

Appendix F

Standard Grant Terms and Conditions

STANDARD GRANT TERMS AND CONDITIONS FOR SERVICES

1. DEFINITIONS

Capitalized terms used in these Commonwealth standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the agreement to which it is attached.

2. TERM OF GRANT

The term of the grant commences on the Effective Date, as defined below, and ends on the Expiration Date identified in the grant, subject to the other provisions of the grant. The Effective Date is the date the grant has been fully executed by the Grantee and by the Commonwealth and all approvals required by Commonwealth procurement procedures have been obtained. The agreement is not binding in any way on the Commonwealth or the Department until it has been fully executed, as prescribed in the preceding sentence, and sent to the Grantee. The Department may, upon notice to the Grantee, extend the term of the grant for up to three months upon the same terms and conditions.

3. INDEPENDENT GRANTEE

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

4. COMPLIANCE WITH LAW

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

5. ENVIRONMENTAL PROVISIONS

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

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

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

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

7. **COMPENSATION/EXPENSES**

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

8. **BILLING REQUIREMENTS**

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

9. **PAYMENT**

- A. **Payment Date.** The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is:
 - a. The date on which payment is due under the terms of the grant;
 - b. 30 days after a proper invoice actually is received at the "Provide Service and Bill To" address if a date on which payment is not due is not specified in the grant (a "proper invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or
 - c. The payment date specified on the invoice if later than the date established by (a) and (b) above.
- B. **Delay; Interest.** Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the grant. If any payment is not made within 15 days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act of December 13, 1982, P.L. 1155, No. 266, 72 P.S. § 1507, (relating to interest penalties on Commonwealth accounts) and accompanying regulations 4 Pa. Code §§ 2.31—2.40 (relating to interest penalties for late payments to qualified small business concerns).
- C. **Payment should not be construed by the Grantee as acceptance of the service performed by the Grantee.** The Commonwealth may conduct further testing and inspection after payment, but within a reasonable time after performance, and reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications.
- D. **Offset (2023).** The Commonwealth may set off the amount of any state tax liability or other obligation of the Grantee, or its subsidiaries, owed to the Commonwealth against any payments due the Grantee under any contract between the Commonwealth and Grantee.
- E. **Purchasing Card.** The Commonwealth may use the Commonwealth purchasing card to make purchases under the grant. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Grantee will be required to pay and the Grantee will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Grantee. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Grantee or any other charges incurred by the Grantee, unless specifically stated in the terms of the grant.
- F. **Automated Clearing House (ACH) Payments (2023).**
 - a. **Payment Method.** The Commonwealth shall make payments to the Grantee through the Automated Clearing House ("ACH"). Within 10 days of the grant award, the Grantee must submit or must have submitted its ACH information within its user profile in the Commonwealth's Master Database. The

Grantee may enroll to receive remittance information via electronic addenda and email (e-Remittance). ACH and e-Remittance information is available at the following:

<https://www.budget.pa.gov/Services/ForVendors/Pages/Direct-Deposit-and-e-Remittance.aspx>

- b. Unique Identifier. The Grantee must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Grantee's unique invoice number on its ACH remittance advice to enable the Grantee to properly apply the state agency's payment to the respective invoice or program.
- c. ACH Information in the Commonwealth's Master Database. The Grantee shall ensure that the ACH information contained in Commonwealth's Master Database is accurate and complete. The Grantee's failure to maintain accurate and complete information may result in delays in payments.

10. TAXES

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

11. WARRANTY

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

12. PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET PROTECTION

The Grantee warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Grant which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report, document or other material provided to the Commonwealth under the grant. The Grantee shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright, trademark, or trade secret infringement in the United States of any of the products provided or used in the performance of the grant. The Commonwealth shall give the Grantee prompt notification such suit or proceeding; full right, authorization, and opportunity to conduct the defense of the suit or proceeding; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Grantee's written request, it will be at the Grantee's expense, but the responsibility for such expense will be only that within the Grantee's written authorization. The Grantee shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Grantee or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the grant. If any of the products provided by the Grantee in such suit or proceeding are held to constitute infringement and the use is enjoined, the Grantee shall, at its own expense and at its option, either procure the right to continue use of such infringement

products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Grantee is unable to do any of the preceding, the Grantee must remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Grantee under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Grantee without its written consent.

