from the applicable Escrow Account for the payment of the cost of such ECMs.
- D. For each Financing Package, The Financer shall then approve payments from the applicable Escrow Account to the applicable GESA Contractor for the amount specified by the applicable Funding Agency.
- E. In the event that the amounts in the Escrow Account are insufficient to pay the costs of the ECMs, the Funding Agency shall deposit additional funds into the Escrow Account to eliminate such insufficiency.

- F. In the event that the amount in the Escrow Account exceeds the cost of the ECMs (the “Excess Funds”), the Funding Agency shall pay such Excess Funds to Financer and such Excess Funds shall be applied as a principal prepayment to the first payment on the Payment Schedule, and to each succeeding payment on the Payment Schedule, until all of the Excess Funds have been applied. Upon acceptance of all the ECMs, the Funding Agency shall deliver to Financer an Acceptance Certificate in the form attached to this Agreement as **Exhibit C**.

3. PAYMENT

- A. For each Financing Package, the applicable Funding Agency agrees to pay to Financer, or any assignee of the Financer, the payments, including the interest portion, as specified in the applicable Payment Schedule at the office of Financer (or such other place as Financer or its assignee may from time to time designate in writing).
- B. For each Financing Package, such payments will be made commencing on the dates set forth in the applicable Payment Schedule.
- C. Unless specifically provided otherwise in the applicable Financing Package, the applicable Funding Agency’s obligation to make the payments to the Financer under such Financing Package shall commence twelve (12) months after the Final Payment (as defined in the GESA Contract) has been paid to the applicable GESA Contractor by the applicable Escrow Agent and shall be absolute and unconditional in all events except as expressly provided in Section 4 and Section 19 of this Agreement.
- D. For each Financing Package, the applicable Funding Agency believes that sufficient funds can be obtained to make all payments during the applicable Financing Package term and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which the applicable payments under such Financing Package may be made, including making provisions for such payments to the extent necessary in each budget submitted by the applicable Funding Agency for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved, and exhausting all available administrative reviews and appeals in the event that such portion of the budget is not approved.
- E. For each Financing Package, it is the applicable Funding Agency’s intent to make payment for the full applicable Financing Package if funds are legally available, and in that regard, such Funding Agency represents that the use of the ECMs is essential to its proper, efficient, and economic operation.
- F. During the Payment Schedule term for each applicable Financing Package, the applicable Funding Agency will, upon the request of Financer, annually make available to Financer, or its assignee, its current financial statements, budgets, proof of appropriation for the ensuing applicable fiscal period, and such other financial information as may be requested by Financer or any assignee relating to the ability of such Funding Agency to continue to make installment payments and other sums due under such Payment Schedule.

- G. For each Financing Package, if payment or other sums owed by the applicable Funding Agency are not paid when due, interest may accrue in accordance with the law of the Commonwealth of Pennsylvania.
- H. Payments will be through an Automated Clearing House.
 - I. The Commonwealth will make all payments to the Financer through an Automated Clearing House (ACH).
 - II. The Financer, within ten (10) days of receiving the Agreement, must include their ACH information in their user profile in the Commonwealth's PA Supplier Portal.
 - III. The Financer must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Professional to properly apply the Project's payment to the invoice submitted.
 - IV. It is the Financer's responsibility to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

4. NONAPPROPRIATION OF FUNDS UNDER EACH GESA PROJECT FINANCING PACKAGE

- A. For each Financing Package, in the event that no funds or insufficient funds are appropriated and budgeted in any Commonwealth Fiscal Period for payments due under the applicable Payment Schedule, then the applicable Funding Agency will immediately notify Financer or its assignee of such occurrence, and such Financing Package shall terminate on the last day of Commonwealth's Fiscal Period for which appropriations were received without penalty or expense to such Funding Agency of any kind whatsoever. In the event of such a termination, the applicable Funding Agency agrees to peaceably surrender possession of all related ECMs requested by Financer in good operating condition, subject to normal wear and tear to Financer or its assignee on the date of such termination, packed for shipment in accordance with manufacturer's published specifications and with freight and insurance prepaid to Financer's or its assignee's nearest warehouse location in the United States, such location to be specified by Financer or its assignee. Financer or its assignee will have all legal and equitable rights and remedies to take possession of the GESA Project's ECMs. Upon such termination, title to the ECMs will revert to Financer or its assignee.
- B. For each Financing Package, if on the thirtieth (30th) day after the commencement of any Fiscal Period, sufficient funds have not been appropriated for the purpose of making all of the payments scheduled to be paid in such Fiscal Period for the applicable Financing Package, the applicable Funding Agency shall cause to be delivered written notice (a "notice of non-appropriation") to Financer or its assignee within ten (10) calendar days after such thirtieth (30th) day. Upon Financer's receipt of a notice of non-appropriation for the applicable Financing Package, such Financing Package shall terminate as of the end of the applicable Fiscal Period just ended; provided, however, that such termination shall not become effective as of the end of such Fiscal Period just ended if, within ten (10) calendar days of the thirtieth (30th) day after the

end of such Fiscal Period just completed, the applicable Funding Agency shall cause to be delivered to Financer a written statement to the effect that it reasonably expects sufficient funds for the then-current Fiscal Period to be appropriated for the applicable Financing Package, and in such event that the applicable Financing Package shall continue into the then-current Fiscal Period so long, but only so long, as an appropriation becomes available from which to make the payments. Notwithstanding the foregoing, the applicable Funding Agency agrees that it will not cancel the applicable Financing Package under the provisions of this paragraph if any funds are appropriated to it, or by it, for the applicable Financing Package for the Fiscal Period following the Fiscal Period in which funds were appropriated.

5. AUTHORITY AND AUTHORIZATION

- A. Commonwealth represents, covenants, and warrants on the date hereof and on the date of the execution of each Financing Package under this Agreement that:
- I. The execution, delivery, and performance by Commonwealth of this Agreement and each Financing Package hereunder have been duly authorized by necessary action on the part of Commonwealth;
 - II. This Agreement and each Financing Package hereunder have been duly executed and delivered on behalf of Commonwealth and constitute a legal, valid, and binding obligation of Commonwealth enforceable in accordance with the terms of this Agreement and each Financing Package hereunder; and
 - III. For this Agreement and each Financing Package hereunder, the Commonwealth has complied with all bidding requirements where necessary, and by due notification, presented this Agreement and each Financing Package hereunder for approval as a valid obligation on its part. The Commonwealth agrees that:
 - a. The Commonwealth will do, or cause to be done, all things necessary to preserve and keep the Agreement and each Financing Package hereunder in full force and effect;
 - b. For each Financing Package, the applicable Funding Agency has sufficient appropriations or other funds available to pay all amounts due for the current Fiscal Period under the applicable Financing Package;
 - c. For each Financing Package, the applicable Funding Agency's obligations are not guaranteed by the United States of America or any agency or instrumentality;
 - d. For each Financing Package, the applicable Funding Agency has not established, and will not establish, any sinking fund, redemption fund, debt service fund, reserve fund, replacement fund, or similar fund to be used to pay principal or interest composing the payments due under the applicable Lease;

- e. For each Financing Package, the Funding Agency will take no action that would cause the interest portion of the payments due under the applicable Financing Package to become included in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations promulgated (the "Regulations"), and the applicable Funding Agency will take and will cause its officers, employees, and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the payments due under the applicable Financing Package does not become included in gross income of the recipient for federal income tax purposes under the Code and Regulations, all as amended from time to time (including, without limitation, the calculation and payment of any rebate required to preserve such exclusion);and
- f. For each Financing Package, the applicable Funding Agency will sign and submit to Financer for filing with the Secretary of the Treasury, information reporting statements and other information relating to the applicable Financing Package at the times and in the forms required by the Code and the Regulations.

6. TITLE

- A. For each Financing Package, upon final acceptance of each implemented/constructed related ECM by Commonwealth, title to such ECMs will vest in Commonwealth, provided however, that:
 - I. In the event of termination of a Financing Package by the applicable Funding Agency pursuant to NONAPPROPRIATION OF FUNDS under Section 4 of this Agreement, title in such ECMs will immediately vest in Financer or its assignee; or
 - II. Upon repossession of the ECMs under a Financing Package in the event of a default of the applicable Funding Agency, title in such ECMs will immediately vest in Financer or its assignee.

7. SECURITY INTEREST

- A. For each Financing Package, in order to secure all of its obligation, the applicable Funding Agency:
 - I. Grants to Financer a first priority security interest in any and all right, title, and interest of the applicable Funding Agency in the related ECMs and in all additions, attachments, accessions, and substitutions, and on any proceeds therefrom;
 - II. Agrees that this Agreement and the applicable Financing Package may be filed as a financing statement evidencing such security interest; and
 - III. Agrees to execute and deliver all financing statements, certificates of title, and other instruments necessary or appropriate to evidence such security interest in the related ECMs under the applicable Financing Package and Schedule.

