

CONTRACT FOR LEGAL SERVICES

This contract for legal services is between the Commonwealth of Pennsylvania, acting through the Governor's Office of General Counsel, and Eckert Seamans Cherin & Mellott, LLC.

Pursuant to the Commonwealth Attorneys Act, 71 P.S. §§ 732-301 *et seq.*, the General Counsel is responsible for the provision of legal advice and representation to the Governor and executive agencies under the Governor's jurisdiction. From time to time, an Executive Agency requires complex or specialized legal services.

Executive Order 2015-2 directed OGC to develop a competitively bid list of pre-approved outside counsel who can provide legal services to an Executive Agency when required. As a result, OGC established a competitive procurement process, in accordance with Executive Order 2015-02 and Section 518 of the Commonwealth Procurement Code, to select law firms that are included on the list.

Utilizing this process, OGC has chosen the Law Firm as one of the law firms that may be selected by the General Counsel to provide general litigation and emergency counsel legal services to Executive Agencies when the General Counsel has determined the services of the Law Firm are appropriate and required.

In order to facilitate subsequent engagements of the Law Firm by OGC, the parties have negotiated fair and reasonable compensation for those services.

The parties, intending to be legally bound, agree as follows:

1. **Definitions.** The following definitions apply to this contract:

a. **"Agency"** means the Executive Agency for which the General Counsel has appointed the Law Firm to provide legal services for a designated matter.

b. **"Commonwealth"** means the Commonwealth of Pennsylvania and each of its Executive Agencies.

c. **"Effective Date"** means the date of the last required Commonwealth signature on this contract or, in the case of an Emergency Procurement, the date of the Appointment Letter.

d. **"Emergency Procurement"** means the acquisition of goods or services when circumstances outside the control of an Agency create an urgency of need that does not permit the delay involved in using more formal, competitive procurement methods.

e. **"Engagement Letter"** means a written notice, in the form of a letter, issued by OGC to the Law Firm that, among other things, advises the Law Firm that the General Counsel has authorized the appointment of the Law Firm to provide services for the designated matter(s) under this contract and directs the Law Firm to commence work.

f. "**Executive Agency**" means: a) the Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth government, but the term does not include any court, officer, or agency of the unified judicial system, the General Assembly and its officers and agencies, or any independent agency; and b) those agencies whose legal services are under the jurisdiction of the General Counsel pursuant to the Commonwealth Attorneys Act.

g. "**General Counsel**" means the chief legal advisor appointed by the Governor who supervises, coordinates, and administers the legal services for each Executive Agency pursuant to the Commonwealth Attorneys Act, 71 P.S. §§ 732-101 *et seq.*

h. "**Law Firm**" means Eckert Seamans Cherin & Mellott, LLC.

i. "**OGC**" means the Governor's Office of General Counsel.

2. **Services.** The Law Firm shall provide the general services set forth in Appendix A and the specific services outlined in the applicable Engagement Letter.

3. **Specific Scope of Work.** Upon the General Counsel's issuance of an Engagement Letter to the Law Firm, the Agency shall create a statement of work for the matter designated in the Engagement Letter. The statement of work must clearly identify the Agency for which services are to be provided as well as the specific nature of the legal services to be provided. The resulting state of work, as well as the duly negotiated compensation for that engagement, will be incorporated as a supplement to Appendix B to this contract, *in seriatim*.

4. **Consultation.** The Law Firm shall:

a. consult with and keep the General Counsel and the applicable Agency fully informed as to the progress of each matter assigned to the Law Firm under this contract.

b. consult and cooperate with, and shall be responsible directly to, the General Counsel, the applicable Agency, and other officials as designated by the General Counsel on all matters of strategy and tactics.

c. advise, counsel, and recommend actions to the applicable Agency and the General Counsel or the other officials designated by the General Counsel, and carry out, to the best of its ability, their directions.

d. not make any offer, settlement, or compromise without the written consent of the General Counsel.

e. offer the General Counsel the opportunity to review court documents and briefs prior to filing.

f. promptly furnish the applicable Agency and the General Counsel with copies of all correspondence and all court documents and briefs prepared in connection with the services provided under this contract and any additional documents as may be requested.

g. make all of its work product prepared in connection with the services provided under this contract, and other parties' pleadings, discovery, correspondence, and other relevant documents and materials, available to the General Counsel via the OGC LawNet extranet in PDF or other format acceptable to the General Counsel.

