PENNVEST CLEAN WATER PROCUREMENT PROGRAM
STANDARD TERMS AND CONDITIONS

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.

a. Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this agreement, that entity shall also be identified as "Agency".

b. Contracting Officer: The person authorized to administer this agreement for the Commonwealth and to make written determinations with respect to the agreement.

c. Days: Unless specifically indicated otherwise, days mean calendar days.

d. Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.

e. Documentation: All materials required to support and convey information about the services required by this agreement. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and other machine-readable storage media.

f. Services: All Contractor activity necessary to satisfy this agreement.

2. TERM

The term of this agreement shall commence on the Effective Date (as defined below) and shall end on the termination date designated in this agreement. The Effective Date shall be fixed by the Contracting Officer after this agreement has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. This agreement shall not be legally binding until after the Effective Date is affixed and the fully executed agreement has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date that is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Commonwealth shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this agreement.

3. DELIVERABLES

The Contractor shall submit all deliverables to the attention of PENNVEST Contracting Officer, Tesra Schlupp, at RA-PVCWPP@pa.gov or other email address as provided.

4. INDEPENDENT PRIME CONTRACTOR

In performing its obligations under this agreement, 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 agreement 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 this agreement.

5. DELIVERY

The Contractor agrees to bear the risk of loss, injury or destruction of the means of production of nutrient or sediment reductions prior to the delivery of verified nutrient reductions to the Commonwealth. Such loss, injury or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all items must be delivered within the time period specified in Exhibit B. Time is of the essence and, in addition to any other remedies, this agreement is subject to termination for failure to deliver as specified.

6. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Contractor 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 this agreement that 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 this agreement. The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of this agreement. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor 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 this agreement. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor 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 Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software that is obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software that 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 Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

7. OWNERSHIP RIGHTS

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any Developed Works or Developed Materials.

8. ACCEPTANCE

No deliverable(s) received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the deliverable(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or any later time if the defects contained in the item(s) or the noncompliance with specifications were not reasonably ascertainable upon the initial inspection.

9. PRODUCT CONFORMANCE

The Commonwealth reserves the right to require any and all Contractors to:

a. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
b. Supply published manufacturer product information.
c. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
d. Complete a survey/questionnaire relating to the bid requirements and specifications.

10. COMPLIANCE WITH LAW

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this agreement.

11. ENVIRONMENTAL PROVISIONS

In the performance of the Contract, the Contractor shall minimize pollution and 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. § 691.301 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.O. 1375, No. 325), as amended, 32 P.S. § 693.1.

12. COMPENSATION

The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in this agreement. All item(s) shall be delivered within the period(s) specified in this agreement. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.

13. INVOICE CONTENTS

The Contractor shall include in all of its invoices the following minimum information:

a. Vendor name and "Remit to" address, including SAP Vendor number;

b. Bank routing information, if Automated Clearing House (ACH);

c. SAP purchase order number;

d. Delivery Address, including name of Commonwealth agency;

e. Description of the supplies/services delivered in accordance with SAP purchase order (include purchase order line number if possible);

f. Quantity provided;

g. Unit price;

h. Price extension;

i. Total price; and

j. Delivery date of supplies or services.

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

The Contractor shall submit all invoices to the attention of PENNVEST Contracting Officer, Tesra Schlupp, at RA-PVCWPP@pa.gov or other email address as provided.

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 payment is due under the terms of this agreement; (b) forty-five (45) days after a proper invoice is received at the "Bill To" address if a date on which payment is due is not specified in this agreement (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in this agreement. 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 conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

15. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS

a. **Payment Method.** The Commonwealth shall make contract payments through 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.

16. 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.

17. 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.

18. ASSIGNMENT OF ANTITRUST 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 this agreement, 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 that are the subject of this agreement.

19. 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 agreement, 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.

20. 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 this agreement. The Contractor agrees to maintain records that will support the prices charged and costs incurred for this agreement. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for this agreement 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 their authorized representatives.

21. DEFAULT

a. PENNVEST may declare the Contractor in default of this agreement by delivering to the Contractor written notice of default and may terminate this agreement or any part of this agreement for any of the following reasons:

1. Failure to commence work within the time specified;
2. Failure to perform the work or dedicate sufficient resources to adequately perform the work in accordance with the agreement;
3. Unsatisfactory performance of the tasks or deliverables outlined in this agreement;
4. Failure to deliver the awarded item(s) within the time specified in this agreement or as otherwise specified;
5. Improper delivery;
6. Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract;
7. Delivery of a defective item;
8. Discontinuance of any work or task without express PENNVEST approval;
9. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
10. Insolvency or bankruptcy;
11. Assignment of any benefit under this agreement without the express consent of PENNVEST;
12. Breach of any provision of this agreement;
13. Failure to comply with representations made in the Proposal or any supporting documentation; or
14. Failure to comply with applicable industry standards, customs, or practice.

