

ITQ TERMS AND CONDITIONS

**ENERGY SUPPLY AND MANAGEMENT SERVICES
(2025)**

ITQ 4400031205

PART I - GENERAL INFORMATION

1. **Purpose:** The Commonwealth of Pennsylvania (Commonwealth) is issuing this Invitation for Bids (IFB) for Contractors to become qualified suppliers on this Invitation to Qualify (ITQ) Contract in order to respond to Requests for Quote (RFQ) issued by the Department of General Services to satisfy the Commonwealth of Pennsylvania's needs for Energy Supply and Management Services.
2. **Type of Contract:** Upon determination that the Contractor meets the ITQ requirements, the Commonwealth will issue a contract to the Contractor and it will contain the Contract Terms and Conditions as shown in Part V of this IFB. Upon receipt of a Notice to Proceed issued under this Contract, the Contractor agrees to furnish the requested services to the Commonwealth agency.
3. **No Pre-Bid Conference:** There will be no pre-bid conference for this IFB. If there are any questions, please forward them to the Issuing Office prior to the bid opening date and time.
4. **Questions:** All questions regarding the IFB must be submitted in writing to the email address of the Issuing Officer provided in the solicitation. All questions received will be answered, in writing, and such responses shall be posted to the Issuing Office's website as indicated in Section 5 below. The Issuing Officer shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the IFB or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation.
5. **Addenda to the IFB:** If the Issuing Office deems it necessary to revise any part of this IFB, the Issuing Office will post an addendum to its website at [HTTPS://WWW.PA.GOV/AGENCIES/DGS.HTML](https://www.pa.gov/agencies/dgs.html) it is the Bidder's responsibility to periodically check the website for any new information or addenda to the IFB.
6. **Bid Protest Procedure:** The Bid Protest Procedure is on the DGS website at:
<https://www.pa.gov/content/dam/copapwp-pagov/en/dgs/documents/documents/procurement-forms/handbook/pt1/pt%20i%20ch%2058%20bid%20protests.pdf>
9. **COSTARS Program:** Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 ("Section 1902"), authorizes local public procurement units and state-affiliated entities (together, "COSTARS Members") to participate in Commonwealth procurement contracts that the Department of General Services ("DGS") may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members' participation.

- A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1) A “local public procurement unit” is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission.
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code).
- Any tax-exempt, nonprofit educational institution or organization.
- Any tax-exempt, nonprofit public health institution or organization.
- Any nonprofit fire, rescue, or ambulance company; and
- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as Local Public Procurement Units on a case-by-case basis.

2) A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:

- The Pennsylvania Turnpike Commission.
- The Pennsylvania Housing Finance Agency.
- The Pennsylvania Municipal Retirement System.
- The Pennsylvania Infrastructure Investment Authority.
- The State Public School Building Authority.
- The Pennsylvania Higher Education Facilities Authority, and
- The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3) A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>.

- B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.
- C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.
- D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.
- E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
DGS-verified Small Diverse Business Bidder	\$166
DGS Self-Certified Small Business Bidder	\$500
All Other Bidders	\$1,500

- 1) Each bidder electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.
- 2) At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at

each contract renewal date to continue to sell the awarded items/services to COSTARS Members.

- F. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.
- 1) The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.
 - 2) DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:
 - a) The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.
 - b) The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
 - c) The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.
 - d) Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.
 - e) The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any

nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.

- f) The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.
- G. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.
 - 1) The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/irj/portal/anonymous>, Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 1800 Herr St. Arsenal Building 2nd Floor, Harrisburg, PA 17103.
 - 2) For each PO received, the Contractor shall include on the report the name and address of each COSTARS Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.
 - 3) DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.
- H. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.costars.state.pa.us.
 - 1) If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.costars.state.pa.us where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently registered COSTARS member entities, please visit the COSTARS website.