5. **Commonwealth Contacts.**

a. **Agency Contact.** The Chief Counsel of the applicable Agency or their designee shall serve as the Law Firm's point of contact for the Department. The Law Firm shall direct its communications with the Agency to the Chief Counsel or their designee.

b. **OGC Contact.** OGC's Deputy Chief of Staff shall serve as the Law Firm's point of contact for OGC matters related to this contract. The Law Firm shall direct its contract-related communications with OGC to the Deputy Chief of Staff or designee.

6. **Term.**

a. **Contract Term.** The term of this contract commences on the Effective Date and remains in effect for one year, unless sooner terminated in accordance with paragraph 16 of this contract. Thereafter, the parties may renew the term of this contract for up to two additional one-year renewal terms with the approval of the General Counsel. If the Law Firm is actively representing an Agency in litigation at the expiration date of this contract and the General Counsel determines that it is in the best interest of the Commonwealth to extend the term of this contract beyond the 3 year maximum term, OGC may extend the term of this contract for the duration of that active litigation by providing a written notice of extension to the Law Firm.

b. **Not Binding Until Delivery to Law Firm.** Except when an Emergency Procurement has been authorized by the General Counsel in accordance with Paragraph 6(c) of this contract, this contract is not legally binding on the Commonwealth until the Commonwealth has provided a fully executed copy of this contract to the Law Firm.

c. **Emergency Procurement.** If the General Counsel determines that circumstances are sufficiently urgent to warrant an Emergency Procurement, OGC may authorize the Law Firm to begin providing services to a Agency before the date this contract is fully executed. In such a circumstance, OGC shall direct the Law Firm to immediately commence the provision of services in an Engagement Letter. Upon the full execution of this contract, all services provided between the date of the Engagement Letter and the Effective Date of this contract will merge into and are covered by the terms of this contract.

7. **Compensation.** The Agency to which the Law Firm is appointed to provide services described in an Engagement Letter shall compensate the Law Firm for the services provided in

accordance with the provisions established in the Engagement Letter and in Appendices B and C of this contract. Except as otherwise specifically provided in this contract, neither the applicable Agency nor the Commonwealth shall be liable to pay the Law Firm for any services or work performed or expenses incurred by the Law Firm before the Effective Date of this contract and not authorized in the applicable Engagement Letter. For the avoidance of doubt, OGC shall not be liable to pay the Law Firm for any services proved or work performed under this contract.

8. **Billing and Invoices.**

a. **Billing.** The Law Firm shall submit monthly invoices to the Agency to which it provides services during each billing period. The Law Firm shall also submit summary invoices only to the following OGC contact via the following resource email address:

Derek Riker
Deputy Chief of Staff
Governor's Office of General Counsel
ogc-outsidecounsel@pa.gov

Each invoice must be accompanied by a cover letter on the Law Firm's letterhead and include an itemized listing of the services performed by attorneys and other professionals, by date, by hours worked, and by rate.

b. **Invoices.** Invoices must also include the following information:

i. Law Firm Information, including -

- Firm name
- Firm's federal employer identification number
- Firm's relationship manager and e-mail address
- Firm's address
- Firm's telephone number
- Firm's file number or matter number (if applicable)

ii. Administrative Information, including -

- Date of invoice
- Unique Invoice Number
- Name of Agency Chief Counsel (or designee)
- Name of Agency
- Agency's address
- RFP number
- Contract number
- Funds Commitment number (if applicable)
- Specific matter or project name for which services were performed (only one per invoice, even if the contract is being used for more than one matter)
- Service dates (i.e., start and end dates for services covered by invoice)
- Total fees for professional services rendered regarding invoice

- Total expenses incurred regarding invoice
- Prior balance due (if applicable)
- Total amount due

c. **Labor Costs.** The amount shown on each invoice for labor costs must be in accordance with the rates set forth in Appendix B of this contract.

d. **Non-Labor Costs.** Invoices must list non-labor costs such as those incurred for travel, food, and lodging, as described in Appendix C of this contract. The Commonwealth shall reimburse the Law Firm for travel, meal costs, and lodging costs for which supporting documentation is provided, in reasonable amounts incurred by the Law Firm in connection with the performance of services under the contract, as described in Appendix C.

e. **Law Firm Certification.** Invoices must contain a statement that reads substantially as follows:

The Law Firm hereby certifies that the services supplied and expenses incurred, as stated in the attached invoice, have met all of the required standards set forth in the contract for legal services.

f. **Firm Signature.** Invoices or accompanying cover letters must be signed by an authorized representative of the Law Firm.

g. **Progress Reports.** Separate and apart from the invoice, the Law Firm must include a progress report with itemized details regarding the engagement to the Agency, including tasks performed and time spent.

h. **Effect of Non-Conformance.** The Law Firm's failure to include all of the required invoicing information will result in the return of the invoice and a request for the submission of a new invoice that conforms with the requirements set forth in this paragraph.