b. If PENNVEST terminates this agreement in whole or in part pursuant to subparagraph a. above, PENNVEST may procure item(s) similar to those so terminated, and the Contractor

will be liable to PENNVEST for any reasonable excess costs incurred because of the need to procure these substitute item(s).

c. If PENNVEST terminates this agreement in whole or in part pursuant to Subparagraph a. above, PENNVEST may, in its sole discretion, require the Contractor to deliver to PENNVEST any partially completed item(s), including, where applicable, reports, working papers and other documentation, along with any right, title, or ownership of such items. PENNVEST shall, if it takes possession of any such partially completed items, pay for such items at the amounts agreed upon under this agreement less any costs incurred to complete the work.

d. PENNVEST's rights and remedies under this provision are not exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

e. PENNVEST's failure to exercise any rights or remedies under this provision may not be construed as a waiver of any rights and remedies regarding any event of default.

22. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this agreement 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 orally within five (5) days and in writing within ten (10) days of the date 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 this agreement 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 cancel this agreement, cancel the purchase order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of this agreement or purchase order.

23. TERMINATION

PENNVEST may terminate this agreement for any of the following reasons. Termination is effective upon PENNVEST delivering written notice to the Contractor:

a. **Termination for Convenience.** PENNVEST may terminate this agreement for its convenience if PENNVEST determines, in its sole discretion, that termination of this agreement is in PENNVEST's interest. PENNVEST shall pay the Contractor for all work satisfactorily completed prior to the effective date of the termination but will not pay or reimburse the Contractor for any lost profits.

b. **Non-appropriation.** PENNVEST's obligations under this agreement are subject to the availability and appropriation of funds. If state or federal funds are not appropriated or otherwise made available to PENNVEST for this agreement, PENNVEST

may terminate this agreement. PENNVEST shall reimburse the Contractor for reasonable expenses incurred in reliance on this agreement but will not reimburse for any loss of profit, loss of use of funds, administrative costs, or overhead costs.

c. **Termination for Cause.** PENNVEST shall have the right to terminate this agreement for any Contractor default under the Default provision of this agreement upon written notice of default to the Contractor. PENNVEST shall further have the right to terminate this agreement for any other cause as specified in this agreement or at law. If PENNVEST's termination under this is deemed in error by any court of competent jurisdiction, PENNVEST may, in its sole discretion, deem such termination to be for convenience under subparagraph a. of this section.

24. CONTRACT CONTROVERSIES

a. **Written Claim.** In the event of a controversy or claim arising from this agreement, the Contractor must, within six months after the cause of action accrues, file a written claim with the Contracting Officer 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. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.

b. **Mediation.** If the Contractor or the Contracting Officer requests mediation and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the 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 purchasing agency.

c. **Statement of Claim.** 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 the performance of this agreement in a manner consistent with the determination of the Contracting Officer and the Commonwealth shall compensate the Contractor pursuant to the terms of this agreement.

25. ASSIGNABILITY AND SUBCONTRACTING

a. **Binding Agreement.** Subject to the terms and conditions of this Paragraph, this agreement shall be binding upon the parties and their respective successors and assigns.

b. **Subcontract.** The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this agreement without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

c. **No Assignment.** The Contractor may not assign, in whole or in part, this agreement or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

d. **Assignment of Payment.** Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under this agreement, 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 this agreement.

e. **Meaning of Assignment.** For the purposes of this agreement, 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.

f. **Assignment Agreement in Writing.** Any assignment consented to by the Contracting Officer 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 this agreement and to assume the duties, obligations, and responsibilities being assigned.

g. **Contractor Name Change.** A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

26. OTHER CONTRACTORS

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees. This paragraph shall be included in the contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

27. 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 this agreement. 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 agreement 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 agreement.

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 agreement.

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 agreement 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 this agreement, 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 this agreement. Accordingly, the Contractor 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 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 agreement. 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.

28. CONTRACTOR INTEGRITY

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

6. "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.

7. "Contractor" means the individual or entity, that has entered into this agreement with the Commonwealth.

8. "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.

9. "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.

10. "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.