- B. Once all payments set forth in the applicable Payment Schedule have been made, then the applicable Funding Agency will own the related ECMs free and clear of all liens or other encumbrances.

8. PERSONAL PROPERTY

- A. For each Financing Package, the related ECMs are, and will remain, personal property, and will not be deemed to be affixed to, or be a part of, the real estate on which it may be situated, notwithstanding that such ECMs, or any part thereof, may be or hereafter become in any manner, physically affixed or attached to real estate or any building hereon.

9. MAINTENANCE

- A. For each Financing Package, the applicable Funding Agency, at its own cost and expense, will maintain the related ECMs in good operating condition for the duration of the applicable Schedule and will not use or deal with the related ECMs in any manner which is inconsistent with any laws or regulations. For each Financing Package, the related ECMs will not be misused, abused, wasted, or be allowed to deteriorate except for ordinary wear and tear resulting from its intended use. For each Financing Package, the applicable Funding Agency agrees to cause the related ECMs to be maintained pursuant to manufacturer's standard maintenance specifications and will provide proof of proper maintenance at Financer's request.

10. ALTERATIONS

- A. For each Financing Package, the applicable Funding Agency will not make any alterations, additions, or improvements to the related ECMs without Financer's prior written consent unless such alterations, additions, or improvement may be readily removed without damage to such ECMs.

11. LIENS AND ENCUMBRANCES

- A. For each Financing Package, the Commonwealth shall keep the related ECMs free and clear of all levies, liens, and encumbrances, except those created under the applicable Financing Package. For each Financing Package, the applicable Funding Agency shall pay, when due, all charges which may be imposed upon the ownership, leasing, rental, sale, purchase, possession, or use of the related ECMs, excluding, however, all taxes on or measured by Financer's income. For each Financing Package, if the applicable Funding Agency fails to pay said charges when due, Financer shall have a right, but shall not be obligated, to pay said charges. For each Financing Package, if Financer pays any charges for which the applicable Funding Agency is responsible or liable under the applicable Financing Package, such Funding Agency shall reimburse Financer.

12. RISK OF LOSS; DAMAGE; DESTRUCTION

- A. For each Financing Package, upon acceptance of the related ECMs, Commonwealth and/or the applicable GESA Contractor, as per the terms of the applicable GESA Contract, assumes all risks of loss or damage to such ECMs from any cause whatsoever, and no such loss of or damage to such ECMs or defect, or unfitness, or obsolescence, shall relieve the applicable Funding Agency

of its obligation to make payments or to perform any other obligation under the applicable Financing Package.

- B. For each Financing Package, in the event of damage to any applicable item or ECM, the applicable Funding Agency will immediately notify the applicable GESA Contractor and place the same in good repair. For each Financing Package, if the applicable Funding Agency determines that any applicable item of ECMs is lost, stolen, destroyed, or damaged beyond repair, such Funding Agency will either:
 - I. Replace the same with like ECMs in good repair; or
 - II. On the next payment date following occurrence of loss, pay Financer or its assignee:
 - a. All amounts for said lost, stolen, destroyed, or damaged beyond repair ECM then owed by such Funding Agency to Financer under the applicable Financing Package, including the payment for such item(s) due on such date; and
 - b. The proportionate amount of applicable payment set forth in the applicable PAYMENT SCHEDULE.

13. INSURANCE

- A. For each Financing Package, the applicable GESA Contractor will insure against any or all risks in accordance with the applicable GESA Contract. For each Financing Package, the applicable GESA Contractor shall demonstrate to the satisfaction of Financer or assignee that adequate insurance is provided. For each Financing Package, in the event of any loss, damage, injury, or accident involving the related ECMs, Commonwealth will promptly provide the applicable GESA Contractor with written notice within ten (10) days and make available to such GESA Contractor all relative information and documentation.
- B. For each Financing Package, upon final acceptance of each related ECMs, and in accordance with Section 6 of this Agreement, title of such ECMs will vest with the Commonwealth. For each Financing Package, Commonwealth will then self-insure against any or all risks assumed in the applicable Financing Package for each such ECMs. For each Financing Package, Commonwealth shall demonstrate to the satisfaction of Financer or assignee that adequate self-insurance is provided. For each Financing Package, in the event of any loss, damage, injury, or accident involving the related ECM(s), Commonwealth will promptly provide the Financer and the applicable GESA Contractor with written notice within ten (10) days and make available to such GESA Contractor all relative information and documentation.
- C. For each Financing Package, upon Commonwealth self-insuring the related ECMs, Commonwealth will assume all risks and liabilities for injury to or death of any person or damage to any property, in any manner arising out of possession, use, operation, custody, control, condition, or storage of such ECMs by Commonwealth, whether such injury or death be with respect to Commonwealth's property or the property of other; provided, however, that said damage or injury results from the negligence of Commonwealth, its agents or employees, and that either Commonwealth agrees to settle such claim or judgment has been obtained against Commonwealth. This Section shall not be construed to limit or waive in any way the

sovereign immunity of Commonwealth, liability of which under the Section is limited to amounts in which Commonwealth is otherwise permitted or required to respond in accordance with applicable law.

14. PREPAYMENT OPTION

- A. For each Financing Package, upon thirty (30) days' prior written notice from the applicable Funding Agency to Financer, and provided that there is no Event of Default under the applicable Financing Package, or an event with which notice or lapse of time, or both, could become an Event of Default under such Financing Package, then existing, the applicable Funding Agency will have the right to terminate such Funding Agency's continued obligation to make payments under such Financing Package, as specified in the PAYMENT paragraph and in the applicable Payment Schedule to Financer on the purchase of the related ECMs.
- B. For each Financing Package, under this paragraph, payments up to date of prepayment and the applicable Purchase Price, along with any interest accrued from the date of the last payment under the applicable Financing Package, will be due to Financer on the date of prepayment. For each Financing Package, upon satisfaction by the applicable Funding Agency of such purchase conditions, Financer shall then have no rights, title, and interest in the related ECMs. For each Financing Package, no voluntary prepayment is permitted prior to the date of the first scheduled payment under the applicable Payment Schedule.

15. ASSIGNMENTS

- A. For each Financing Package, without Financer's prior written consent, Commonwealth will not assign, transfer, pledge, or grant any security interest in, or otherwise dispose, of this Agreement, any Financing Package hereunder and the related ECMs thereto, or any interest in this Agreement, any Financing Package hereunder and the related ECMs thereto. For each Financing Package, Financer may assign its rights, title, and interest to this Agreement, any Financing Package hereunder and the related ECMs thereto, and any other documents executed with respect to this Agreement and any Financing Package hereunder and/or grant or assign a security interest in this Agreement, any Financing Package hereunder and the related ECMs, in whole or in part. Any such assignee shall have all of the rights of Financer under this Agreement and the applicable Financing Package. Subject to the foregoing, this Agreement and each Financing Package hereunder inures to the benefit of, and is binding upon, the heirs, executors, administrators, successors, and assigns of the parties.
- B. Upon assignment of Financer's interests under a Financing Package, Financer will cause written notice of such assignment to be sent to the applicable Funding Agency, which will be sufficient if it discloses the name of the applicable assignee and address to which further payments under the Financing Package should be made. No further action will be required by Financer or by the applicable Funding Agency to evidence the assignment of a Financing Package, but the applicable Funding Agency will acknowledge such assignments in writing, if so requested.
- C. For each Financing Package, notwithstanding the foregoing, no such assignments of Financer's interests shall be effective against an applicable Funding Agency unless such Funding Agency receives notification in writing of the assignment designating the name and address of any such

assignee. In compliance with Section 149(a) of the Internal Revenue Code, Commonwealth agrees to provide a copy of each notification of assignment to the applicable Funding Agency.

- D. FOR EACH FINANCING PACKAGE, NOT BEING THE MANUFACTURER OR VENDOR OF THE RELATED ECMs, ANY ASSIGNEE OF FINANCER SHALL BE DEEMED TO HAVE MADE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITIONS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF SUCH ECMs. In no event shall any assignee be liable for any incidental, indirect, special, or consequential damage in connection with, or arising out of, the applicable Financing Package that has been assigned to it or the existence, furnishing, functioning, or the applicable Funding Agency's use of any applicable item or ECMs, or products, or services provided for in the applicable Financing Package.

