

Commonwealth of Pennsylvania
 Department of Conservation and Natural Resources
 Bureau of Forestry, Minerals Division
 P.O. Box 8552
 Harrisburg, PA 17105-8552

STREAMBED TRACT NO. 1021

CONTRACT NO.
M-1101021-20

FIRST AMENDMENT TO
OIL AND GAS LEASE AND UNITIZATION AGREEMENT NONDEVELOPMENT
STATE RIVER TRACT 1021

This First Amendment to Oil and Gas Lease for Publicly Owned Streambed (“Amendment”), is made this 8th day of March, 2022, with an effective date of 29th day of June, 2022 (“Effective Date”), by and between the COMMONWEALTH OF PENNSYLVANIA (“Commonwealth”), acting through the DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES (“Department”), and CHESAPEAKE APPALACHIA, L.L.C., an Oklahoma limited liability company with its principle place of business at P.O. Box 18496, Oklahoma City, Oklahoma 73154-0496 (“Chesapeake”), EQUINOR USA ONSHORE PROPERTIES INC., with its principle place of business at 2107 City West Boulevard, Suite 100, Houston, TX 77042 (“Equinor”), EQT AMD LLC, with its principle place of business at 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222 (“EQT”), and MITSUI E&P USA LLC, with its principle place of business at 1300 Post Oak Boulevard, Suite 1800, Houston, TX 77055 (“Mitsui”), and authorized to do business within the Commonwealth of Pennsylvania (collectively “Lessee”).

WITNESSETH:

WHEREAS, on May 3, 2010, the Department, as Lessor, entered into an Oil and Gas Lease and Unitization Agreement Nondevelopment State River Tract 1021 for approximately 1,538 acres of the publicly owned streambed of the Susquehanna River located in Bradford County, Contract No. M-1101021-20 (“Lease”), with the Lessee by virtue of its authority under Section 302(a)(13) of the Conservation and Natural Resources Act, Act of June 28, 1995, P.L. 89, No. 18, 71 P.S. §§ 1340.101 et seq. (“CNRA”), 71 P.S. §1340.302(a)(13);

WHEREAS, through assignments of the Lease without the Department’s consent, Chesapeake Appalachia, L.L.C. has come to hold a 33.75% interest in the Lease;

WHEREAS, through assignments of the Lease without the Department’s consent, EQT AMD LLC has come to hold a 33.75% interest in the Lease;

WHEREAS, through assignments of the Lease without the Department’s consent, Equinor has come to hold a 16.25% interest in the Lease;

WHEREAS, through assignments of the Lease without the Department’s consent, Mitsui has come to hold a 16.25% interest in the Lease;

WHEREAS, the Department acknowledges the assignments that occurred and resulted in the Lessee and formally approve of said Lessee through a Consent to Assignment of the Lease executed simultaneously with this Amendment; and

WHEREAS, the Department, acting as trustee of the Commonwealth's public natural resources and in consideration of settlement of outstanding issues between the Commonwealth and Lessee, the Department has determined that this Amendment will conserve and maintain Pennsylvania's public natural resources for the benefit of all the people.

NOW THEREFORE, the Department and Lessee agree to amend the Original Lease in the following manner:

FIRST, Section 5 of the Lease, GAS ROYALTY, shall be removed and replaced with the following language:

5. GAS ROYALTY

5.01 The Lessee shall install a discrete well meter for each well drilled on the Leased Premises to measure all the natural gas produced by the Lessee for purposes of calculating the Department's royalty pursuant to Paragraph 5.04. The Department will use this discrete well meter measurement for auditing purposes pursuant to Section 11 AUDITS of this Lease. The Lessee shall ensure that all meters are maintained according to industry standards. Gang metering and comingled metering for purposes of calculating the Department's royalty is expressly prohibited without the express written permission of the Department.

5.02 For purposes of this Lease, the term "fair market value" shall be defined as the first point of sale where the natural gas is transferred from the Lessee to a nonaffiliated third-party purchaser in an arms-length, commercially reasonable transaction where the only relationship is contractual. A sale of natural gas by Lessee to a Related Party shall be considered for the purposes of royalty payments as if the Related Party were the Lessee. The Related Party's sales to a nonaffiliated third-party or parties shall provide the pricing basis for the royalty calculation. The status of a Related Party as such shall be evidenced by, but not limited to, stock ownership, affiliation, internal division, subsidiary, or any other common ownership. The price used to calculate royalties due to the Department pursuant to this Lease shall be the fair market value received.

