

EXHIBIT \_\_\_\_\_

ADDITIONAL COVENANTS APPLICABLE TO DGS DELEGATED PROJECTS

The provisions of this Exhibit are incorporated by reference into the Agreement dated \_\_\_\_\_ (the Contract) between The Pennsylvania State University (Owner) and \_\_\_\_\_ (Professional). If any provisions contained in this Exhibit conflict with any provisions in the Contract, the terms and conditions set forth in this Exhibit shall prevail.

I. NONDISCRIMINATION / SEXUAL HARASSMENT CLAUSE

The Professional agrees:

1. In the hiring of any employee(s) for the performance of work, or any other activity required under the contract or any subcontract, the Professional, each subcontractor, or any person acting on behalf of the Professional or subcontractor shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of the Commonwealth of Pennsylvania (Commonwealth) who is qualified and available to perform the work to which the employment relates.
2. Neither the Professional nor any subcontractor nor any person on their behalf shall in any manner discriminate 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.
3. The Professional and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees 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 contract services are performed shall satisfy this requirement.
4. The Professional and each subcontractor shall not discriminate 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.
5. The Professional and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Professional 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 that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Professional and each subcontractor shall, upon request and within the time periods requested by Owner on behalf of 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 Small Business Opportunities (BSBO), for

purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

6. The Professional 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.

7. The Professional'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 Professional and each subcontractor shall have an obligation to inform the Owner if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of the provisions.

8. The Owner may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for the violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the Commonwealth may proceed with debarment or suspension and may place the Professional in the Professional Responsibility File.

## II. PUBLIC WORKS EMPLOYMENT VERIFICATION ACT

The Professional is hereby notified that this contract is for a public work and the Professional is therefore subject to the provisions, duties, obligations, remedies and penalties of the Public Works Employment Verification Act, 43 P.S. §§167.1-167.11, which is incorporated herein by reference as if fully set forth herein. Professionals subject to said Public Works Employment Verification Act are required to utilize the Federal E-Verify program to verify the employment eligibility of each new employee hired after January 1, 2013 and to submit to the Owner a Commonwealth Public Works Employment Verification Form available on the Department of General Service's web site at [www.dgs.pa.gov](http://www.dgs.pa.gov).

## III. AMERICANS WITH DISABILITIES ACT

During the term of the contract, Professional agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. § 35.101 et seq., the Professional understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the professional 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 through contracts with outside contractors.

2. The Professional shall be responsible for and agrees to indemnify and hold harmless the Owner and the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Owner or the Commonwealth as a result of the Professional's failure to comply with the provisions of paragraph 1 above.

#### IV. 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 Professional consents to the jurisdiction of the Court of Common Pleas of Centre County, Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Professional 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.

#### V. CONTRACTOR INTEGRITY PROVISIONS

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

i. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

ii. "Consent" means written permission signed by a duly authorized officer or employee of the Owner, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Owner shall be deemed to have consented by virtue of the execution of this contract.

iii. "Financial Interest" means either:

1. Ownership of more than a five percent interest in any business; or
2. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

iv. "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.

v. "Non-bid Basis" means a contract awarded or executed by the Owner with Professional without seeking bids or proposals from any other potential bidder or offeror.

vi. "Professional" means the individual or entity, that has entered into this contract with the Owner.

vii. "Professional Related Parties" means any affiliates of the Professional and the Professional's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Professional.

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

i. Professional 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 Professional or that govern contracting or procurement with the Commonwealth.

ii. Professional shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Professional activity with the Commonwealth and Commonwealth employees and which is made known to all Professional employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lit places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

iii. Professional, its affiliates, agents, employees and anyone in privity with Professional shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

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

v. Professional certifies to the best of its knowledge and belief that within the last five (5) years Professional or Professional Related Parties have not:

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 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 Professional 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 Owner will determine whether a contract may be entered into with the Professional. The Professional's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Professional shall have an obligation to immediately notify the Owner in writing if at any time during the term of the contract it becomes aware of any event which would cause the Professional's certification or explanation to change. Professional acknowledges that the Owner 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.

Professional 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, Professional must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

#### VI. RESPONSIBILITY PROVISIONS

A. The Professional certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Owner, that as of the date of its execution of this Contract, that neither the Professional, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Professional cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.

B. The Professional also certifies, in writing, that as of the date of its execution of this Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

C. The Professional's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Professional shall have an obligation to inform the Owner 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 Professional, 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 Professional to notify the Owner of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract.