16. EVENTS OF DEFAULT BY THE APPLICABLE FUNDING AGENCY

- A. The term "Event of Default," as used in paragraphs 17 and 18, means the occurrence of any one of the following events under a Financing Package:
 - I. The applicable Funding Agency, in accordance with the applicable GESA Contract, fails to make any payment under the applicable Financing Package as it becomes due in accordance with the terms of such Financing Package, and any such failure continues for sixty (60) days after receipt of written notice of Default; or
 - II. The applicable Funding Agency fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it under the applicable Financing Package, and such failure is not cured within sixty (60) days after written notice by Financer.

17. REMEDIES BY FINANCER

- A. For each Financing Package, upon the occurrence of an Event of Default under a Financing Package, and as long as such Event of Default is continuing, Financer may at its option, exercise any one or more of the following remedies:
 - I. By written notice to the applicable Funding Agency, with or without terminating the applicable Financing Package, declare an amount equal to all amounts then due under such Financing Package, and all remaining payments due under such Financing Package for which funds have been appropriated, to be immediately due and payable, whereupon the same shall become immediately due and payable;
 - II. By written notice to the applicable Funding Agency, request such Funding Agency to, at such Funding Agency's expense, promptly return the related ECMs to Financer in the manner specified in the NONAPPROPRIATION OF FUNDS paragraph, or Financer, at its option, may enter upon the premises where the related ECM is located and take immediate possession of and remove the same, and the applicable Funding Agency hereby expressly waives any damages occasioned by such actions not caused by Financer's willful misconduct or negligence;

- III. Sell the related ECMs under the applicable Financing Package and apply any proceeds of such disposition in the following order: (i) all costs incurred in securing possession of such ECMs; (ii) all expenses incurred in completing the disposition; (iii) any sales or transfer taxes; (iv) the applicable payment under the Financing Package; and (v) the balance of any payments owed under the applicable Financing Package by the applicable Funding Agency for which funds have been appropriated. Any disposition proceeds remaining after the requirements of clauses (i), (ii), (iii), (iv), and (v) have been met shall be paid to the applicable Funding Agency; and
- IV. Exercise any other right, remedy, or privilege which may be available to it under applicable laws of the Commonwealth of Pennsylvania, or any other applicable law, or proceed by appropriate court action to enforce the terms of the applicable Financing Package, or to recover damages for the breach of such Financing Package, or to terminate such Financing Package as to any or all of the related ECMs. In addition, the applicable Funding Agency will remain liable to the extent not prohibited by law for all covenants under the applicable Financing Package and for all fees, other costs, and expenses incurred by Financer with respect to the enforcement of any of the remedies listed above or any other remedy available to the Financer in connection with the applicable Financing Package.

18. EVENTS OF DEFAULT BY FINANCER AND REMEDIES BY COMMONWEALTH

- A. If Financer fails to make any payment as it becomes due in accordance with the terms of any Financing Package, and any such failure continues for sixty (60) days after receipt of written notice of Default, then Commonwealth may pursue any right, remedy, or privilege which may be available to it under applicable laws of the Commonwealth of Pennsylvania, or any other applicable law, or proceed by appropriate court action to enforce the terms of such Financing Package, or to recover damages for the breach of such Financing Package.

19. NOTICES

- A. All notices to be given under this Agreement or any Financing Package shall be made in writing and mailed by certified mail (return receipt requested) or delivered by overnight courier or sent by facsimile transmission (with electronic confirmation) to the other party at its address or at such address as the party may provide in writing from time to time.

20. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

The Contractor agrees:

- A. 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.

- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. The Contractor and each subcontractor represent 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.

- H. 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.
- I. 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.
- J. 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.

21. CONTRACTOR INTEGRITY PROVISIONS

During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

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 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 (i.e., FINANCER) 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 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 and 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.
 - 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 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 (Exhibit D) 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. in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

22. CONTRACTOR RESPONSIBILITY PROVISIONS

During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offer or, loan recipient, grantee or Financer, 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.

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.

23. AMERICANS WITH DISABILITIES ACT

During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. §35.101 et seq., Financer understands and agrees that it shall not cause any individual

with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. As a condition of accepting this Agreement, Financer 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 all benefits, services programs, and activities provided by the Commonwealth of Pennsylvania through the contracts with outside contractors.

Financer shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of Financer's failure to comply with the provisions of subparagraph a above.

24. INDEMNIFICATION

Neither the Financer nor the Commonwealth assumes any liability for each other. As to liability to each other for injury or death to persons, or damages to property, the Commonwealth and the Financer do not waive any defenses as a result of entering into this Agreement. This provision shall not be construed to limit the Commonwealth's rights, claims or defenses which arise as a matter of law pursuant to any provisions of this Agreement. This provision shall not be construed to limit the sovereign immunity of the Commonwealth.

25. RIGHT-TO-KNOW

During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

- 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 and "this Contract" shall refer to the Agreement together with its Payment Schedule and "the Contractor" shall refer to Financer.
- B. If the Commonwealth needs the Contractor's assistance in a 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:
 - V. 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
 - VI. 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 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.

26. OFFSET PROVISION

During the term of this contract, the Energy Financing Provider/Financer (referred to as "Contractor" in this Section) agrees as follows:

- A. The Contractor agrees that the Commonwealth of Pennsylvania (Commonwealth) may offset the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under this or any other contract with the Commonwealth.

27. GOVERNING LAW

- A. This Agreement and each Financing Package hereunder shall be construed in accordance with, and governed by the laws of, the Commonwealth of Pennsylvania.

28. ENHANCED MINIMUM WAGE PROVISIONS

During the term of this contract, the Energy Financing Provider/Financer (referred to as “Contractor” in this Section) agrees as follows:

- 1. Enhanced Minimum Wage.** Contractor 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 Contract, and for an 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.
- 2. Adjustment.** Beginning July1, 2023, and annually thereafter, the minimum wage rate shall be increased by an annual cost-of-living adjustment using 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.
- 3. Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. 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
 - d. required to be paid a higher wage under any state or local policy or ordinance.
- 4. Notice.** Contractor 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.
- 5. Records.** Contractor 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.
- 6. 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.

7. **Subcontractors.** Contractor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

29. PARAGRAPH HEADINGS

- A. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement or any Financing Package hereunder.

30. COUNTERPARTS

- A. This Agreement and each Financing Package hereunder may be executed in one or more counterparts, each of which is an original, and all of which together are either a single Agreement or Financing Package, as applicable.

31. DELIVERY OF RELATED DOCUMENTS

- A. Commonwealth will execute or provide, as requested by Financer, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Agreement and each Financing Package hereunder.
- B. For each Financing Package, Commonwealth agrees that pursuant to Section 149(a) of the Internal "Revenue Code of 1986, as amended (the "Code"), and any temporary and final income tax regulations promulgated thereunder, it shall file the applicable Internal Revenue Service Form 8039G or 8038GC (Information Return for Tax Exempt Governmental Bond Issues). Additionally, for each Financing Package, Commonwealth, pursuant to Section 149 (a) of the Code, appoints the Financer, or any assignee, as "Agent" of each applicable Funding Agency to keep a record of the assignees who maintain an interest in each Financing Package. Commonwealth agrees that it shall remit to the Internal Revenue Service any rebates due under any Financing Package as provided by the Code.

32. ENTIRE AGREEMENT; WAIVER

- A. This Agreement, together with the Request for Bid Proposals for Financing, the Financer's Bid Proposal, the form of Schedule, the form of GESA Contract, the form of Acceptance Certificate, the form of Payment Schedule, and the documents delivered pursuant to the requirements of paragraph 28 F of this Agreement, constitute the entire Agreement between the parties with respect to the financing of GESA Contracts for applicable Funding Agencies, and this Agreement shall not be modified amended, altered, or changed except with the written consent of the Financer and the Commonwealth. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. The waiver by the Financer and the Commonwealth of any breach by the other party of any term, covenant, or condition shall not operate as a waiver of any subsequent breach.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

The parties have caused this contract to be executed on the dates written above.

ATTEST:

Printed Name

Title

Signature *Date*

Federal ID No. _____

Vendor ID No. _____

FINANCER:

Printed Name

Title

Signature *Date*

COMMONWEALTH OF PENNSYLVANIA
Acting through the DEPARTMENT OF GENERAL
SERVICES

Name: *Date*

Title:

APPROVED AS TO FORM AND LEGALITY

Office of Chief Counsel *Date*
[Funding Agency]

Office of General Counsel *Date*

Office of Attorney General *Date*

Comptroller Operations *Date*

Exhibit A
to Master Installment Purchase Agreement

SCHEDULE

Exhibit A
to Master Installment Purchase Agreement

SCHEDULE

Re: Master Installment Purchase Agreement, dated as of ___ day of _____, 20 ___ between (“Financer”) and the Commonwealth of Pennsylvania (“Commonwealth”), acting through the agencies of the Commonwealth (each a “Funding Agency” and, collectively, the “Funding Agencies”).