5.03 All royalty payments to the Department pursuant to this Lease shall be free and clear of all taxes, fees, charges, costs, and expenses for production and post-production that are incurred up to and including at the point of sale where fair market value is received. For purposes of this Lease, taxes, fees, charges, costs, and expenses for production and post-production include, but are not limited to, exploration, development, extraction, handling, compression, gathering, transportation, dehydration, sweetening, processing, conditioning, and fuel use.

5.04 The Lessee shall pay to the Department a natural gas royalty of Thirty-Five Cents (\$0.35) per thousand cubic feet (Mcf) or Twenty Percent (20%) of the monthly weighted average

fair market value of natural gas produced, whichever is higher. The natural gas royalty payment shall be calculated by multiplying the higher amount of Thirty-Five Cents (\$0.35) per Mcf or Twenty Percent (20%) of the monthly weighted average sales price that represents the fair market value by the Department's fractional interest for all natural gas produced, as measured from each natural gas well on the Leased Premises. The natural gas royalty paid to the Department shall be consistent with Paragraph 5.03 of this Lease. The Lessee's obligation to pay natural gas royalties to the Department shall commence upon the date a well is placed into production, regardless of the Effective Date of this Lease.

5.05 The Department may, at its option, however, demand that the Lessee deliver to the credit of the Department, as natural gas royalty, free and clear of costs as set forth in Paragraph 4.03 of this Lease, in the pipeline to which the Lessee may connect its wells, the equal Twenty Percent (20%) part of all marketable natural gas produced and saved from the Leased Premises; the amount to be delivered to the Department will be the equal Twenty Percent (20%) part of the natural gas produced multiplied by the Department's fractional interest in all natural gas produced. The Lessee shall calculate and deliver a natural gas balancing statement on a quarterly basis to the Department in order to ensure that the Department receives its Twenty Percent (20%) share of all the natural gas produced. Adjustments for overage or shortage in the delivery of the Department's Twenty Percent (20%) royalty share shall be made by reducing or increasing future delivery natural gas volumes to the Department's account.

5.06 The Lessee shall pay to the Department a flaring royalty for any natural gas that is flared from a well that is planned to produce natural gas from the Leased Premises. The flaring royalty payment shall be made for any natural gas flared beyond the initial twenty-four (24) hour period of flaring following well completion, and during any other time periods, unless the natural gas is flared in the case of an emergency. Natural gas volume shall be metered or determined by a method acceptable to the Department, as approved in express writing of the Department. The natural gas price to be used for the flaring royalty payment shall be based on the nearest published pricing point in Platt's Gas Daily publication for natural gas for the month and year in which the well is flared.

SECOND, Paragraphs 7.02 and 7.03 of Section 7 of the Lease, PAYMENTS, shall be removed and replaced with the following language:

7.02 Within ninety (90) calendar days after the end of each monthly sales period, the Lessee shall submit a statement to the Department detailing the production and sale of natural gas for each individual well associated with the Leased Premises. Such statements shall include, for each well, the gross wellhead volume as metered at the wellhead, the net royalty interest in the natural gas attributable from the Leased Premises or any unit that includes a part of the Leased Premises, the weighted average monthly sales price received for the natural gas, the applicable royalty (*i.e.*, royalty rate or minimum price per Mcf) as established by this Lease, and the royalty amount paid on each well. A statement with attached payment and a digital version in a format acceptable to the Department shall be required monthly.

7.03 Once it has been determined by the Department that the Lessee is in default in the payment of any sum of money payable under provisions of this Lease for thirty (30) days, the

Lessee shall pay an additional Twelve Percent (12%) annual interest on the overdue amount calculated from the time payment was originally due. Payment of such interest shall not waive the Lessee's duty to make timely payments under this Lease or limit the Department's remedies for the Lessee's failure to pay on time.

THIRD, Section 8 of the Lease, UNITIZATION AND POOLING, shall be removed, renamed and replaced with the following language:

8. UNITIZATION AND UNIT AGREEMENTS

8.01 The Lessee shall have the right to pool and consolidate this Lease, in whole or in part, or as to any subsurface geologic horizon, with lands or leases located adjacent to or in the immediate vicinity of the Leased Premises, provided that the proposed unit establishes production from the Leased Premises and that the Lessee obtains prior written approval of the unit from the Department, which approval shall not be unreasonably withheld. The purpose of unitization of this Lease is to establish production from the Leased Premises.