E. The Professional agrees to reimburse the Owner on behalf of the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Professional's compliance with the terms of this or any other agreement between the Professional and the Owner that results in the suspension or debarment of the Professional. 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 Professional shall not be responsible for investigative costs for investigations that do not result in the Professional's suspension or debarment.

F. The Professional 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:

603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

## VII. 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 Owner on behalf of the Commonwealth needs the Professional's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Professional using the legal contact information provided in this Contract. The Professional, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Owner.

C. Upon written notification from the Owner on behalf of the Commonwealth that it requires the Professional's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Professional's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Professional shall:

- i. Provide the Owner, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Professional's possession arising out of this Contract that the Owner on behalf of the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
- ii. Provide such other assistance as the Owner on behalf of the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

D. If the Professional 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 Professional considers exempt from production under the RTKL, the Professional must notify the Owner on behalf of the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Professional explaining why the requested material is exempt from public disclosure under the RTKL.

E. The Owner on behalf of the Commonwealth will rely upon the written statement from the Professional in denying a RTKL request for the Requested Information unless the Owner on behalf of the

Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Owner on behalf of the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Professional shall provide the Requested Information within five (5) business days of receipt of written notification of the Owner on behalf of the Commonwealth's determination.

F. If the Professional fails to provide the Requested Information within the time period required by these provisions, the Professional shall indemnify and hold the Owner and the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Owner or the Commonwealth may incur as a result of the Professional's failure, including any statutory damages assessed against the Commonwealth.

G. The Owner on behalf of the Commonwealth will reimburse the Professional 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 Professional 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 Professional shall indemnify the Owner and the Commonwealth for any legal expenses incurred by the Owner or the Commonwealth as a result of such a challenge and shall hold the Owner and the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Owner or the Commonwealth may incur as a result of the Professional's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Professional agrees to waive all rights or remedies that may be available to it as a result of the Owner on behalf of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

The Professional's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Professional has Requested Information in its possession.

#### VIII. SOVEREIGN IMMUNITY

Nothing in the Contract shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth and its agencies, officers, and employees, or to subject the Commonwealth party to any liability not expressly authorized by law. The Professional shall indemnify and hold harmless the Commonwealth from and against all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting from the performance of the Work or services, provided that any such claim, damage, loss or expense is:

A. Attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and

B. Caused in whole or in part by any negligent act or omission of the Professional or any subcontractor.

Pursuant to the Commonwealth Attorneys Act 71 P.S. § 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 Professional, the Commonwealth will cooperate with all reasonable requests of Professional made in the defense of such suits.

Notwithstanding the above, the Professional shall not enter into any settlement without the Commonwealth's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Professional to control the defense and any related settlement negotiations.

In any and all claims against the Commonwealth by any employee of the Contractor or any subcontractor, the indemnification obligations under this Section shall not be limited on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit Acts.

#### **IX. TAX OFFSET PROVISION**

The Professional, by execution of the Contract:

- a. Certifies that the Professional has no outstanding tax liability to the Commonwealth of Pennsylvania;
- b. Authorizes the Department of Revenue to release information related to its tax liability to the Department of General Services; and
- c. Authorizes the Owner to set off any state and local tax liabilities of the Professional or any of its subsidiaries, as well as any other amount due to the Commonwealth from the Professional, not being contested on appeal by the Professional, against any payment due to the Professional under the Contract.

The certification of no outstanding tax liability is a material representation of fact upon which reliance is placed by the Owner in entering into the Contract. If it is later determined that the Professional knowingly rendered an erroneous certification, the Owner may find the Professional in default and terminate the Contract. Professional acknowledges that such erroneous certification may also be grounds for the initiation of civil or criminal proceedings by the Commonwealth.

#### **X. ENHANCED MINIMUM WAGE PROVISIONS**

1. Enhanced Minimum Wage: Professional 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, and for an employee's hours performing ancillary services necessary for the performance of the contracted services when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. Adjustment: Beginning July1, 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.

3. Exceptions: These Enhanced Minimum Wage Provisions shall not apply to employees:
  - i. Exempt from the 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.
4. Notice: Professional shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. Records: Professional must maintain and, upon request and within the time periods requested by the Owner on behalf of the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. Sanctions: Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. Subcontractors: Professional shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

## **XI. ENVIRONMENTAL STATEMENT**

The Commonwealth Procurement Code, Act of May 15, 1998, P.L. 358, No. 57, 62 Pa. C.S. §§ 101-4509, requires all invitations for bids and requests for proposals for construction projects issued by any government agency shall set forth any provision of Federal and State statutes, rules, and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect the Project.