13. OWNERSHIP RIGHTS

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

14. ASSIGNMENT OF ANTITRUST CLAIMS

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

15. AUDIT PROVISIONS

The Commonwealth and its authorized representatives shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Grantee to the extent that the books, documents, and records relate to costs or pricing data for the grant. The Grantee shall maintain records which support the prices charged and costs incurred for the grant. The Grantee shall preserve books, documents, and records that relate to costs or pricing data for the grant for the greater of a period of five years from date of final payment or the period identified in any Audit Clause attached to the agreement. The Grantee shall give full and free access to all records to the Commonwealth and its authorized representatives.

16. DEFAULT

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

- l.** Failure to comply with representations made in its application or agreement; or
 - m.** Failure to comply with applicable industry standards, customs, and practice.
- B.** If the Commonwealth terminates this grant in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Grantee shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical services included within the terminated part of the grant.
- C.** If the grant is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Grantee to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Department, such partially completed work, including, where applicable, reports, working papers and other documentation, as the Grantee has specifically produced or specifically acquired for the performance of such part of the grant as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth will be at the grant price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth will be in an amount agreed upon by the Grantee and the Department. The Commonwealth may withhold from amounts otherwise due the Grantee for such completed or partially completed works, such sum as the Department determines to be necessary to protect the Commonwealth against loss.
- D.** The rights and remedies of the Commonwealth provided in this paragraph are not be exclusive and are in addition to any other rights and remedies provided by law or under this grant.
- E.** The Commonwealth's failure to exercise any rights or remedies provided in this paragraph will not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

17. FORCE MAJEURE

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

18. TERMINATION PROVISIONS

The Commonwealth may terminate this Grant for any of the following reasons. Termination will be effective upon written notice to the Grantee unless the notice specifies an effective date for the termination.

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

19. INDEMNIFICATION (2023)

The Grantee shall indemnify and defend the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Grantee or its employees and agents pursuant to this agreement, as determined by the Commonwealth in its sole discretion.

20. ASSIGNABILITY AND SUBGRANTING

- A. Subject to the terms and conditions of this Paragraph 20, this grant is binding upon the parties and their respective successors and assigns.
- B. The Grantee shall not subgrant with any person or entity to perform all or any part of the work to be performed under this grant without the prior written consent of the Commonwealth, which consent may be withheld at the sole and absolute discretion of the Commonwealth.
- C. The Grantee may not assign, in whole or in part, this grant or its rights, duties, obligations, or responsibilities under this agreement without the prior written consent of the Commonwealth, which consent may be withheld at the sole and absolute discretion of the Commonwealth.
- D. Notwithstanding the foregoing, the Grantee may, without the consent of the Commonwealth, assign its rights to payment to be received under the Grant, provided that the Grantee provides written notice of such assignment to the Commonwealth together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this grant.
- E. For the purposes of this grant, the term "assign" includes, but is not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Grantee provided, however, that the term will not apply to the sale or other transfer of stock of a publicly traded company.
- F. Any assignment consented to by the Commonwealth must be evidenced by a written assignment agreement executed by the Grantee and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the grant and to assume the duties, obligations, and responsibilities being assigned.

- G. A change of name by the Grantee, following which the Grantee's federal identification number remains unchanged, will not be considered to be an assignment. The Grantee shall give the Commonwealth written notice of any such change of name.

21. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE (2023)

- A. Representations. The Grantee represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the agreement. The Grantee 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 its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- B. Nondiscrimination/Sexual Harassment Obligations. The Grantee shall not:
- a. in any manner discriminate in the hiring of any employee(s) for the performance of the activities required under this agreement or any subgrant agreement, contract, or subcontract, 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. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any of its employees.
 - c. 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 this agreement or any subgrant agreement, contract, or subcontract.
 - d. in any manner 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 subgrantee, contractor, subcontractor, or supplier who is qualified to perform the work to which this agreement relates.
 - e. 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 the Acts' enforcement and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- C. Establishment of Grantee Policy. The Grantee shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of this agreement, the Grantee shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the grant activities are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.
- D. Notification of Violations. The Grantee's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the agreement. Accordingly, the Grantee shall notify the Commonwealth if, at any time during the term of this agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.

- E. Cancellation or Termination of Agreement. The Commonwealth may cancel or terminate this agreement and all money due or to become due under this agreement may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee in the Contractor Responsibility File.
- F. Subgrant Agreements, Contracts, and Subcontracts. The Grantee shall include these Nondiscrimination/Sexual Harassment provisions in its subgrant agreements, contracts, and subcontracts with all subgrantees, contractors, and subcontractors providing goods or services under this agreement. The incorporation of these provisions in the Grantor's subgrants, contracts, or subcontracts does not create privity of contract between the Commonwealth and any subgrantee, contractor, or subcontractor, and no third-party beneficiaries are created by those provisions. If the Grantee becomes aware of a subgrantee's, contractor's, or subcontractor's violation of these provisions, the Grantee shall use its best efforts to ensure the subgrantee's, contractor's, or subcontractor's compliance with these provisions.

22. **GRANTEE INTEGRITY PROVISIONS (October 2023)**

- A. Definitions. For purposes of these Grantee Integrity Provisions, the following definitions apply:
- a. "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - b. "Grantee" means the individual or entity, that has entered into this agreement with the Commonwealth.
 - c. "Grantee Related Parties" means any Affiliates of the Grantee and the Grantee's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Grantee.
 - d. "Financial Interest" means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - e. "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](#), as may be amended, 4 Pa. Code §7.153(b), apply.
 - f. "Non-Solicitation Award Process" means a method of awarding grants based on predetermined criteria, without the solicitation of grant applications.
- B. Representations and Warranties.
- a. **Grantee Representation and Warranties.** The Grantee represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Grantee nor Grantee Related Parties have:
 - i. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - ii. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 - iii. had any business license or professional license suspended or revoked;

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

- b. **Contractor Explanation.** If the Grantee cannot make the representations and warranties set forth above at the time of its submission of its grant application or if the agreement is awarded pursuant to a Non-Solicitation Award Process at the time of the execution of the agreement, the Grantee shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the agreement.
- c. **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to the agreement, the Grantee further represents that it has not violated any of these Grantee Integrity Provisions during the term of the agreement.
- d. **Notice.** The Grantee shall immediately notify the Commonwealth, in writing, if at any time during the term of the agreement it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Grantee acknowledges that the Commonwealth may, in its sole discretion, terminate the agreement for cause if it learns that any of the certifications made in these Grantee Integrity Provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the agreement.

C. **Grantee Responsibilities.** During the term of this agreement, the Grantee shall:

- a. maintain the highest standards of honesty and integrity.
- b. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Grantee that govern Commonwealth contracting or grant administration.
- c. establish and implement a written business integrity policy that includes, at a minimum, the requirements of these Grantee Integrity Provisions as they relate to the Grantee's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
- d. not accept, agree to give, offer, confer, 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, statement of policy, management directive, or bulletin applicable to the award of grants or the administration of this agreement.
- e. not have a financial interest in any other subgrantee, contractor, subcontractor, or supplier providing services, labor, or material under this agreement, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Grantee's financial interest. The Grantee must disclose the financial interest to the Commonwealth at the time of submission of its grant application, or if a Non-Solicitation Award Process is used, no later than the date the Grantee signs the agreement. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.
- f. comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. § 13A01 et seq.) regardless of the method of award.