1. Defined Terms

All terms used herein have the meanings ascribed to them in the above-referenced Master Installment Purchase Agreement (the “Agreement”).

2. Funding Agency; GESA Contractor; GESA Contract

The Funding Agency for this Schedule is _____.

The GESA Contractor for this Schedule is _____.

The GESA Contract for this Schedule is _____.

3. ECMs

A. Location of ECMs: For purposes of the Financing Package created hereby the location of the ECMs is set forth below:

B. ECMs (Scope of Work): For purposes of the Financing Package created hereby the description of the ECMs and the scope of work is set forth below:

4. Payment Schedule

A. Rental Payments; Commencement Date. The Rental Payments shall be in such amounts and payable on such Rental Payment Dates as set forth in the Payment Schedule attached to this Schedule and incorporated herein by this reference. The Funding Agency’s obligation to pay Rental Payments under the Financing Package created hereby shall commence on the date on which the Acquisition Amount is deposited in an Escrow Account for the purpose of acquiring and installing the ECMs listed in this Schedule (the “Commencement Date”).

B. Prepayment Price Schedule. The Prepayment Price on each Rental Payment Date shall be the amount set forth for such Rental Payment Date in the “Prepayment Price” column of the Payment Schedule attached to this Schedule plus all Rental Payments then due (including the Rental Payment due on such Rental Payment Date) plus all other amounts then owing under this Schedule.

5. Representations, Warranties and Covenants

- A. Commonwealth hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the Commencement Date. Commonwealth further represents and warrants that (a) no Event of Default has occurred and is continuing under any Financing Package currently in effect; (b) no nonappropriation of funds under any Financing Package currently in effect has occurred or is threatened; (c) no Financing Package has been terminated as the result of the occurrence of an Event of Default or a nonappropriation of funds; (d) the delivery of the Agreement and this Schedule has authorized; the ECMs listed in this Schedule are essential to the functions of the Commonwealth and the Funding Agency or to the services the Commonwealth and the Funding Agency provide its citizens; the Commonwealth and the Funding Agency have an immediate need for, and expect to make immediate use of, substantially all such ECMs, which will be used by the Funding Agency only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority; and (g) the Commonwealth expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period.

6. The Financing Package

- A. The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or ECMs listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.
- B. By execution of this Schedule by the Funding Agency, the Funding Agency agrees to be bound by the terms and provisions of the Master Installment Purchase Agreement.

7. Acquisition Amount

- A. The Acquisition Amount that Financer shall pay to the Escrow Agent for deposit into the Escrow Account in connection with this Schedule is \$ _____. It is expected that by [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Schedule No. _____, the Commonwealth will have taken possession of all items of Equipment shown above and that the Commonwealth's final disbursement request pursuant to the Escrow Agreement will be signed by the Commonwealth, approved by the Financer and delivered to the Escrow Agent on or before [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Schedule.

8. Acquisition Period

The Acquisition Period applicable to this Schedule shall end at the conclusion of the _____ month following the date hereof.

9. Financing Package Term

The Financing Package Term shall consist of the Original Term and _____ consecutive Renewal Terms, with the final Renewal Term ending on _____, subject to earlier termination pursuant to the Agreement.

10. Execution and Form and Legality

Execution of this Schedule by the Commonwealth of Pennsylvania's Office of General Counsel and the Commonwealth of Pennsylvania Office of Attorney General is not required because both aforementioned parties have executed the Master Installment Purchase Agreement and Payment Schedule which contemplates execution of this Schedule for review and approval of Financer for financing. Execution of this Schedule is required by the Funding Agency, Funding Agency's Office of Chief Counsel, Financer, and Comptroller Operations.

11. List of Required Exhibits to Schedule

Exhibit B: GESA Contract
Exhibit C: Acceptance Certificate
Exhibit D: Payment Schedule

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

The parties have caused this contract to be executed on the dates written above.

ATTEST:

Printed Name

Title

Signature *Date*

Federal ID No. _____

Vendor ID No. _____

FINANCER:

Printed Name

Title

Signature *Date*

**COMMONWEALTH OF PENNSYLVANIA
Acting through the [FUNDING AGENCY]**

Name: *Date*

Title:

APPROVED AS TO FORM AND LEGALITY

Office of Chief Counsel *Date*
[Funding Agency]

Comptroller Operations *Date*

Exhibit B
to Master Installment Purchase Agreement

GESA CONTRACT
(with Exhibits)

Guaranteed Energy Savings Act Contract GESA [PROJECT NUMBER AND NAME] Project

This Guaranteed Energy Savings Act Contract ("GESA Contract") for a GESA Project is executed this ____ day of _____, 20____, by and between the **[FUNDING AGENCY]** ("Funding Agency"), an executive agency of the Commonwealth of Pennsylvania authorized to enter into GESA Contracts pursuant to 62 Pa C. S. §§3751-3758, and **[GESA CONTRACTOR]** ("GESA Contractor" or "Contractor"), a company organized under the Laws of the State of **[STATE]**, with its principal offices located at **[GESA CONTRACTOR ADDRESS]**.

ARTICLE 1 – CONTRACT DOCUMENTS

- 1.1 The Contract Documents shall consist of this GESA Contract, the Request for Quote ("the RFQ"), the Contractor's Quote submitted in response to the RFQ, the Contract Bonds, the Conditions of the Contract (General, Special, Supplementary, and other Conditions), all drawings created by or for the Contractor and/or its Retained Professional, the specifications created by or for the Contractor and/or its Retained Professional, the Scope of Work by ECM (**Exhibit 1**), all bulletins and addenda issued prior to execution of this Contract, all change orders, the Administrative Procedures for the GESA Contract, the Installment Purchase Agreement and Payment Schedule, and the Investment Grade Audit Contract Documents, and the Investment Grade Audit. These documents form the Contract and are as fully part of the Contract as if attached to this Contract.

ARTICLE 2 – SCOPE OF WORK

- 2.1 The Contractor shall perform all the Work required by the Contract Documents as stated in the RFQ for the design and implementation/construction of the **[PROJECT NUMBER AND NAME]** ("Project").

ARTICLE 3 – TERM

- 3.1 The term of this Contract shall commence upon the Effective Date of this Contract and shall run for **[LENGTH OF CONSTRUCTION]** calendar days, which is the length of construction. The Effective Date of this Contract shall be the date of the last required Commonwealth signature.
- 3.2 The format and scope of the Work shall be as stated in the RFQ and the Investment Grade Audit.
- 3.3 Time is of the essence and if the Contractor fails to complete the Work within the time specified above, the Contractor shall pay the Funding Agency, as Liquidated Damages and not as a penalty for such failure, the sum of **[LIQUIDATED DAMAGES {AMOUNT PER DGS' CALCULATION} WRITTEN & NUMERICAL]** (\$0.00) per day for each and every calendar day after the completion date until the Work is completed and accepted. The Funding Agency may extend the completion date of the GESA Contract for causes stated in the General Conditions of the GESA Contract ("General Conditions") that, in fact, delay the completion of the Work. In such case, the Contractor is liable for said Liquidated Damages only after the expiration of the extended period.

ARTICLE 4 – CONTRACT SUM

- 4.1 The Funding Agency will authorize a financing provider, procured separately, to pay the Contractor for the performance of the Work subject to additions and deductions by change order, as provided in the

General Conditions, the Contract Sum of [**CONTRACT SUM – WRITTEN AND NUMERICAL – THIS SUM IS LESS THAN THE FINANCING AMOUNT BECAUSE THE FINANCING AMOUNT INCLUDES OWNER CONTROLLED CONTINGENCY**] (\$). Payment will be made as stated in the General Conditions. Deductions from, or additions to, this sum will be made as stated in the General Conditions. The Funding Agency is not liable for any debt due to the GESA Contractor but will be responsible for debts owed to the Financer.

ARTICLE 5 – PROGRESS PAYMENTS AND RETAINAGE

- 5.1 Based upon Applications for Release of Payment submitted to the Funding Agency by the Contractor, the Funding Agency will authorize the financing provider to release progress payments to the Contractor, in accordance with the provisions of the Prompt Payment Schedules found in the Commonwealth Procurement Code, 62 Pa. C.S. §3931-§3939, and the Administrative Procedures, which are both incorporated by reference and made a part hereof as if those provisions were fully and at length recited, except that, where those provisions refer to the government agency, it is deemed to refer to the Funding Agency. The Funding Agency will retain a portion of the amount due to the Contractor to insure the proper performance of the Contractor in each Application for Release of Payment in accordance with the provisions of Retainage found in the Commonwealth Procurement Code, 62 Pa. C.S. §3921, and the General Conditions, which are both incorporated by reference and made a part hereof as if those provisions were fully and at length recited, except that, where those provisions refer to the government agency, it is deemed to refer to the Funding Agency.

