

EXHIBIT A

ITQ TERMS AND CONDITIONS

RETAIL SOLAR ELECTRICITY SUPPLY SERVICES

ITQ 4400022400

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 waiver 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 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 contained in this Exhibit A 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 contained in this Exhibit A 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. **Term of Contract:** The term of the ITQ Contract shall commence on the Effective Date (as defined below), to be no earlier than April 1, 2020 and shall expire March 31, 2025.

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.

The period of performance (awarded term length) specified in an RFQ may extend beyond 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 specified in an RFQ and subsequent Notice to Proceed.

6. **Special Requirements:** The Commonwealth reserves the right to purchase Services within the scope of this Contract through other procurement methods whenever the Commonwealth deems it to be in its best interest.

7. **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.

8. **Changes to the ITQ Contract:** The Commonwealth reserves the right to make changes at any time during the term of the ITQ Contract to add service categories in response to changes in available electric generation technologies. Upon the addition of a new service category, the Contractor may elect to qualify under the ITQ for the additional service category.

9. **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.

10. **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

11. **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.
12. **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.
13. **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.
14. **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.

15. **Disputes:**

- A. In the event of a controversy or claim arising from this ITQ Contract and any subsequent RFQ, Notice of Award, 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.

16. **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 18, 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 17, 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 solar electricity supply 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 solar electricity supply 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: After thirty (30) days prior written notice, with a reasonable opportunity to cure, the Contractor may, subject to the provisions of Section 18, Force Majeure, declare the Commonwealth in default by written notice thereof to the Issuing Office, and may elect to terminate (as provided in Section 17, 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 solar electricity 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; or
- 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 17(A), Termination for Convenience below.

This contract may involve a payment arrangement through which the Contractor will invoice Commonwealth agencies for solar electricity by inclusion of its charges due under this contract on the monthly utility invoice(s) issued by the applicable local electric distribution company. The Contractor shall not have the right to declare the Commonwealth in default under this Section if the Commonwealth has paid the applicable local electric distribution company invoices in full for the billing periods in question.

17. **Termination:**

A. **For Convenience:**

- 1) The Commonwealth may terminate this Contract and/or any or all awards issued under it through the RFQ process without cause by giving Contractor ninety (90) days prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth. The Notice of Termination shall specify which, if any, RFQ awards will terminate with termination of the Contract. Any such termination shall be effected 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 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.
- 3) Upon termination, the Contractor may recover damages equal to the difference in price between the Commonwealth's contracted rate and the applicable market rate for the affected service(s) at the time of termination multiplied by the anticipated quantity of electricity specified for the terminated portion of the award. The mechanism to be used to determine any such damages may be further defined in an RFQ to reflect the workings of the marketplace for the specific service(s) included in the RFQ. In the event the market rate(s) for the affected service(s) is greater than the Commonwealth's contracted rate(s), no damages shall have accrued and the Commonwealth shall not be responsible for reimbursement under this Section.

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 16, 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 of solar electricity 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 18, 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 15, Disputes, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

18. **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 orally within five (5) days and 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 and the Contractor shall agree upon an adjustment to performance as reasonably necessary.

19. **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 17(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.
 - 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. **Offset Provision:** The Contractor agrees that the Commonwealth of Pennsylvania (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.
26. **Sovereign Immunity and Commonwealth Held Harmless Provisions:**
- A. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim 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 such 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.
 - B. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.
27. **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 17(C)(1). This limitation will apply, except as otherwise stated in this Section 27, 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.
28. **Choice of Law:** This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law
29. **Americans With Disabilities Act:**
- A. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- B. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor’s failure to comply with the provisions of subparagraph a above.
30. **Nondiscrimination/Sexual Harassment Clause:** The Contractor agrees:
- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates;
- B. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal

laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract;

- C. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract;
- D. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives;
- E. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site;
- F. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates;
- G. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause;

- H. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor;
 - I. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions; and
 - J. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.
31. **Contractor Integrity Provisions:** It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.
- A. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
 - 1) **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - 2) **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract
 - 3) **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.
 - 4) **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

- 5) **“Financial Interest”** means either:
 - a) Ownership of more than a five percent interest in any business; or
 - b) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- 6) **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- 7) **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

- 1) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- 2) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- 3) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- 4) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in

writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

- 5) Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - b) been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 - c) had any business license or professional license suspended or revoked;
 - d) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - e) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- C. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- D. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such

ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

- E. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices, or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
 - F. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. UPS will not utilize the services of a subcontractor on the Contract. If UPS does intend to use the services of a subcontractor, UPS will need to receive the Commonwealth's approval in writing before subcontracting.
 - G. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
32. **Contractor Responsibility Provisions:** For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan

recipient, grantee, or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- A. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- B. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- C. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- D. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- E. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- F. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

33. **Right to Know Law:**

- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- B. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- C. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
- 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- D. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

- E. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- F. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- G. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- H. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- I. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

34. **Enhanced Minimum Wage Provisions:**

- A. **Enhanced Minimum Wage.** Effective July 1, 2018, Contractor/Lessor agrees to pay no less than \$12.00 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 contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week;
- B. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches

\$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1;

- C. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - 1) Exempt from the 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.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed;

- E. **Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions;

- F. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral; and

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