- 2) Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
1800 Herr St
Arsenal Building, 2nd Floor
Harrisburg, PA 17103
Telephone: 1-866-768-7827
E-mail GS-PACostars@pa.gov

14. **Rejection of Bids:** The Issuing Office reserves the right to reject any and all Bids submitted in response to this IFB by Contractors seeking to become qualified on this ITQ, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid if the best interests of the Commonwealth are thereby served.
15. **Representations and Authorizations:** By submitting its bid, the Contractor, referred to in this section as the Bidder, understands, represents, and acknowledges that:
- A. All of the Bidder's information and representations in the bid are material and important, and the Issuing Office may rely upon the contents of the bid in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the submission, punishable pursuant to 18 Pa. C.S. § 4904.
 - B. The Bidder has arrived at the price(s) and amounts in its bid independently and without consultation, communication, or agreement with any other bidder or potential bidder.
 - C. The Bidder has not disclosed the price(s), the amount of the bid, nor the approximate price(s) or amount(s) of its bid to any other firm or person who is an Bidder or potential bidder for this IFB.
 - D. The Bidder has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a bid on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
 - E. The Bidder makes its proposal 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.
 - F. To the best knowledge of the person signing the bid for the Bidder, the Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four 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 the Bidder has disclosed in its bid.

- G. To the best of the knowledge of the person signing the bid for the Bidder and except as the Bidder has otherwise disclosed 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.
- H. The Bidder 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 it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I. The Bidder has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its bid or the specifications for the services described in the bid.
- J. Each Bidder, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Bidder's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Bidder receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Bidder shall not begin to perform.
- L. The Bidder is not currently engaged and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

PART II - REQUIREMENTS

1. **COSTARS Program Election to Participate:** If the Contractor, referred to in this Section as the Bidder, is willing to sell the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to COSTARS members, the Bidder should complete and return the COSTARS Program Election to Participate form. If the Bidder is asserting that it is a Department of General Services Certified Small Business, the Bidder must submit its active certification with the bid response.
2. **Iran Free Procurement Certification and Disclosure:** Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, a bidder must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

All Bidders must complete and return the Iran Free Procurement Certification form, which is attached hereto and made part of this IFB. The completed and signed Iran Free Procurement Certification form must be submitted with the Bid Response. See the following web page for current Iran Free Procurement list:

<http://www.dgs.pa.gov/businesses/materials%20and%20services%20procurement/procurement-resources/pages/default.aspx#.WDNfJJgo6Ht>

3. **Worker Protection and Investment Certification:** Pursuant to Executive Order 2021-06, Worker Protection and Investment (October 21, 2021), the Commonwealth is responsible for ensuring that every Pennsylvania worker has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with all applicable Pennsylvania state labor and workforce safety laws. Such certification shall be made through the Worker Protection and Investment Certification Form (BOP-2201). Contractor must complete and return the Worker Protection and Investment Certification form with its Bid Response

PART III – SELECTION CRITERIA

1. **Mandatory Responsiveness Requirements:** To be eligible for selection, a bid must be:
 - A. Timely received from a Bidder; and
 - B. Properly signed by the Bidder.
2. **Method of Award – All Bidders:** Award will be made to all responsive and responsible bidders.
3. **Awards:** Unless all Bids are rejected, and except as otherwise provided by law, award will be made through the issuance of a contract in accordance with the method of award. As a condition for receipt of award of a contract, the Bidder must be registered in the Commonwealth of Pennsylvania's Vendor Master file. In order to register, bidders must visit the Pa Supplier Portal at <https://www.pasupplierportal.state.pa.us/> or call the Customer Support Center at 877-435-7363 or 717-346-2676.
4. **RFQ Conditional Award:** *For 83100000-ITQ-510, Carbon-Free Electricity Project Supply Services and 83100000-ITQ-511, Renewable Natural Gas Project Supply Services only*, DGS Procurement may elect to provide a conditional award notification to a Contractor selected for award through the RFQ process. The intent of providing a conditional award notification shall be to provide the selected Contractor time to execute any agreements with their sources of carbon-free electricity or renewable natural gas supply that may be required to enable the Contractor to meet the Commonwealth's requirements, as specified in an RFQ, prior to the award being formally executed through the issuance of a Notice to Proceed. If DGS Procurement elects to issue a Conditional Award Notification for an RFQ, the process for providing such notification and a subsequent Notice to Proceed shall be specified in the applicable RFQ
5. **Tie Bids:** All tie bids will be broken by the Issuing Office.
6. **Prompt Payment Discounts:** Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Bidder, however, the Issuing Office will take advantage of such offer.