11. "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.**

i. **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:

1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
2. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
3. had any business license or professional license suspended or revoked;
4. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
5. been, and 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.

ii. **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 agreement is awarded on a non-bid basis at the time of the execution of this agreement, 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 this agreement.

iii. **Further Representations**. By submitting any bills, invoices, or requests for payment pursuant to this agreement, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of this agreement.

iv. **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of this agreement 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 this agreement 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 this agreement.

c. **Contractor Responsibilities.** During the term of this agreement, the Contractor shall:

i. maintain the highest standards of honesty and integrity.

ii. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.

iii. 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.

iv. 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 agreement.

v. not have a financial interest in any other 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 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 this agreement. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.

vi. comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.

vii. comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this agreement was awarded on a Non-bid Basis.

viii. 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:

i. 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.

ii. 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.

iii. 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 be limited to, Contractor'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 Contractor Integrity Provisions, the Commonwealth may terminate this agreement 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 agreement, 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 agreement. 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.

29. 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.**

12. 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 agreement, 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 this agreement, a written explanation of why such certification cannot be made.

13. 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 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 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 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 this 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.

30. 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 agreement or from activities provided for under this agreement.

b. **Compliance.** For all goods and services provided pursuant to this agreement, 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.

31. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this agreement 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 Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

32. APPLICABLE LAW AND FORUM

This agreement 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. INTEGRATION

This Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this agreement, 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 this agreement. No modifications, alterations, changes, or waiver to this agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

34. ORDER OF PRECEDENCE

In the event there is a conflict among the documents comprising this agreement, the Commonwealth and the Contractor agree on the following order of precedence: this agreement; the solicitation; and the Contractor's response to the solicitation.

35. CONTROLLING TERMS AND CONDITIONS

The terms and conditions of this agreement shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the Commonwealth.

36. CHANGES

The Commonwealth reserves the right to make changes at any time during the term of this

agreement or any renewals or extensions thereof 1) to increase or decrease the quantities resulting from variations between any estimated quantities in this agreement and actual quantities; 2) to make changes to the services within the scope of this agreement; 3) to notify the Contractor that the Commonwealth is exercising any agreement renewal or extension option; or 4) to modify the time of performance that does not alter the scope of this agreement to extend the completion date beyond the expiration date of this agreement or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate this agreement, nor, if performance security is being furnished in conjunction with this agreement, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through the Contract Controversies Provision.

37. CONFIDENTIALITY

a. The Contractor agrees to guard the confidentiality of the Commonwealth's confidential information with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this agreement. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this agreement 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. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this agreement, and at the discretion of the non-breaching party, result in termination for default.

b. The obligations stated in this Section do not apply to information:

1) already known to the recipient at the time of disclosure other than through the contractual relationship;

2) independently generated by the recipient and not derived from the information supplied by the disclosing party;

3) 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;

4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or

5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

c. 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 agreement.

38. NOTICE

Any written notice to any party under this agreement shall be deemed sufficient if delivered by 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 this agreement with an email copy to the Contracting Officer.

39. RIGHT-TO-KNOW LAW

a. **Applicability**. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this agreement.

b. **Contractor Assistance.** If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this agreement, the Commonwealth shall notify the Contractor that it requires the Contractor's assistance, and the Contractor shall provide to the Commonwealth:

   i. access to, and copies of, any document or information in the Contractor's possession (Requested Information) arising out of this agreement that the Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and

   ii. any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this agreement.

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.**

   i. **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.

ii. **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 agreement.

40. 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 agreement, and for an employee's hours performing ancillary services necessary for the performance of the services 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

i. Exempt from minimum wage under the Minimum Wage Act of 1968;

ii. covered by a collective bargaining agreement;

iii. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or

iv. required to be paid a higher wage under any state or local policy or ordinance.

d. **Notice.** The Contractor shall: (1) post this Enhanced Minimum Wage Provision for the entire period of this agreement 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 this agreement, 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 this agreement, 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 contact or lease to ensure that these provisions are binding on its subcontractors.

41. 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.

42. EXCEPTIONS INCORPORATED

Any exceptions or additions to the Standard Terms and Conditions identified in the Proposal that have not been incorporated into this agreement are deemed rejected. Only those exceptions and additions that are incorporated into this agreement are accepted.

43. DISASTER RECOVERY

The Contractor shall employ reasonable disaster recovery procedures to assist in preventing interruption of contracted services, and any relevant records and data electronically stored by the Contractor shall have a secured backup solution to prevent loss of data.

44. SEVERABILITY

If any phrase, clause, sentence or provision of this agreement is declared to be invalid, void or unenforceable by any tribunal having jurisdiction, such invalidity, voidness, or unenforceability shall not affect the validity or enforceability of the remaining portions of this agreement unless the result would be manifestly inequitable or unconscionable.

45. NO WAIVER

The failure of either Party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this agreement in the event of a continuing or subsequent default on the part of the Contractor or the Commonwealth.