9. **Payment.**

The Agency will use its best efforts to make payments on invoices that conform with the requirements set forth in paragraph 8 within 45 days of receipt. For the avoidance of doubt, OGC is not responsible for the payment of the Law Firm invoices.

10. **Subcontracting, Assignment, Key Personnel, and Experts.**

a. **Subcontracting.** The Law Firm may not subcontract all or any portion of the services to be provided to the Agency under this contract without the prior written consent of the General Counsel. In the event that the General Counsel provides the necessary prior written consent, the Law Firm shall ensure that its contract with the subcontractor contains a written acknowledgement of the subcontractor that the terms and conditions of this contract apply to and bind the subcontractor as fully and completely as the Law Firm is bound and obligated by this contract.

b. **Assignment.** The Law Firm may not assign all or any portion of its rights or duties

under this contract to a third party without the prior written consent of the General Counsel. In the event that the General Counsel provides the necessary prior written consent, the Law Firm shall ensure that its assignment agreement with the assignee contains a provision that states that all of the terms and conditions of this contract apply to and bind the assignee as fully and completely as the Law Firm is bound and obligated by this contract. Any assignment or transfer not in accordance with this paragraph is void.

c. **Replacement of Key Personnel.** The Law Firm must consult with and obtain the consent of the Agency prior to the replacement of key personnel assigned to provide services to the Agency. The Agency's consent to any proposed replacement is required and may not be unreasonably withheld.

d. **Experts.** Notwithstanding the foregoing, the Law Firm may, with the prior written consent of the General Counsel, engage experts in various fields related to the subject matter of any matter(s) assigned to the Law Firm to assist it in the performance of its duties under this contract. The hourly rates, fees, or other compensation to be paid to any such experts are also subject to the prior approval of the General Counsel. The Law Firm shall ensure that its contract with any expert it engages contains a written acknowledgement of the expert that the terms and conditions of this contract apply to and bind the expert as fully and completely as the Law Firm is bound and obligated by this contract. The Law Firm shall include approved compensation for experts, as incurred, in the Law Firm's invoices in accordance with the provisions of paragraph 8 of this contract, without addition, surcharge, or increase by the Law Firm of the actual fees billed to the Law Firm by such experts.

11. **Ownership Rights.**

a. **Ownership and Use.** All documents, data, and records produced by the Law Firm and any subcontractor or expert while performing the services or their duties under this contract, without limitation and whether preliminary or final, are and will remain the property of the Commonwealth. The Commonwealth may use all documents, data, and records without restriction or limitation and without additional compensation to the Law Firm, subcontractor, or expert and the Law Firm, subcontractor, and experts shall have no right or interest in the documents, data, and records.

b. **Delivery of Commonwealth Property.** Upon completion of the services or at the expiration or termination of this contract, the Law Firm shall, if requested by the General Counsel or the Agency, appropriately gather, arrange, index, and deliver all of the Commonwealth's documents, data, and records to OGC or the Agency.

c. **Disclosure.** Neither the Law Firm nor any subcontractor or expert shall disclose any documents, data, or records provided to it or prepared by the Law Firm, subcontractor, or expert that relates to this contract or the services provided under this contract to any individual or organization without the prior approval of the General Counsel. Neither the Law Firm nor any subcontractor or expert shall disclose any information secured by the Law Firm, subcontractor, or expert from the Commonwealth in connection with the provision of services under this contract unless the disclosure is approved in writing by the General Counsel or is directed by a court or other tribunal of competent jurisdiction.

d. **Retention of Copies.** Notwithstanding the provisions of paragraph 11(a) of this contract, the Law Firm may retain copies of the documents, data, and records delivered to OGC or to the Agency.