PART IV – STATEMENT OF WORK

1. **Statement of Work:** The Commonwealth is seeking bids from Contractors desiring to become qualified to respond to RFQs issued for the services set forth in the attached document entitled "Statement of Work."

PART V – CONTRACT TERMS AND CONDITIONS

1. **Contract Integration:** This Contract, including the Invitation to Qualify (ITQ), the Contractor's submittal, all referenced documents, and any Requests for Quotation (RFQs) and subsequent Conditional Award Notifications and Notices to Proceed constitutes the entire agreement between the parties. No agent, representative, employee, or officer of either the Commonwealth or the Contractor has the authority to make, or has made, any statement, agreement, or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the contract. No modifications, alterations, changes, or waivers to the contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.
2. **Definitions:**
 - A. **Agency:** The department, board, commission or other Commonwealth Agency listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an RFQ and Notice to Proceed against this contract, that entity shall also be identified as "Agency".
 - B. **Contracting Officer:** The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
 - C. **Days:** Unless specifically indicated otherwise, days mean calendar days.
 - D. **Services:** All Contractor activity necessary to satisfy the Contract.
 - E. **RFQ Award:** A term used to refer to an award made to the Contractor resulting from the Request for Quotation (RFQ) process, inclusive of the RFQ, the Contractor's quote in response to the RFQ, the Notice to Proceed, and if applicable, the Conditional Award Notification.
3. **Order of Precedence:**
 - A. If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence shall be:
 - 1) The Contract, inclusive of the Terms and Conditions and the ITQ Statement of Work;
 - 2) The Information submitted by the Contractor when seeking approval as a qualified Contractor under this ITQ.

- B. If any conflicts or discrepancies should arise in the interpretation of an RFQ Award, the order of precedence shall be:
 - 1) The applicable RFQ solicitation;
 - 2) The Contract, inclusive of the Terms and Conditions and the ITQ Statement of Work;
 - 3) The Notice to Proceed issued to the Contractor for the applicable RFQ solicitation as defined below in Section 4;
 - 4) The Contractor's response submitted to the applicable RFQ solicitation.

4. **Notice to Proceed:**

- A. Purchase Orders (PO) shall not be required to initiate the performance of services specified in an RFQ. DGS shall issue a Notice to Proceed to the contractor selected through the RFQ process. This Notice to Proceed shall constitute the selected contractor's authority to proceed with the services specified in the RFQ.
- B. Each Notice to Proceed issued will be deemed to incorporate the terms and conditions set forth in this ITQ Contract and the applicable RFQ. The Contractor will be required to adhere to the requirements and/or specifications of the RFQ.
- C. Any references to "purchase order" or "purchase orders" in these Terms and Conditions shall be replaced with a reference to the defined term "RFQ Award."

5. **Effective Date:** The term of the ITQ Contract shall commence on the Effective Date (as defined below). The Effective Date shall be either the Effective Date printed on the Contract after the Contract has been fully executed by the Commonwealth (signed and approved as required by the Commonwealth contracting procedures) or the "Valid from" date printed on the Contract, whichever is later.