8.02 An executed pooled unit agreement shall be submitted to the Department for approval prior to the production from any well associated with the Leased Premises. The Department will only consider units for approval that contain a proposed permitted well that traverses and develops the Leased Premises. The Lessee shall submit to the Department for its review and approval which approval shall not be unreasonably withheld:

- (a) a declaration and notice of unit agreement;
- (b) a plat identifying the name of the unit, the boundaries of the unit, the well or wells planned to be included in the unit including a depiction of any horizontal laterals, the API number of each existing or permitted well in the unit, and the boundaries of ownership within the unit for all other parties included in the unit agreement;
- (c) a division of interest table that includes the name of the unit, the total number of acres in the unit, the lease number, lessor name, lessee name (correlated to the ownership parcels shown on the plat), lease date, number of acres for each lessee in the unit, percentage of each lessee's acreage based on the total unit acreage, tax parcel identification number, and deed recording information for each lease that is a part of the unit;
- (d) the county(ies) and township(s) within which the unit is located;
- (e) the producing zone(s) covered by the unit;
- (f) a calculation showing the Department's net royalty interest for each well in the unit, based on the royalty provision section(s) specified in this Lease; and

- (g) a geographic information system (GIS) shape file(s) of the unit boundary and as-drilled wellbores.

8.03 Upon review and favorable consideration of the items listed in Paragraph 8.02, above, the Department shall provide written approval of the Lessee's pooled unit agreement. Should the Department disapprove the pooled unit agreement, the Lessee shall amend said pooled unit agreement and resubmit to the satisfaction of the Department.

8.04 The Lessee shall submit all amendments to approved pooled units to the Department for its review and approval, in accordance with the above paragraphs. Any amended pooled unit agreements not approved by the Department shall be null and void and of no force or effect. The royalty payment shall be calculated based on the effective date of the approved amended pooled unit agreement and applied thereafter to subsequent royalty payments.

8.05 The Lessee may establish multi-unit wells only with the express written permission of the Department. The royalty for multi-unit wells shall be calculated by measuring the length of the wellbore, from the first perforation to the last perforation, in each unit encompassing the multi-unit well, to allocate the fractional interest of the well volume to each unit that is part of the multi-unit well and then as set forth in Paragraph 5.04 of this Lease; unless an alternative method to allocate the production from the well is approved by the express written permission of the Department. Prior to beginning production, the Lessee shall submit to the Department for review and express written approval:

- a. A diagram of the as drilled wellbore identifying the first and last perforation in each unit traversed and the length between the perforations; and
- b. The calculation of the royalty allocation for the Department's net royalty interest.

8.06 Upon production from any part of any unit involving the Leased Premises, the Department shall be entitled to, and the Lessee shall pay, royalties calculated as follows: the number of acres involving the Leased Premises shall be divided by the total number of acres within the unit, multiplied by the payment provision section(s) of this Lease as described in Sections 5 GAS ROYALTY and 6 OIL ROYALTY, above.

8.07 The Lessee's drilling or reworking operations upon a pooled unit approved by the Department, or production of oil or natural gas from any part of a unit approved by the Department, shall be treated, for all purposes as operations upon or production from the Leased Premises, provided that the Lessee is an owner and/or operator.

8.08 Should a unit be established pursuant to a valid spacing or integration order issued by the Department of Environmental Protection or any other jurisdictional agency having such authority, the Department's approval shall not be required.

FOURTH, Section 28 of the Lease, CONTRACTOR INTEGRITY PROVISIONS, shall be removed, renamed and replaced with the following language:

28. COMMONWEALTH CONTRACT TERMS AND CONDITIONS

28.01 The Lessee shall comply with the Commonwealth Contract Terms and Conditions, attached hereto in EXHIBIT “D” and made a part hereof.

28.02 The word “Contractor” as used in EXHIBIT “D” shall refer to the Lessee.

FIFTH, Section 29 of the Lease, **NONDISCRIMINATION CLAUSE**, shall be removed in its entirety.