- g. comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. § 3260a) if this agreement was awarded pursuant to a Non-Solicitation Award Process.
 - h. immediately notify the Commonwealth or the Office of the State Inspector General, in writing, when the Grantee has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Grantee 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 the ethical standards.
- D. Investigations.** If a State Inspector General investigation is initiated, the Grantee shall:
- a. reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Grantee's compliance with the terms of this or any other agreement between the Grantee and the Commonwealth that results in the suspension or debarment of the Grantee. The Grantee shall not be responsible for investigative costs for investigations that do not result in the Grantee's suspension or debarment.
 - b. 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 Grantee non-compliance with these Grantee Integrity Provisions and make identified Grantee employees and volunteers available for interviews at reasonable times and places.
 - c. upon the inquiry or request of an Inspector General, 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 Grantee's integrity and compliance with these provisions. This information may include, but is not be limited to, the Grantee's business or financial records, documents or files of any type or form that refer to or concern this agreement.
- E. Termination.** For violation of any of these Grantee Integrity Provisions, the Commonwealth may terminate this agreement and any other contract with the Grantee, claim liquidated damages in an amount equal to the value of anything received in breach of these Grantee Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another grantee to complete performance under this agreement, and debar and suspend the Grantee from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does 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.
- F. Subcontracts.** The Grantee shall include these Grantee Integrity Provisions in its subgrant agreements, contracts, and subcontracts with all subgrantees, contractors, and subcontractors providing goods or services under this agreement. The incorporation of this provision in the Grantee's subgrant agreements, contracts, and subcontracts shall not create privity of contract between the Commonwealth and any subgrantee, contractor, or subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Grantee becomes aware of a subgrantee's, contractor's, or subcontractor's violation of these provision, the Grantee shall use its best efforts to ensure their compliance with these provisions.

23. **CONTRACTOR RESPONSIBILITY PROVISIONS (2023)**

- A. Definition.** For the purpose of these provisions, the term "Contractor" means 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. The term

also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

B. Contractor Representations.

- i. The Contractor represents for itself and its subgrantees, contractors, and subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this agreement, that neither the Contractor, nor any of its subgrantees, contractors, and subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with the agreement, a written explanation of why the certification cannot be made.
- ii. The Contractor represents that, as of the date of its execution of this agreement, it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal, if any liabilities or obligations exist, or is subject to a duly approved deferred payment plan if any liabilities exist.

C. Notification. The Contractor shall notify the Commonwealth if, at any time during the term of the agreement, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subgrantees, contractors, or subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.

D. Default. The Contractor's failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the agreement with the Commonwealth.

E. Reimbursement. The Contractor shall 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 agreement or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not 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. Suspension and Debarment List. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

24. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT (2023)

A. No Exclusion. Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this agreement.

B. Compliance. For all goods and services provided pursuant to this agreement, the Grantee shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.

C. Indemnification. The Grantee shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Grantee's failure or its employee's or agent's failure to comply with the provisions of subparagraph A, as determined by the Commonwealth in its sole discretion.

25. HAZARDOUS SUBSTANCES (2018)

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

A. Labeling. The Grantee shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Grantee is clearly labeled, tagged or marked with the information listed in Paragraph (i) through (iv):

- a. Hazardous substances:
 - i. The chemical name or common name,
 - ii. A hazard warning, and
 - iii. The name, address, and telephone number of the manufacturer.
- b. Hazardous mixtures:
 - i. The common name, but if none exists, then the trade name,
 - ii. The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - iii. The chemical or common name of hazardous substances consisting of 1.0% or more of the mixture,
 - iv. A hazard warning, and
 - v. The name, address, and telephone number of the manufacturer.
- c. Single chemicals:
 - i. The chemical name or the common name,
 - ii. A hazard warning, if appropriate, and
 - iii. The name, address, and telephone number of the manufacturer.
- d. Chemical Mixtures:
 - i. The common name, but if none exists, then the trade name,
 - ii. A hazard warning, if appropriate,
 - iii. The name, address, and telephone number of the manufacturer, and
 - iv. The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

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

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

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

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.
- Labels must be legible and prominently affixed to and displayed on the product and

the carton, container, or package so that employees can easily identify the substance or mixture present therein.