6. **Period of Performance:** The period of performance (awarded term length) shall be specified in the RFQ and the Notice to Proceed. **This period of performance, including any renewal terms specified in the RFQ, may extend beyond the expiration date of the ITQ Contract as long as the Notice to Proceed was issued before the expiration date of the ITQ Contract.** The terms and conditions of this ITQ contract shall remain binding and effective during the period of performance as specified in the RFQ and Notice to Proceed.

7. **Option for Separate Competitive Procurements:** The Commonwealth reserves the right to purchase Services covered within the scope of this Contract through other procurement methods whenever the Commonwealth deems it to be in its best interest.

This section does not excuse the Commonwealth from any minimum quantity purchase commitments made through the award of an RFQ. Any language related to minimum/maximum quantities included in an RFQ shall apply to the services provided by the Contractor through the RFQ award as applicable.

8. **Independent Prime Contractor:** In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth. The Contractor will be responsible for all services in this Contract whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.
9. **Addition of ITQ Categories:** The Commonwealth reserves the right to add service categories at any time during the term of the ITQ Contract in response to changes to products or services available in the energy marketplace. Upon the addition of a new service category, the Contractor may elect to qualify under the ITQ for the additional service category.
10. **Notice:** Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:
 - A. If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.
 - B. If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.
11. **Signatures:** The Contract shall not be a legally binding contract until the fully-executed Contract has been sent to the Contractor. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

The Contract may be electronically signed by the Commonwealth. The electronically-printed name of the Purchasing Agent represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have "Fully Executed" at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

The fully-executed Contract may be sent to the Contractor electronically or through facsimile equipment. The electronic transmission of the Contract shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Contract shall constitute receipt of the fully-executed Contract.

The Commonwealth and the Contractor specifically agree as follows:

- A. No handwritten signature shall be required in order for the Contract to be legally enforceable.

- B. The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- C. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary
12. **Compliance with Law:** The Contractor shall comply with all federal, state, and local laws applicable to its Services, including, but not limited to, all statutes, regulations and rules that are in effect as of the date of the issuance of the Notice to Proceed. The Contractor shall maintain, at the Contractor's expense, all licenses and/or permits necessary for the fulfillment of its obligations of an RFQ Award.
13. **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. 23-23740001-K. 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.
14. **Payment:** 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 Contract; (b) thirty (30) days after an invoice actually is received at the billing address specified in an RFQ if a date on which payment is due is not specified in the Contract; or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on the invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth

reserves the right to reject the service if it is later determined the services provided have failed to meet specifications.

If specified in an RFQ, an RFQ Award may involve a payment arrangement through which the Contractor will invoice the Commonwealth by the inclusion of the Contractor's charges on the monthly invoice issued to the Commonwealth by the applicable local electric distribution company (EDC) or local natural gas distribution company (LDC), often referred to as "utility consolidated billing." For RFQ awards in which "utility consolidated billing" is specified, the payment terms established by the applicable EDC and LDC, as reviewed and approved by the PA Public Utility Commission (PUC), are the terms that will effectively apply to the Commonwealth's payment to the Contractor. Any terms governing "utility consolidated billing" instituted by EDC or LDC that are applicable to the Contractor or any terms in an agreement between the EDC or LDC and the Contractor regarding "utility consolidated billing" are solely between the Contractor and the EDC or LDC. The Commonwealth is not a party to any payments owed by the EDC or LDC to the Contractor under "utility consolidated billing" and the Commonwealth shall not be required to intervene in any payment dispute between the Contractor and the EDC or LDC.