SIXTH, Section 33 of the Lease, **SUCCESSORS AND ASSIGNS**, shall be added in its entirety:

33. SUCCESSORS AND ASSIGNS

33.01 This Lease shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns, provided the assignment has been approved in accordance with this Lease.

SEVENTH, Section 34 of the Lease, **AMENDMENTS AND MODIFICATIONS**, shall be added in its entirety:

34. AMENDMENTS AND MODIFICATIONS

34.01 No alterations or variations to this Lease shall be valid unless made in writing and signed by the parties. Amendments to this Lease shall be accomplished through a formal written document signed by the parties with the same formality as the original Lease.

EIGHTH, Section 35 of the Lease, **SEVERABILITY**, shall be added in its entirety:

35. SEVERABILITY

35.01 The provisions of this Lease shall be severable. If any phrase, clause, sentence or provision of this Lease is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Lease and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

NINETH, Section 36 of the Lease, **NO WAIVER**, shall be added in its entirety

36. NO WAIVER

36.01 Any party may elect not to enforce its rights and remedies under this Lease in the event of a breach by other parties of any term or condition of this Lease. In any event, the failure by any party to enforce its rights and remedies under this Lease shall not be construed as a waiver of any subsequent breach of the same or any other term or condition of this Lease.

TENTH, Section 37 of the Lease, **INDEPENDENCE OF THE PARTIES**, shall be added in its entirety:

37. INDEPENDENCE OF THE PARTIES

37.01 It is understood by and between the parties that nothing contained herein is intended to be construed to, in any respect, create or establish the relationship of partners between the Lessee and the Department, or as constituting the Department as the representative or general agent of the Lessee for any purpose whatsoever.

ELEVENTH, Section 38 of the Lease, **NOTICES**, shall be added in its entirety:

38. NOTICES

38.01 All notices and reports arising out of, or from, the provisions of this Lease shall be in writing, unless otherwise provided in a provision of this Lease, and given to the parties at the address provided under this Lease, either by regular mail, facsimile, e-mail or delivery in person.

TWELFTH, Section 39 of the Lease, **INTEGRATION AND MERGER**, shall be added in its entirety:

39. INTEGRATION AND MERGER

39.01 Except as set forth in this First Amendment, any terms not changed in the Lease shall remain in full force and effect. All prior approvals issued by the Department under the Lease shall remain in full force and effect.

The remainder of this page is left intentional blank.

IN WITNESS WHEREOF, the Department and the Lessee have caused this Amendment to be duly executed by their proper officers, all hereunto duly authorized, on the date first above written.

CHESAPEAKE APPALACHIA, L.L.C.

Chesapeake Energy Corporation
(Principal Name)

By: Julie Woodard
(Signature)

Name: Julie Woodard
(Print or Typed)

Title: Attorney-in-Fact
(Member or Manager)

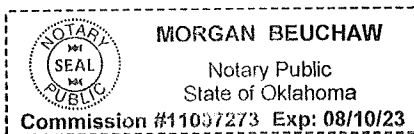
Federal Identification No.: 20-3774650

ACKNOWLEDGMENT

STATE OF Oklahoma, :
 :
 : **SS.**
COUNTY OF Oklahoma :

On this, the 8th day of March, 2022, before me, the undersigned officer, personally appeared Julie Woodard, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, acknowledged that s/he, being authorized to do so, executed this instrument in her/his capacity as Attorney-in-Fact of Chesapeake Appalachia, L.L.C., and that the same was executed for the purposes contained therein as the act and deed of said company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Morgan Beuchaw
Notary Public

My Commission Expires:

ATTEST:

**EQUINOR USA ONSHORE PROPERTIES
INC.**

By: Wally Stuka
(Signature)

By: [Signature]
(Signature)

Name: Wally Stuka
(Print or Typed)

Name: David Hartz
(Print or Typed)

Title: Sr. Consultant Land
(Secretary / Treasurer)

Title: Manager- Land & Regulatory/GPA
(President / Vice President)

Federal Identification No.: 26-3666667

ACKNOWLEDGMENT

STATE OF Texas,
COUNTY OF Harris

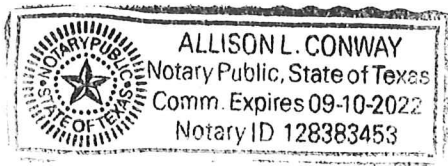
:
:
: **ss.**
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On this, the 9th day of March, 2022, before me, the undersigned officer, personally appeared David Hartz, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, acknowledged that s/he, being authorized to do so, executed this instrument in her/his capacity as Manager- Land & Regulatory/GPA of Equinor USA Onshore Properties Inc., and that the same was executed for the purposes contained therein as the act and deed of said company.