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

26. COVENANT AGAINST CONTINGENT FEES

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

27. APPLICABLE LAW AND FORUM (2023)

This contract is governed by and must be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in personam jurisdiction over the Contractor, and the Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the Commonwealth’s rights or defenses.

28. INTEGRATION

When fully executed by the parties, this agreement will be the final and complete agreement between the parties containing all the terms and conditions agreed on by the parties. All representations, understandings, promises, and agreements pertaining to the subject matter of this agreement made prior to or at the time this agreement is executed are superseded by this agreement, unless specifically accepted by any other term or provision of this agreement. There are no conditions precedent to the performance of this agreement, except as expressly set forth in this agreement.

29. CHANGES

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

For purposes of this grant, “change order” means a written order signed by the Commonwealth directing the Grantee to make changes authorized under this clause. For purposes of this grant, “funding adjustment” means a written agreement adjustment to increase or decrease the total cost of a services agreement when the services provided are based on estimated usage amounts.

30. RIGHT TO KNOW LAW (2023)

- A. Applicability. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this contract.
- B. Grantee Assistance. If the Commonwealth needs the Grantee’s assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Grantee that it requires the Grantee’s assistance, and the Grantee shall provide to the Commonwealth:
 - a. access to, and copies of, any document or information in the Grantee’s possession (Requested Information) arising out of this contract that the Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and
 - b. any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this contract.
- C. Trade Secret or Confidential Proprietary Information. If the Grantee considers the Requested Information to include 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 Grantee shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Grantee, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Grantee shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth’s determination.
- D. Reimbursement
 - a. Commonwealth Reimbursement. If the Grantee fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Grantee shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Grantee’s failure, including any statutory damages assessed against the Commonwealth.
 - b. Contractor Reimbursement. The Commonwealth will reimburse the Grantee for any costs that the Grantee incurs as a direct result of 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.
- E. Challenges of Commonwealth Release. The Grantee 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 Grantee shall reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Grantee’s legal challenge, regardless of the outcome.
- F. Waiver. As between the parties, the Grantee waives 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.
- G. Survival. The Grantee’s obligations contained in this Section survive the termination or expiration of this contract.

31. WORKER PROTECTION AND INVESTMENT (2023)

The Grantee shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:

- A. Construction Workplace Misclassification Act;
- B. Employment of Minors Child Labor Act;
- C. Minimum Wage Act;
- D. Prevailing Wage Act;
- E. Equal Pay Law;
- F. Employer to Pay Employment Medical Examination Fee Act;
- G. Seasonal Farm Labor Act;
- H. Wage Payment and Collection Law;
- I. Industrial Homework Law;
- J. Construction Industry Employee Verification Act;
- K. Act 102: Prohibition on Excessive Overtime in Healthcare;
- L. Apprenticeship and Training Act; and
- M. Inspection of Employment Records Law.

32. ENHANCED MINIMUM WAGE (2023)

- A. Enhanced Minimum Wage. Contractor shall pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this contract/lease, and for an employee's hours performing ancillary services necessary for the performance of the services or lease when the employee spends at least 20% of their time performing ancillary services in a given work week.
- B. Adjustment. Beginning July 1, 2023, and annually thereafter, the minimum wage rate will 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 Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- C. Exceptions. These Enhanced Minimum Wage Provisions do not apply to employees
 - a. Exempt from 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.
- D. Notice. The Contractor shall: (1) post this Enhanced Minimum Wage Provision 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; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.

- E. Records. Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- F. Sanctions. Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.
- G. Subcontractors. The Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contract or lease to ensure that these provisions are binding on its subcontractors.

33. SURVIVAL

Paragraphs 4, 10, 11, 12, 13, 14, 15, 19, 27, 30, and 31 and any right or obligation of the parties in this agreement which, by its express terms or nature and context is intended to survive termination or expiration of this agreement, will survive any such termination or expiration shall survive the expiration or termination of the agreement.