15. **Small Diverse Business Compliance:** If specified in an RFQ, the Contractor must comply with any Small Diverse Business Program requirements included the RFQ. The Contractor must meet and maintain any Small Diverse Business commitment it makes in its quote throughout the term of the Contract unless a change is approved by the Contracting Officer upon recommendation by Bureau of Diversity, Inclusion, and Small Business Opportunities (BDISBO). If the Contract is assigned to another contractor, the new contractor must maintain the SDB participation of the original contract.
16. **Veteran-Owned Business Enterprise Compliance:** If specified in an RFQ, the Contractor must comply with any Veteran-Owned Business (VBE) or Service-Disabled Veteran-Owned Business (SDVBE) requirements included the RFQ. The Contractor must meet and maintain any VBE/SDVBE commitment it makes in its quote throughout the term of the contract unless a change is approved by the Contracting Officer upon recommendation by BDISBO. If the Contract is assigned to another contractor, the new contractor must maintain the VBE/SDVBE participation of the original contract.
17. **Disputes:**
 - A. In the event of a controversy or claim arising from this ITQ Contract and any subsequent RFQ, Notice to Proceed, or Purchase Order, the Contractor must, within six months after the cause of action accrues, file a written claim with the Issuing Office for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.

- B. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the Commonwealth.
- C. Within fifteen (15) days of the mailing date of the determination denying a claim, or within 135 days of filing a claim if no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with performance under the Contract in a manner consistent with the determination of the Contracting Officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

18. **Default:**

- A. **Contractor Default:** After thirty (30) days prior written notice, with a reasonable opportunity to cure, the Commonwealth may, subject to the provisions of Section 20, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Section 19, Termination) the whole or any part of this Contract or any award made to the Contractor through the RFQ process for any of the following reasons:
 - 1) Failure to provide awarded services or materials to the Commonwealth in accordance with the requirements of the Contract, RFQ, or Notice to Proceed;
 - 2) Failure to maintain any licenses or permits required to provide services or materials to the Commonwealth in accordance with the requirements of the Contract, RFQ, or Notice to Proceed;
 - 3) Insolvency or bankruptcy;
 - 4) Assignment made for the benefit of creditors; or
 - 5) Breach of any material provision of the Contract.
- B. **Commonwealth Default (This Section 18.B. is applicable to RFQs issued and awarded under the Carbon-Free Electricity Sourced Supply Services and Renewable Natural Gas Sourced Supply Services Service Categories only):**

After thirty (30) days prior written notice, with a reasonable opportunity to cure, the Contractor may, subject to the provisions of Section 20, Force Majeure, declare the Commonwealth in default by written notice thereof to the Issuing Office, and may elect to terminate (as provided in Section 19, Termination) an award made to the Contractor through the RFQ process for any of the following reasons.

- 1) Failure to make payment to the Contractor for services provided by the Contractor under the applicable RFQ award in accordance with the requirements of the Contract, RFQ, or Notice to Proceed for a period of three consecutive monthly utility billing periods if and only if,
 - a) Payment is not made for three consecutive monthly utility billing periods for all Commonwealth utility accounts included in the RFQ award; AND
 - b) The failure of the Commonwealth to make payment is not caused by the temporary non-appropriation of funds as described in Section 19.B. below.
- 2) Breach of any material provision of the contract.

In the event the Contractor declares the Commonwealth in default and elects to terminate an RFQ Award, the RFQ Award shall be deemed to have been terminated for convenience under Section 19(A), Termination for Convenience below.

Where an RFQ Award specifies that the Contractor will invoice Commonwealth agencies for services through “utility consolidated billing” as described in Section 14, the Contractor shall not have the right to declare the Commonwealth in default under this Section if the EDC or LDC fails to pay the Contractor for any reason other than the failure of the Commonwealth to make payment to the LDC or EDC.

19. **Termination:**

A. **For Convenience (Early Termination):**

- 1) The Commonwealth shall have the right to terminate the Contract or any or all awards issued under it through the RFQ process upon written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part, and the date on which such termination becomes effective. Any RFQ award not specified in the Notice of Termination shall continue in effect for the term stated in the Notice to Proceed.
- 2) The Contractor shall be paid for any item(s) or service(s) provided and work satisfactorily completed prior to the effective date of the termination. In addition, the Contractor may recover damages when the Contractor can demonstrate irrevocable purchase commitments made by the Contractor prior to the receipt of such termination notice, in preparation for deliveries under an RFQ award or Notice to Proceed issued against this Contract. The Contractor shall take all prudent and reasonable steps to assign, sell, or