ARTICLE 6 – FINAL PAYMENT

- 6.1 Final Payment, constituting the entire unpaid balance of the Contract Sum (does not include owner-controlled contingency), will be approved by the Funding Agency for release by the financing provider to the Contractor within thirty (30) days after Closeout Inspection of the Work if the Contract has been fully performed and a Final Application for Release of Payment has been submitted, as provided in the General Conditions.

ARTICLE 7 – SMALL DIVERSE BUSINESS PARTICIPATION

- 7.1 The Issuing Office and BDISBO have set SDB and VBE Participation Goals for this RFQ. The Contractor has agreed to meet the SDB and VBE Participation Goals in full or demonstrated they have made Good Faith Efforts to meet both Goals as shown in the attached Small Diverse Business (SDB) and Veteran Business Enterprise (VBE) Participation Summary Sheet **Exhibit 1**.

ARTICLE 8 – WARRANTEE AND GUARANTEE

- 8.1 In addition to the Contract Bond, the GESA Contractor shall unconditionally warrant and guarantees equipment, materials and workmanship against patent defects arising from faulty equipment, faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of Final Acceptance of the Work or beneficial occupancy (whichever comes first) unless other warranties found within the Contract Documents specify or indicate longer periods. The GESA Contractor shall replace such defective equipment, materials or workmanship without cost to DGS or the Funding Agency. The GESA Contractor shall warrant that such equipment, material or workmanship furnished under this GESA Contractor shall be furnished in conformance with the Contract Documents. All work not conforming to these standards may be considered non-conforming.

1. If items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The GESA Contractor shall replace such defective equipment or materials, without cost to DGS or the Funding Agency, within the manufacturer's warranty period. Nothing in this paragraph relieves the GESA Contractor or surety of its obligations under the performance bond.
 2. The GESA Contractor shall assign and deliver to the Funding Agency all warranties for review. The warranty provided in this Paragraph shall be in addition to, and not in limitation of, any other warranty or remedy provided by Law or by the Contract Documents.
 3. If there is a substitution of material or equipment, the GESA Contractor warrants that such installation, construction, material or equipment will perform to the standard of the item originally specified. The GESA Contractor explicitly warrants the merchantability, and the fitness for use and quality of all substituted items provided for or by it.
 4. DGS and the Funding Agency may bring an action for latent defects that were hidden or not readily apparent to DGS and/or the Funding Agency at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law and/or the Contract Bond.
- B This paragraph, "Warranty and Guarantee," in no way limits the applicability of the Contract Bond.

ARTICLE 9 – MISCELLANEOUS PROVISIONS

- 9.1 Terms used in this Contract defined in the General Conditions have the meanings designated in those General Conditions.
- 9.2 In addition to any other guarantees or warranties, the Contractor covenants and agrees after acceptance of the Work performed under this Contract, to remedy without cost to the Funding Agency, any such defect in the Work, provided said defects in the reasonable judgment of the Funding Agency, or its successors having jurisdiction over the premises, are caused by defective or inferior materials, equipment, or workmanship. If the corrective Work is not completed within thirty (30) days after the notification by the Funding Agency to the GESA Contractor, the Funding Agency may do the Work and submit those costs to the Surety Company for reimbursement.
- 9.3 The Contract Bonds given by the Contractor conditioned upon the faithful performance of the Contract and for the payment of labor, material, equipment, and public utility service claims are attached to this Contract and are made a part of it. No third party shall acquire any rights against the Funding Agency under the Contract Documents. The Performance Bond does not cover the Assured Performance Guarantee or guaranteed savings under the Contract Documents. However, failure to meet Assured Performance Guarantee or guaranteed savings may be the result of defective or inferior materials, equipment, or workmanship due to the Contractor's failure of faithful performance. Where and when such cases of defective and/or nonconforming work occurs, such defective and/or nonconforming work is covered by the Performance Bond.
- 9.4 The Contractor agrees to abide by and be bound by the Laws of Pennsylvania, including those relating to and regulating the hours and conditions of employment.

- 9.5 Nothing in this Contract shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth and its agencies, officers, and employees, or to subject any Commonwealth party to any liability not expressly authorized by law.
- 9.6 Any person, co-partnership, association, or corporation furnishing labor, material, equipment or renting equipment, or rendering public utility services in connection with the performance of this GESA Contract, has a right of action to recover the cost from the Contractor and the Surety on the Bond given to secure the payment of such labor, material, equipment, or equipment rental and services rendered by public utility as though such person or corporation had been named as Obligee in the Bond. For those who do not have a Contract directly with the Contractor, this right of action may not be exercised unless the Contractor is notified of the claim within ninety (90) days from the last performance of labor or provision of materials. The Contractor shall include in all of its Subcontracts or supply Contracts a provision requiring that its Subcontractors and Suppliers notify, in writing, their Subcontractors and Suppliers of this requirement. It is agreed that no third-party rights arise against the Funding Agency for any reason under this Article, and the Contractor agrees to inform all Subcontractors and Suppliers in writing.
- 9.7 This Contract may be executed in one or counterparts, each of which is an original, and all of which together are a single Contract.

ARTICLE 10 – CONTRACT COMPLIANCE REGULATIONS

- 10.1 Refer to the appropriate paragraph of the General Conditions (which are made a part of this Contract by incorporation by reference), which prohibits discrimination in hiring or employment opportunities. Also made a part of this Contract by incorporation by reference are all State and Federal Laws prohibiting discrimination in hiring or employment opportunities. The Contract Documents also list applicable statutory provisions, which are incorporated by reference into this GESA Contract.

ARTICLE 11 – ASSURED PERFORMANCE GUARANTEE

- 11.1 The Contractor is required to guarantee energy and cost savings stipulated in this Contract on an annual basis. The savings must be guaranteed to equal or exceed the Project financing payment, plus the service fees during that year for the Contract duration. No credit for savings above the annual guarantee will be credited toward the performance guarantees for future years of this Contract. The recovery of Contract costs from energy savings over the term of this Contract shall not exceed **[PAYBACK PERIOD – WRITTEN & NUMERICAL] () years**. Refer to the Assured Performance Guarantee (which is made a part of this Contract by incorporation) for the Contractor’s requirements regarding documenting and verifying the annual energy and/or cost savings that are attributed to this Project **(Exhibit 2)**.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

The parties have caused this contract to be executed on the dates written above.

ATTEST:

Secretary/Treasurer *Date*

[CONTRACTOR]

[NAME] President *Date*

**COMMONWEALTH OF PENNSYLVANIA
ACTING THROUGH [FUNDING AGENCY]**

ATTEST:

Date

Secretary *Date*

I hereby certify that funds in the amount of
\$ _____
Are available under Appropriation Symbol

Comptroller Operations *Date*
(Comptroller Operations execution may be by
electronic signature and does not imply verification
of funds)

APPROVED AS FORM AND LEGALITY

Office of Chief Counsel *Date*
Department of General Services

Office of General Counsel *Date*

Office of Attorney General *Date*

CONTRACT BOND

KNOW ALL PERSONS BY THESE PRESENTS, That we the undersigned

as Principal and

as the Surety Company, a Corporation organized and existing under the Laws of the State of

_____ and authorized to transact business in Pennsylvania, as surety, are held and firmly

bound unto the **[FUNDING AGENCY]** ("Funding Agency"), as hereinafter set forth, in the full and just several

sums of:

(A) _____ Dollars

(\$ _____) for faithful performance of the GESA Contract as

designated in Paragraph "A" below; and

(B) _____ Dollars

(\$ _____) for payment for labor, material equipment rental and

public utility services as designated in Paragraph "B" below; and

Sealed with our respective seals and dates this _____ day of _____.