12. **Conflict of Interest.** The Law Firm represents and warrants that it has no conflicting representation that has not been fully disclosed to and waived by the General Counsel. The Law Firm warrants that it shall not undertake any representation that conflicts with its performance of the services or its duties under this contract unless the conflicting representation has been fully disclosed to and waived by the General Counsel. The Law Firm shall promptly disclose any conflicting representation to the General Counsel. The General Counsel shall determine whether the disclosed conflict is cause for the termination of this contract. The Law Firm shall request a conflict waiver utilizing the process set forth in the Office of General Counsel Conflict Waiver Procedure, which is attached to this contract as Appendix D.

13. **Inability to Perform.** If, due to death or any other occurrence beyond the control of the Law Firm, it becomes impossible for any principal(s) and, in particular, the principal(s) assigned to provide services under this contract, to render the services set forth in this contract, neither the Law Firm nor the surviving principal(s) are relieved of the duty to complete performance under this contract. The Law Firm shall consult the General Counsel regarding any replacement principal(s) that it proposes to assign to provide the services. The Law Firm must obtain the General Counsel's consent before assigning a replacement, The General Counsel may not unreasonably withhold his or her consent.

14. **Licensing.** The Law Firm represents and warrants that attorneys involved in the representation of the Agency are duly licensed and in good standing to practice before the judicial forum, court, board, or tribunal before which they will appear or practice on behalf of the Agency. When necessary and in accordance with subparagraph 10(a), the Law Firm may retain a subcontractor to act as co-counsel where appearance by the Agency is required in a forum or jurisdiction where the Law Firm's attorneys are not licensed to practice.

15. **Independent Contractor.** In performing the services required by this contract, the Law Firm and its employees and agents shall act as an independent contractor and not as an employee or agent of the Commonwealth.

16. **Termination.**

a. **Termination for Convenience.** If the Commonwealth determines that termination of this contract is in its best interest, the Commonwealth may terminate this contract for convenience by providing written notice of termination to the Law Firm. The Commonwealth shall pay the Law Firm for work satisfactorily completed prior to the effective date of the termination, but in no event is the Law Firm entitled to recover loss of profits.

b. **Non-Appropriation.** The Commonwealth's obligation to make payments during any Commonwealth fiscal year following the current fiscal year is subject to the availability and appropriation of funds. When funds (state, federal, or both) are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year period, the Commonwealth may terminate this contract by providing written notice of termination to the Law Firm. The Commonwealth shall reimburse the Law Firm for the reasonable value of any

nonrecurring costs incurred, but not amortized, in the price of the supplies or services delivered under this contract. The Commonwealth will not reimburse the Law Firm for loss of profit, loss of use of money, or administrative or overhead costs. The Commonwealth shall pay the reimbursement amount using any appropriation(s) available for that purpose.

c. **Termination for Cause.** The Commonwealth may terminate this contract for Law Firm default by providing written notice of termination to the Law Firm. The Commonwealth may also terminate this contract for any other cause, as specified in this contract or by law, by providing written notice of termination to the Law Firm. If it is later determined that the Commonwealth erred in terminating this contract for cause, this contract will be deemed to have been terminated for convenience under subparagraph 16(a) at the Commonwealth's discretion.

d. **Effective Date of Termination.** Any notice of termination provided to the Law Firm will be effective on the date it is mailed or emailed to the Law Firm.

17. **Utilization Reports.** The Law Firm shall submit a completed quarterly utilization report (or similar type document containing the same information) to OGC and the Department of General Services, Bureau of Diversity, Inclusion and Small Business Opportunities, ten business days following the end of each quarter. If there was no activity during the quarter, the Law Firm shall include the following statement in its report: "*No activity in this quarter.*"

18. **Commonwealth Standard Terms and Conditions.** The Law Firm shall comply with the Commonwealth Standard Terms and Conditions set forth in Appendix E.

19. **Retention Guidelines for Outside Counsel.** The Law Firm shall comply with the Retention Guidelines for Outside Counsel attached to this contract as Appendix F.

20. **Audit Provisions.** The Commonwealth may, at reasonable times and at a site designated by the Commonwealth, audit the books, documents, and records of the Law Firm to the extent that the books, documents, and records relate to fees, costs, or pricing data for this contract. The Law Firm shall maintain records that support the fees charged and costs incurred under this contract.