dispose of commitments at the best market price obtainable. The Commonwealth will reimburse the Contractor for costs incurred in assigning, selling, or disposing of commitments. In addition, the Commonwealth shall pay the Contractor damages equal to the difference between the price at which the commitments are sold and the price the Commonwealth would have paid under the Contract. In the event the market rate(s) for the affected service(s) is greater than the Commonwealth's contracted rate(s), and no damages shall have accrued, and the Commonwealth shall not be responsible for reimbursement under this Section. The burden of proof for such costs and damages rests solely and wholly with the Contractor. Except where specified in an RFQ as provided in Section 19(A)(3)(b) below, in no event shall the Contractor be entitled to recover loss of profits or those costs that may be charged between or among Contractor's subsidiary or other associated corporations or entities of any type.

3) **For RFQs issued and awarded under the Carbon-Free Electricity Project Supply Services and Renewable Natural Gas Project Supply Services Service Categories only:**

- a) The Commonwealth will provide a written Notice of Termination no later than (90) days prior to the date upon which the termination for convenience is to be effective.
 - b) The mechanism to be used to determine damages may be further defined in an RFQ to reflect the workings of the marketplace for the specific service(s) to be provided through the RFQ. In no event shall an RFQ specify a methodology for calculating damages in a manner that would cause those damages to be less than they otherwise would be if calculated as described in Section 19(A)(2) above.
- 4) The Contractor shall cease Services as of the date set forth in the Notice of Termination and shall be paid for services provided up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination.

The terms contained in this Subsection A are intended to address an instance in which an RFQ Award is terminated for convenience in its entirety. This Subsection does not address an instance in which the quantity purchased by the Commonwealth through an RFQ Award is less than any minimum purchase quantity commitment specified in an RFQ where that RFQ Award is still in effect. The Contractor shall address/resolve/invoice for any shortfalls in Commonwealth purchases vs. minimum purchase quantity commitments for RFQs still effect in accordance with the terms specified in the applicable RFQ.

- B. **For Non-Appropriation:** Any payment obligation or portion thereof of the Commonwealth created by this Contract or any RFQ award issued pursuant to this Contract is conditioned upon the 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

shall have the right to terminate the RFQ award. In the event of a termination for non-appropriation, the Contractor shall be reimbursed in the same manner as described in Subsection A, Termination for Convenience.

- C. **For Default:** The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract or any RFQ award issued pursuant to this Contract in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations and does not cure such failure within thirty (30) days notice as described in Section 18, Default or, if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. Termination of an RFQ award for default shall not affect work on other RFQ awards under which the Contractor is not in default. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.
- 1) In the event the Commonwealth terminates this Contract in whole or in part as provided in this Subsection C, the Commonwealth may procure services similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for the difference, if any, between the purchase price paid by the Commonwealth, utilizing commercially reasonable efforts for replacement, and the prices established through the Contract, RFQ, and Notice to Proceed multiplied by the anticipated quantity specified for the terminated portion of the Award.
 - 2) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor as defined in Section 20, Force Majeure.
 - 3) Nothing in this Subsection C shall abridge the Commonwealth's right to suspend, debar, or take other administrative action against the Contractor.
 - 4) If it is later determined that the Commonwealth erred in terminating the Contract for default, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under Subsection A, Termination for Convenience.
- D. The rights and remedies of the Commonwealth provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- E. The Commonwealth's failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

- F. Following exhaustion of the Contractor's administrative remedies as set forth in Section 17, Disputes, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

20. **Force Majeure:** Neither party will incur any liability to the other if its performance of any obligation under this Contract 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 aren't 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.

The Contractor shall notify the Commonwealth in writing within ten (10) days of the date on which the Contractor 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 contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to terminate the Contract or RFQ award for convenience in accordance with Section 19(A) or the Commonwealth and the Contractor shall agree upon an adjustment to performance as reasonably necessary.