WHEREAS, the above Principal has entered into a GESA Contract with the **[FUNDING AGENCY]** dated the _____ day of _____, 20__ for _____ upon certain terms and conditions

in said GESA Contract more particularly mentioned; and

WHEREAS, it is one of the conditions of the Award pursuant to which said GESA Contract is about to be entered into, that these presents be executed;

NOW, THEREFORE, the joint and several conditions of this obligation are such:

A. That, if the above Principal as GESA Contractor shall well and faithfully do and perform the things agreed by it to be done and performed according to the terms of said Contract Documents, including the plans and specifications therein referred to and made part thereof, and such alterations as may be made in said plans and specifications as therein provided and which are hereby made part of this Bond the same as though they were fully set forth herein, and shall indemnify and save harmless the **[Funding Agency]** and all of their officers, agent and employees from any expense incurred through the failure of said GESA Contractor to complete the Work as specified and for any damages growing out of the manner of performance of said GESA Contract by said GESA Contractor or its Subcontractors, or their agents or servants, including, but not limited to, patent trademark and copyright infringements, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

B. That, if the above Principal shall and will promptly pay or cause to be paid all sums of money which may be due by the Principal or any of its Subcontractors to any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor entered into and become component parts of the Work or improvements contemplated, and for rental of equipment used, and services rendered by public utilities in, or in connection with, the prosecution of such Work, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

C. It is further agreed that any alterations which may be made in the terms of the GESA Contract or in the Work to be done or materials to be furnished or labor to be supplied or performed, or equipment to be rented, or public utility services to be rendered, or the giving by the Funding Agency of any extension of time for the performance of the GESA Contract, or the reduction of the retained percentage as permitted by the GESA

Contract, or any other forbearance on the part of either the Funding Agency or the Principal to the other, shall not in any way release the Principal and the surety or sureties or either or any of them, their heirs, executors, administrators, successors or assigns, from their liability hereunder; notice to the surety or sureties of any such alterations, extension or forbearance being hereby waived.

D. The Principal and Surety hereby jointly and severally agree with the Funding Agency herein that every person, co-partnership, association or corporation which, whether as subcontractor as a person otherwise entitled to the benefits of this Bond, has furnished material or supplied or performed labor or rented equipment used in the prosecution of the Work as above provided and any public utility, which has rendered services, in, or in connection with, the prosecution of such Work, and, which has not been paid in full therefore, may sue in assumpsit on this Bond in his, their, or its name and prosecute the same to final judgment for such sum or sums as may be justly due him, them, or its, and have execution thereon; provided, however, that the Funding Agency shall not be liable for the payment of any cost or expenses of such suit to a third party under any theory of law or equity.

E. Recovery by any persons, co-partnership, association or corporation hereunder is subject to the provisions of the Pennsylvania Procurement Code, 62 Pa. C.S §§101-4509, as amended, which Act is incorporated herein and made a part hereof, as fully and completely as though its provisions were fully and at length herein recited, except that, where said Act refers to the Commonwealth of Pennsylvania or a Department thereof, it is deemed to refer to the Funding Agency.

IN WITNESS WHEREOF, the said Principal and Surety have duly executed this Bond under seal the day and year above written.

Attest:

(Date)

Principal (Date)
[CONTRACTOR]

Surety

(Corporate Seal)

By: _____
Attorney-in-Fact (Date)

APPROVED AS TO FORM AND LEGALITY

Office of Chief Counsel
[Funding Agency]

Office of Attorney General

Office of General Counsel

EXHIBIT 1
Scope of Work by ECM
Including
Small Diverse Business Participation

Project Scope

[LIST PROJECT SCOPE / DESCRIPTION OF ECMS] EXAMPLE: Listed in the table below are the Base Project Energy Conservation Measures (ECMs) (Lighting, Building Envelope and Water Conservation), as well as, the additional “Wish List” ECMs which **[FUNDING AGENCY]** wanted to include in the project:

[INSERT TABLES OR CHART SHOWING EACH ECM & DESCRIPTION OF ECM]

[Remainder of this page left intentionally blank]

[INSERT SB/SDB FORM HERE]

EXHIBIT 2

**ASSURED PERFORMANCE GUARANTEE
For
GESA CONTRACT**

PART 1

1-1. DEFINITIONS

For purposes of this Agreement, the following terms have the meanings set forth below:

Annual Project Benefits are the portion of the projected Total Project Benefits to be achieved in any one year of the Guarantee Term.

Annual Project Benefits Realized are the Project Benefits actually realized for any one year of the Guarantee Term.

Annual Project Benefits Shortfall is the amount by which the Annual Project Benefits exceed the Annual Project Benefits Realized in any one year of the Guarantee Term.

Annual Project Benefits Surplus is the amount by which the Annual Project Benefits Realized exceed the Annual Project Benefits in any one year of the Guarantee Term.

Baseline is the mutually agreed upon data and/or usage amounts that reflect conditions prior to the installation of the Energy Conservation Measures.

Guarantee Term will commence on the first day of the month following the Final Payment date and will continue through the duration of the M&V Services.

Installation Period is the period beginning on the effective date of the GESA Contract and ending on the commencement of the Guarantee Term.

Measured Project Benefits are the utility savings and cost avoidance calculated in accordance with the methodologies set forth in Part 2 of this Agreement.

Project Benefits are the Measured Project Benefits to be achieved for a particular period during the term of this Agreement.

O&M Benefits are the operations and maintenance cost avoidance savings as stipulated in Part 2 of this Agreement.

Rebate Project Benefits are the energy rebate or incentive non-recurring savings as stipulated in Part 2 of this Agreement.

Total Project Benefits are the projected Project Benefits to be achieved during the entire term of this Agreement.

1-2. SCOPE

- A.** The Funding Agency is contracting for a full range of energy services and energy-related capital improvements at no initial capital cost for the Project. The ECMs may include but are not limited to: the design, acquisition, installation, modification, maintenance and training of funding agency personnel in the operation of existing and new equipment. The ECMs will reduce energy consumption and related costs associated with the heating, ventilation and air conditioning system, lighting systems, control systems, building envelope, the hot water systems, water consumption, sewage costs and other energy using devices. Additionally, savings which will not reduce consumption but are aimed at cost savings, such as fuel switching, demand side management, on-site generation, utility bill auditing, utility rate changes, and distribution upgrades etc. have been considered. ECMs may also include the training of facility staff with respect to routine maintenance and operation of all improvements. ECMs must result in a guaranteed minimum energy savings with payments linked to actual documented energy and cost reductions.
- B.** Any stipulated energy and/or operational cost savings that are attributed to this project have been rigorously reviewed and the GESA Contractor is required by this contract to thoroughly document and verify the savings, which have been approved by DGS and the Funding Agency. The Annual Project Benefits Realized by the ECMs in any year must be guaranteed to equal or exceed the Annual Project Benefits during that year for the duration of the contract. The GESA Contractor is required to guarantee energy and cost savings on an annual basis. No credit for the achievement of savings above and beyond the annual guarantee will be credited to satisfy performance guarantees in future years of the contract. Annual reconciliation of the achieved savings will be required.

1-3. MEASUREMENT & VERIFICATION

- A.** Measurement & Verification (M&V) services shall commence on the first day of the month following the month in which the Funding Agency releases the Final Payment to the GESA Contractor and shall continue throughout the Assured Performance Guarantee Term, subject to earlier termination of the Assured Performance Guarantee as provided herein. The GESA Contractor shall ensure that an approved representative from the Funding Agency is physically present for all pre-retrofit and post-retrofit measurements for each ECM as applicable to the Energy Savings Guarantee unless the Funding Agency waives their right to be present. The final completion date shall be the date when all Work is completed, including all punch list items, as evidenced by the release of the Final Payment by the Funding Agency. In the event the Funding Agency (i) cancels or terminates receipt of M&V Services, (ii) fails to fulfill any of Funding Agency responsibilities necessary to enable GESA Contractor to complete the Work and provide the M&V Services, or (iii) otherwise cancels, terminates or materially breaches this Agreement, GESA Contractor shall issue a written notice to the Funding Agency stating the nature of the alleged breach, the date upon which it arose, and the remedy sought. GESA Contractor shall provide the Funding Agency with a thirty (30) day period to cure such breach. In the event of a dispute, all parties shall act in good faith to mitigate damages with a reservation of rights as to damages.
- B.** If the GESA Contractor is delayed in the commencement, performance, or completion of the M&V Services by causes beyond its control and without its fault, including but not limited to inability to access property; concealed or unknown conditions encountered at the project, differing from the conditions represented by Funding Agency in the quote documents or otherwise disclosed by

Funding Agency to the GESA Contractor; a Force Majeure condition; failure by Funding Agency to perform its obligations under this GESA Contract; or failure by Funding Agency to reasonably cooperate with GESA Contractor in the timely completion of the M&V Work where such failure is material, substantial and inconsistent with the terms of this GESA Contract, GESA Contractor shall provide written notice to Funding Agency of the existence, extent of, and reason for such delays and impacts. Under such circumstances, an equitable adjustment in the time for performance and the Assured Performance Guarantee shall be made, subject to the mutual written agreement of the parties.