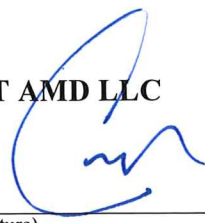
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: 9/10/2022



EQT AMD LLC

By:  **ME**
(Signature)

Name: Corey C. Peck
(Print or Typed)

Title: Authorized Agent
(Member or Manager)

Federal Identification No.: 81-4637871

ACKNOWLEDGMENT

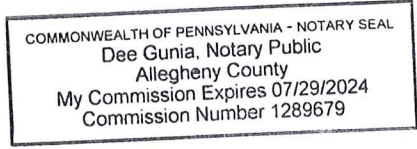
COMMONWEALTH OF PENNSYLVANIA :
: **ss.**
COUNTY OF WASHINGTON :

On this, the 15 day of March, 2022, before me, the undersigned officer, personally appeared **Corey C. Peck**, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, acknowledged that s/he, being authorized to do so, executed this instrument in her/his capacity as **Authorized Agent** of **EQT AMD LLC**, a limited liability company, and that the same was executed for the purposes contained therein as the act and deed of said company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires: 7/29/2024



MITSUBISHI E&P USA LLC

By: _____
(Signature)

Name: Guillermo Martinez
(Print or Typed)

Title: EVP & COO
(Member or Manager)

Federal Identification No.: 80-0544726

ACKNOWLEDGMENT

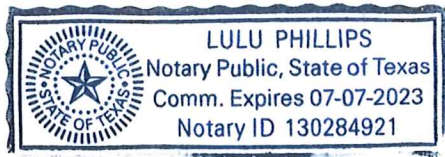
STATE OF Texas, :
 :
 : ss.
COUNTY OF Harris :

On this, the 17th day of March, 2022, before me, the undersigned officer, personally appeared Guillermo Martinez, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, acknowledged that s/he, being authorized to do so, executed this instrument in her/his capacity as EVP & COO of Mitsui E&P USA, LLC, and that the same was executed for the purposes contained therein as the act and deed of said company.

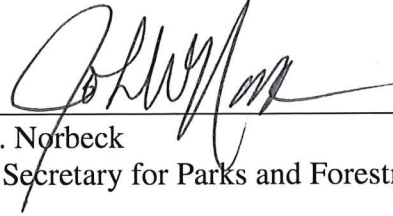
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lulu Phillips
Notary Public

My Commission Expires:
7-7-2023



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES**



John W. Norbeck
Deputy Secretary for Parks and Forestry

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: **ss.**
COUNTY OF DAUPHIN :

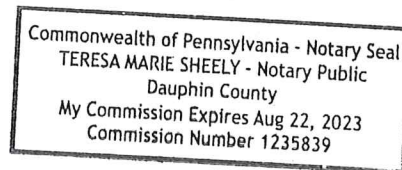
On this, the 15th day of April, 2023, before me, the undersigned officer, personally appeared John W. Norbeck, Deputy Secretary for Parks and Forestry, Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

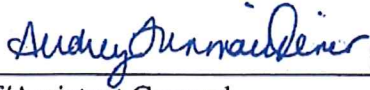


Notary Public

My Commission Expires: 8/22/23



APPROVED AS TO LEGALITY AND FORM:



Chief/Assistant Counsel
Department of Conservation and Natural Resources



2022.06.06
10:25:38 -04'00'

Office of General Counsel



Digitally signed by David E. Stover,
Senior Deputy Attorney General
Date: 2022.06.29 15:14:25 -04'00'

Office of Attorney General

APPROVED:



GOVERNOR OF PENNSYLVANIA

EXHIBIT "D"**COMMONWEALTH CONTRACT TERMS AND CONDITIONS****1. COMMONWEALTH HELD HARMLESS**

- 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.

2. 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.

- 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.

3. 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.

- 6) 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)*.
- 7) 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.
- 8) 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.

- 9) 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. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- 10) 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.

4. 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 search the 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.

5. 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 no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, 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 the 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.

6. APPLICABLE 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.

7. 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.

8. 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.