21. **Confidentiality:** The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the Contractor's response to an RFQ). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration of this Contract). Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and

at the discretion of the non-breaching party, result in termination for default pursuant to Section 18(C), in addition to other remedies available to the non-breaching party.

Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:

- A. Already known to the recipient at the time of disclosure other than through the contractual relationship;
- B. Independently generated by the recipient and not derived by the information supplied by the disclosing party;
- C. Known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- D. Disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- E. Required to be disclosed by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:

- A. Prepare an un-redacted version of the appropriate document.
- B. Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret.
- C. Prepare a signed written statement that states:
 - 1) The attached document contains confidential or proprietary information or trade secrets;
 - 2) The Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
 - 3) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
- D. Submit the two documents along with the signed written statement to the Commonwealth.

20. **Releases to Media:** The Contractor shall not issue any news releases pertaining to the Contract or an RFQ Award without the prior consent of the Commonwealth.
21. **Assignability:**
- A. Subject to the terms and conditions of this Section, the Contract is binding upon the parties and their respective successors and assigns.
 - B. The Contractor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Commonwealth, which consent may be withheld at the sole and absolute discretion of the Commonwealth. Notwithstanding, the Commonwealth shall not unreasonably withhold its consent to the assignment of this contract.
 - C. Notwithstanding the foregoing, the Contractor may, without the consent of the Commonwealth, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Contract.
 - D. For the purposes of the Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
 - E. Any assignment consented to by the Commonwealth shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
 - F. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, is not considered to be an assignment. The Contractor shall give the Contracting Officer written notice of any such change of name.
22. **Audit Provisions:** The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

23. **Single Audit Act of 1984:** In compliance with the Single Audit Act of 1984, the Contractor agrees to the following:
- A. This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in Government Auditing Standards, 1994 Revisions (Yellow Book).
 - B. The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the Single Audit Act of 1984, 31 U.S.C. § 7501, et seq., and all rules and regulations promulgated pursuant to the Act.
 - C. The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.
 - D. The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the Single Audit Act of 1984.
24. **Assignment of Anti-Trust Claims:** The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor'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 Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Contract.
25. **Limitation of Liability:** The Contractor's liability to the Commonwealth under this Contract shall be limited to the incremental cost, if any, for services obtained by the Commonwealth to replace any terminated services that were to be provided by the Contractor as described in Section 18(C)(1). This limitation will apply, except as otherwise stated in this Section 25, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to damages for:
- A. Bodily injury;
 - B. Death;
 - C. Intentional injury; or
 - D. Damage to real property or tangible personal property for which the Contractor is legally liable.

26. **Enhanced Minimum Wage:**

- 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
 - 1) Exempt from minimum wage under the Minimum Wage Act of 1968;
 - 2) covered by a collective bargaining agreement;
 - 3) 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
 - 4) 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.

27. **Indemnification:**

- A. **Contractor Obligations.** The Contractor 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 any activities performed by the Contractor or its employees and agents that are related to this contract, as determined by the Commonwealth in its sole discretion.
- B. **Commonwealth Attorneys Act.** The Commonwealth shall provide the Contractor with prompt notice of any claim or suit of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under any terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- C. **Settlement.** Notwithstanding the above, neither party may enter into a settlement of any claim or suit without the other party's written consent, which will not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

28. **Nondiscrimination/Sexual Harassment:**

- A. **Representations.** The Contractor 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 contract. The Contractor 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 Contractor shall not:
 - 1) in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any 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.

- 2) 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 this contract.
- 3) 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 contract.
- 4) 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 subcontractor or supplier who is qualified to perform the work to which this contract relates.
- 5) 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.