- C. Funding Agency shall provide GESA Contractor, its subcontractors, and its agents reasonable and safe access to all facilities and properties in Funding Agency's control that are subject to the M&V Services. Work to be performed by GESA Contractor in accordance with this GESA Contract shall be performed during normally scheduled staff shifts and as agreed to by both parties. Funding Agency further agrees to assist GESA Contractor, its subcontractors, and its agents to gain access to facilities and properties that are not controlled by Funding Agency but are necessary for GESA Contractor to provide the M&V Services. An equitable adjustment in the time for performance and Assured Performance Guarantee shall be made as a result of any failure to grant such access, subject to the mutual written agreement of the parties.

- D. In order for GESA Contractor to perform its obligations under this Agreement with respect to the Work, the Assured Performance Guarantee, and the M&V Services, Funding Agency shall be responsible for:
 - 1. Providing GESA Contractor, its subcontractors, and its agents reasonable and safe access to all facilities and properties that are subject to the Work and/or M&V Services;
 - 2. Properly maintaining, and performing appropriate preventative maintenance on, all equipment and building systems affecting the Assured Performance Guarantee in accordance with manufacturers' standards and specifications;
 - 3. Providing the utility bills, reports, and similar information reasonably necessary for administering GESA Contractor's obligations under the Assured Performance Guarantee within thirty (30) days of Funding Agency receipt and/or generation or GESA Contractor's request therefore;
 - 4. Providing all records relating to energy and/or water usage and related maintenance of the premises and relevant equipment requested by GESA Contractor; and
 - 5. Promptly notifying GESA Contractor of any change in use or condition or any other matter that may impact the Assured Performance Guarantee.

[Remainder of this page left intentionally blank]

**PART 2
PROJECT BENEFITS**

2-1. PROJECT BENEFITS SUMMARY

- A. Subject to the terms and conditions of this GESA Contract, GESA Contractor and Funding Agency agree that, upon Final Completion, Funding Agency will be deemed to achieve a total of \$ in annual increments as shown in the Maintenance Material Savings column of the Total Project Benefits table below. GESA Contractor guarantees that Funding Agency will achieve a total of \$ in Total Annual Energy Savings during the term of this Assured Performance Guarantee, for Total Project Benefits of \$ as set forth in the Total Project Benefits table below.

Table A. Total Project Benefits

[INSERT TABLE SHOWING BREAKDOWN OF ANNUAL SAVINGS HERE]

The energy cost savings provided in **Table A** above are based on the annual escalation stated in **Table A-1** below and will be applied to the unit utility rates listed in **Table B** beginning the first month following the baseline period, escalating annually throughout the Guarantee Period.

Table A-1 – Annual Escalation Rates

Energy Cost Esc./yr	1.0%
Labor Cost Esc./yr	3.0%
Maintenance Cost Esc	1.0%

The actual escalation of calculated savings that will be applied in the M&V Report will be the highest of:

- (1) **Table A-1** above
- (2) CPI (Consumer Price Index) for the geographical region, or
- (3) Actual fuel rate

B. Within thirty (30) days of the commencement of the Guarantee Term, GESA Contractor will calculate the Measured Project Benefits achieved during the Installation Period and provide the Funding Agency of written confirmation of the calculations.

C. Within thirty (30) days of each anniversary of the commencement of the Guarantee Term, GESA Contractor will calculate the Measured Project Benefits achieved for the applicable year applicable to such period and provide both DGS and the Funding Agency with an annual report containing:

1. an executive overview of the project’s performance and Project Benefits achieved to date; and
2. a summary analysis of the Measured Project Benefits accounting; and
3. a detailed analysis of the Measured Project Benefits calculations.

D. Funding Agency acknowledges and agrees that if, for any reason, it (i) cancels or terminates receipt of M&V Services, (ii) fails to pay for M&V Services, (iii) fails to fulfill any of its responsibilities necessary to enable GESA Contractor to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches this GESA Contract, the Assured Performance Guarantee shall automatically terminate and GESA Contractor shall have no liability hereunder.

2-2. PROJECT SAVINGS SHORTFALLS OR SURPLUSES

A. Guaranteed Savings Shortfalls: If an Annual Project Benefit Shortfall occurs for any year of the Assured Performance Guarantee Term, GESA Contractor shall, at the sole discretion of the Funding Agency, perform one or more of the following:

1. pay to Funding Agency the amount of such shortfall, or
2. subject to Funding Agency's written approval, provide to Funding Agency additional products or services, in the value of such shortfall, at no additional cost to Funding Agency.

B. Guaranteed Savings Surpluses: If an Annual Project Benefit Surplus occurs for any year of the Guarantee Term, GESA Contractor may not apply the amount of such surplus to set off any subsequent Annual Project Benefit Shortfall during the Guarantee Term.

C. Additional Energy Conservations. Where an Annual Project Benefits Shortfall has occurred, GESA Contractor may, subject to Funding Agency approval, implement additional Energy Conservation Measures, at no cost to Funding Agency, which may generate additional Project Benefits in future years of the Guarantee Term. Such improvements do not relieve the GESA Contractor from liability set forth in Paragraph 2-2(A).

D. Event of Default by GESA Contractor: If an Annual Project Benefits Shortfall has occurred and the GESA Contractor does not comply with Paragraph 2-2(A), the Funding Agency may deem this to be an Event of Default. If default occurs, the Funding Agency may place the GESA Contractor in the Contractor Responsibility Program and also pursue debarment or suspension in accordance with the Commonwealth Procurement Code.

PART 3

MEASUREMENT AND VERIFICATION METHODOLOGY

3-1. MEASUREMENT & VERIFICATION PROTOCOL

A. GESA Contractor shall apply either Option A or Option B verification methodologies, as more fully detailed in the guidelines and standards of the International Measurement and Verification Protocol (IPMVP) and/or the Federal Energy Management Program (FEMP), or modified variations as outlined below, in connection with the provision of M&V Services hereunder. The applicable option shall be as set forth in the Project-Specific Request for Quote submitted to and accepted by DGS and the Funding Agency. Option A shall not be accepted without DGS and the Funding Agency's prior written approval.

B. Option A: Partially Measured Retrofit Isolation

Measured Project Benefits are determined by partial field measurement of the energy use of the system(s) to which an ECM was applied separate from the energy use of the rest of the facility. Measurements will be short-term with only one-time measurements before and after the Installation Period.

Partial measurement means that some but not all parameters will be measured. Careful review of the design and installation of ECMs is intended to demonstrate that the stipulated values fairly represent the probable actual values. Agreed-upon values will be shown in the measurement and verification plan, along with analysis of the significance of the error they may introduce. Engineering calculations using short-term pre and post-retrofit measurements and stipulations are used to calculate Measured Project Benefits for the duration of the Guarantee Term.

C. Option B: Retrofit Isolation

Savings are determined by field measurement of the energy use of the systems to which the ECM was applied, separate from the energy use of the rest of the facility. Short-term or continuous measurements are taken throughout the post-retrofit period.

3-2. CHANGES IN USE OR CONDITION

A. Funding Agency agrees to notify GESA Contractor within thirty (30) days of (i) any actual or intended change, whether before or during the Guarantee Term, in the use of any facility, equipment, or Energy Conservation Measure to which this schedule applies; (ii) any proposed or actual expansions or additions to the premises or any building or facility at the premises; (iii) a change to utility services to all or any portion of the premises; or (iv) any other change or condition arising before or during the Guarantee Term that reasonably could be expected to change the amount of Project Savings realized under this Agreement.

1. Such a change, expansion, addition, or condition would include, but is not limited to: (a) changes in the primary use of any facility, Energy Conservation Measure, or portion of the premises; (b) changes to the hours of operation of any facility or portion of the premises; (c) changes or modifications to the Energy Conservation Measures or any related equipment; (d) changes to the M&V Services provided under this GESA Contract; (e) insufficient or improper maintenance or unsound usage of the Energy Conservation Measures or any related

equipment at any facility or portion of the premises (other than by GESA Contractor); or (f) additions or deletions of Energy Conservation Measures or any related equipment at any facility or portion of the premises.

- B.** If GESA Contractor independently learns of any such change or condition, GESA Contractor shall calculate and send to Funding Agency a Notice of adjustment to the Annual Project Benefits to reflect the impact of such change or condition, and the adjustment shall become effective as of the date the change or condition first arose. If the Funding Agency fails to promptly provide GESA Contractor with notice of any such change or condition, GESA Contractor may make reasonable estimates as to the impact of such change or condition and as to the date on which such change or condition first arose in calculating the impact of such change or condition, and such estimates shall be conclusive.

PART 4

BASELINE CALCULATIONS AND UTILITY RATES

4-1. UTILITY COSTS FOR BASELINE

- A.** The unit utility costs for the Baseline period are set forth below as “Base Utility Cost” and shall be used for all calculations. The Base Utility Cost shall be escalated annually by escalation rate of one percent (1%). The Base Utility Cost for electric represents the 12- month average utility costs from **[BASELINE PERIOD] EXAMPLE:** July 1, 2014 through June 30, 2015.

- B.** The **[BASELINE PERIOD]** energy rates used to calculate savings are **[COST/KWH]** \$ / kWh for electricity, **[COST/MMBTU]** \$/mmBtu for natural gas, **[COST/KBTU]** \$ / KBtu for heating fuel and **[COST/KGAL]** \$/kGal for water.

Baseline utility rates used for the energy savings calculations were determined according to the following methods:

Electric Rates:

Heating Fuel Rates:

Natural Gas Rates:

Water Rates:

[Remainder of this page left intentionally blank]

PART 5

PRIMARY OPERATIONS SCHEDULE PRE & POST RETROFIT

5-1. PRE/POST RETROFIT

[INCLUDE CHARTS/TABLES ETC. THAT EXPLAIN PRE/POST RETROFIT LIGHTING BURN HOURS, TEMPERATURES, SETPOINTS, ETC. OF ECMS]

[Remainder of this page left intentionally blank]

PART 6

6.1 MEASUREMENT & VERIFICATION SERVICES

COMMONWEALTH REPRESENTATIVE

- A. **GESA Contractor shall ensure that an approved representative from Funding Agency is physically present for all pre-retrofit and post retrofit measurements, for each ECM as applicable to the Energy Savings Guarantee. Funding Agency and GESA Contractor shall mutually witness and record said measurements and sign GESA Contractor's measurement logbook, if deemed mutually acceptable. GESA Contractor shall include all logged measurements in the annual report to be provided.**

6-2. M&V SERVICES

- A. GESA Contractor will, for a period of 3 Guarantee Years (the "Reporting Period") unless earlier terminated by Funding Agency, provide the "M&V Services" set forth below in connection with the Assured Performance Guarantee. Funding Agency shall pay GESA Contractor an annual fee during the Reporting Period for such M&V Services as identified in the table below. Notwithstanding anything to the contrary, Funding Agency may choose to continue the M&V services in Guarantee Year Four (4) and beyond by notifying GESA Contractor within thirty (30) days of the end of the third Guarantee Year.
1. During the Installation Period, the GESA Contractor's Performance Assurance Engineer will track Measured Project Benefits. The GESA Contractor will report the Measured Project Benefits achieved during the Installation Period to the Funding Agency within 90 days of the commencement of the Guarantee Term.
 2. Within 90 days of each anniversary of the commencement of the Guarantee Term, for a period of 3 years, GESA Contractor will provide the Funding Agency with an annual report containing:
 - A. an executive overview of the project's performance and Project Benefits achieved to date;
 - B. a summary analysis of the Measured Project Benefits accounting; and
 - C. depending on the M&V Option, a detailed analysis of the Measured Project Benefits calculations.
 3. During the Guarantee Term, for a period of 3 years, the GESA Contractor's Performance Assurance Engineer will monitor the on-going performance of the ECMs, as specified in this GESA Contract, to determine whether anticipated Measured Project Benefits are being achieved. In this regard, the Performance Assurance Engineer will periodically assist the Funding Agency, on-site or remotely, with respect to the following activities:
 - A. Conduct one annual on-site visit to verify proper operation of the equipment installed under the project.
 - B. review information furnished by the Funding Agency from the facility management system to confirm that control strategies are in place and

- functioning;
 - C. advise Funding Agency’s designated personnel of any performance deficiencies based on such information;
 - D. coordinate with Funding Agency’s designated personnel to address any performance deficiencies that affect the realization of Measured Project Benefits; and
 - E. inform Funding Agency of opportunities to further enhance project performance and of opportunities for the implementation of additional ECMs.
4. For specified ECMs utilizing “Option A” and “Modified Option A” M&V protocols, the GESA Contractor will:
- A. conduct pre and post installation measurements required under this GESA Contract;
 - B. confirm the building management system employs the control strategies and set points specified in this GESA Contract; and
 - C. analyze actual as-built information and adjust the Baseline and/or Measured Project Benefits to conform to actual installation conditions (e.g., final lighting and water benefits calculations will be determined from the as-built information to reflect the actual mix of retrofits encountered during installation).

6-3. COST OF M&V SERVICES

Based on direction from the Commonwealth, the fees for the first three (3) years of annual M&V service has been included in the Project; refer to the project cash flow in the Investment Grade Audit. The amount to be paid annually by Funding Agency for the M&V services provided is listed in the table below. If the Funding Agency chooses to continue the M&V services in Guarantee Year Four (4) and beyond, it must notify GESA Contractor within thirty (30) days of the end of the third Guarantee Year. If the Customer wishes to continue the M&V Services past the third Guarantee Year, the pricing for each additional Guarantee Year for M&V services will be the Year 3 M&V Cost annually escalated at 3% in each additional Guarantee Year. The billing for the 1st three Guarantee Years will begin with Final Acceptance of this project.

Year	M&V Cost
1	\$
2	\$
3	\$
Total	\$

[Remainder of this page left intentionally blank]

PART 7

FUNDING AGENCY RESPONSIBILITIES

7-1. In order for GESA Contractor to perform its obligations under this GESA Contract with respect to the Work, the Assured Performance Guarantee, and the M&V Services, Funding Agency shall be responsible for:

1. Providing GESA Contractor, its subcontractors, and its agents reasonable and safe access to all facilities and properties that are subject to the Work and/or M&V Services;
2. Properly maintaining, and performing appropriate preventative maintenance on, all equipment and building systems affecting the Assured Performance Guarantee in accordance with manufacturers' standards and specifications;
3. Providing the utility bills, reports, and similar information reasonably necessary for administering GESA Contractor's obligations under the Assured Performance Guarantee within thirty (30) days of Funding Agency receipt and/or generation or GESA Contractor's request therefore;
4. Providing all records relating to energy and/or water usage and related maintenance of the premises and relevant equipment requested by GESA Contractor;
5. Providing and maintaining a dedicated telephone line and/or TCP/IP remote connection to facilitate remote monitoring of relevant equipment;
6. Promptly notifying GESA Contractor of any change in use or condition or any other matter that may impact the Assured Performance Guarantee.

[remainder of this page left intentionally blank]

ENERGY EFFICIENT MEASURES

The table(s) below summarizes ECM savings and cost and simple payback

[INSERT SUMMARY TABLE(S)]

Exhibit C
to Master Installment Purchase Agreement

ACCEPTANCE CERTIFICATE

**Exhibit C
to Master Installment Purchase Agreement**

ACCEPTANCE CERTIFICATE

FINANCER ADDRESS

Attn: Contract Administration

Re: Schedule No. ____ dated as of _____ (the "Schedule") to Master Installment Purchase Agreement (the "Agreement") dated as of between _____ ("FINANCER") and the Commonwealth of Pennsylvania, Acting through the [Funding Agency] (the "Funding Agency")

Ladies and Gentlemen:

In accordance with the terms of the above-referenced Agreement and Schedule (collectively, the "Financing Package", the undersigned Funding Agency hereby certifies and represents to, and agrees with FINANCER as follows:

1. The implementation/construction of the ECMs (as defined in the Financing Package) has been completed by the GESA Contractor (as defined in the Financing Package) and such ECMs have been delivered, installed, are operating in a manner consistent with the GESA Contractor's intended use and has been inspected and finally accepted for all purposes by the Funding Agency and title thereto has transferred to the Funding Agency and any security interest of the GESA Contractor therein has been released.

2. The Funding Agency has conducted such inspection and/or testing of the ECMs as it deems necessary and appropriate in order to determine the capability and functionality of the ECMs in order to accept such ECMs and hereby acknowledges that it accepts the ECMs for all purposes.

3. The Funding Agency is self-insured in accordance with Section 13 of the Agreement.

4. The Funding Agency hereby reaffirms that the representations, warranties and covenants contained in the Financing Package are true and correct as of the date hereof.

5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof under the Financing Package.

Date: _____

Commonwealth of Pennsylvania, Acting through the
[Funding Agency] (the "Funding Agency")

By: _____

Name: _____

Title: _____

(Seal)

Exhibit D
to Master Installment Purchase Agreement

PAYMENT SCHEDULE

Exhibit D
to Master Installment Purchase Agreement

PAYMENT SCHEDULE

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	PREPAYMENT PRICE [including prepayment premium; if applicable]
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Contract Rate. The Contract Rate for this Schedule is _____% per annum.

Prepayment Option Commencement Date. For purposes of paragraph 14 of the Agreement, the Prepayment Option Commencement Date for this Schedule is _____.