- C. **Establishment of Contractor Policy.** The Contractor 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 the contract, the Contractor 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 contracted services 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 Contractor's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the contract. Accordingly, the Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- E. **Cancellation or Termination of Contract.** The Commonwealth may cancel or terminate this contract and all money due or to become due under this contract may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the agency may

proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

- F. **Subcontracts.** The Contractor shall include these Nondiscrimination/Sexual Harassment provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of these provisions in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by those provisions. If the Contractor becomes aware of a subcontractor's violation of this clause, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

29. **Contractor Integrity:**

- A. **Definitions.** For purposes of these Contractor Integrity Provisions, the following definitions apply:

- 1) "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.
- 2) "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
- 3) "Contractor Related Parties" means any Affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
- 4) "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.
- 5) "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.
- 6) "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. Representations and Warranties.

- 1) **Contractor Representation and Warranties.** The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:
 - 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 are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil antitrust investigation by any federal, state, or local prosecuting or investigative agency.
- 2) **Contractor Explanation.** If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, the Contractor 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 contract.
- 3) **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
- 4) **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made in these 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 contract.

C. **Contractor Responsibilities.** During the term of this contract, the Contractor shall:

- 1) maintain the highest standards of honesty and integrity.
- 2) take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that governs Commonwealth contracting and procurement.
- 3) establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
- 4) 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 provision of goods or services under this contract.
- 5) 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. The Contractor must 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 the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.
- 6) comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
- 7) comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.
- 8) immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the 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 the ethical standards.

- D. **Investigations.** If a State Inspector General investigation is initiated, the Contractor shall:
- 1) 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. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
 - 2) 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 and make identified Contractor employees available for interviews at reasonable times and places.
 - 3) 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 Contractor's integrity and compliance with these provisions. This information may include, but is not limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.
- E. **Termination.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Contractor Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend the Contractor 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 contract.
- F. **Subcontracts.** The Contractor shall include these Contractor Integrity Provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of this provision in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Contractor becomes aware of a subcontractor's violation of these provisions, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

30. **Contractor Responsibility:**

- 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.**
- 1) The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this 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 make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.
 - 2) The Contractor represents that as of the date of its execution of this 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. **Notification.** The Contractor shall notify the Commonwealth if, at any time during the term of this contract, 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 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 contract 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 contract 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.

31. **Americans With Disabilities Act:**

- 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 contract.
- B. **Compliance.** For all goods and services provided pursuant to this contract, the Contractor 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 Contractor 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 Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

32. **Applicable Law and Forum:** 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.

33. **Right to Know Law:**

- A. **Applicability.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this contract.
- B. **Contractor Assistance.** If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this contract, the Commonwealth shall notify the Contractor that it requires the Contractor's assistance, and the Contractor shall provide to the Commonwealth:

- 1) access to, and copies of, any document or information in the Contractor'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
 - 2) 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 Contractor 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 Contractor 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 Contractor, 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 Contractor shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth's determination.
- D. **Reimbursement.**
- 1) Commonwealth Reimbursement. If the Contractor fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Contractor shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
 - 2) Contractor Reimbursement. The Commonwealth will reimburse the Contractor for any costs that the Contractor 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 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 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 Contractor's legal challenge, regardless of the outcome.

- F. **Waiver.** As between the parties, the Contractor 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 Contractor's obligations contained in this Section survive the termination or expiration of this contract.
34. **Offset:** The Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor, or its subsidiaries, owed to the Commonwealth against any payments due the Contractor under any contract between the Commonwealth and Contractor.
35. **Automated Clearing House (ACH) Payments:**
- A. **Payment Method.** The Commonwealth shall make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the contract or purchase order, the Contractor must submit or must have submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).
 - B. **Unique Identifier.** The Contractor must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Contractor's unique invoice number on its ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
 - C. **ACH Information in SRM.** The Contractor shall ensure that the ACH information contained in SRM is accurate and complete. The Contractor's failure to maintain accurate and complete information may result in delays in payments.
36. **Worker Protection and Investment:** The Contractor 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.