21. **Preservation of Books, Documents and Records.** The Law Firm shall preserve all books, documents, and records that relate to fees, costs, or pricing data for this contract for a period of three years from the date of final payment under this contract. The Law Firm shall give full and free access to all records to the Commonwealth and its authorized representatives.

22. **Insurance.** The Law Firm represents and warrants that it carries malpractice insurance in the amount usual and customary for law firms of its size and practice areas, subject to normal deductibles. The Law Firm shall maintain the coverage throughout its representation of the Commonwealth.

23. **Amendments and Modification.** With the approval of the General Counsel, the parties may amend or modify this contract. Amendments or modifications regarding the total estimated amount of this contract set forth in Appendix C may be accomplished through a funding

adjustment in accordance with Commonwealth procedures. Amendments or modifications regarding the funding of this contract that do not exceed the amount set forth in Appendices C or regarding a change in the term of this contract may be accomplished by a letter of mutual consent signed by the Agency and the Law Firm. All other amendments and modifications to this contract, including changes in the scope of work, must be accomplished through a formal written amendment to this contract, signed by the parties, and executed in the same manner as this original contract and in accordance with applicable law.

24. **Notice.** Any written notice or communication provided under this contract is sufficient if delivered to the party personally, by email (provided the delivery is confirmed), by a recognized overnight courier service (e.g., United Parcel Service, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to any other address the party may designate by notice given pursuant to this paragraph:

To the Commonwealth –

Theron Perez
First Deputy General Counsel
Governor’s Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, Pennsylvania 17101
tperez@pa.gov

with a copy to -

The Honorable Jennifer Selber
General Counsel
225 Main Capitol Building
Harrisburg, Pennsylvania 17120-0020

To the Law Firm -

Michael McAuliffe Miller, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, Pennsylvania 17101
mmiller@eckertseamans.com

25. **Contract Controversies.** In the event of a controversy or claim arising from this contract, the Law Firm must, within six months after the cause of action accrues, file a written notice of the controversy or claim with the General Counsel for a determination. The General Counsel shall send a written determination to the Law Firm. The decision of the General Counsel will be final and conclusive unless, within 15 days after receipt of such written determination, the Law Firm files a claim with the Commonwealth’s Board of Claims. Pending a final judicial resolution of a controversy or claim, the Law Firm shall proceed diligently with the performance of this contract in a manner consistent with the interpretation of the General Counsel, and the

Commonwealth shall compensate the Law Firm pursuant to the terms of this contract.

26. **Waiver.** Failure or delay on the part of a party to exercise any right, remedy, power, or privilege under this contract may not be construed as a waiver of the right, remedy, power, or privilege. In order for a waiver to be deemed effective, it must be in writing and must be signed by the party waiving the right, remedy, power, or privilege. A written waiver of a default will not operate as a waiver of the same type of default or any other default on a future occasion.

27. **Severability.** If any article, clause, or provision of this contract, or any part of this contract, is declared to be invalid, void, or unenforceable by any tribunal having jurisdiction, the invalidity or unenforceability will not affect the validity or enforceability of the remaining portions of this contract, unless the result would be manifestly inequitable or unconscionable.

28. **Integration Clause.** This contract, including all referenced documents, constitutes the entire agreement between the parties. Terms used in appendices to this contract have the same meanings as are ascribed to them in this contract, unless otherwise defined in the appendix. No agent, representative, employee, or officer of either the Commonwealth or the Law Firm has authority to make, or has made, any statement, agreement, or representation, oral or written, in connection with this contract, which in any way can be deemed to modify, add to, detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, is permitted to modify or contradict any of the terms and conditions of this contract. No modifications, alterations, changes, or waivers to the contract or any of its terms are valid or binding unless accomplished pursuant to paragraph 23 of this contract.

29. **Counterparts.** This contract may be signed in counterparts, each of which, for all purposes, will be considered an original of this contract. Faxed and scanned signatures are enforceable as original signatures.

30. **Electronic Signatures.** This agreement may be signed electronically in accordance with the Pennsylvania Electronic Transactions Act, Act 69 of 1999, 73 P.S. § 2260.301 et seq.

[SIGNATURE PAGE FOLLOWS.]

The parties, through their authorized representatives, have signed this contract on the date indicated below.

ECKERT SEAMANS CHERIN & MELLOTT, LLC

COMMONWEALTH OF PENNSYLVANIA,

Michael Markwith Miller
[NAME]
Title: Member in Charge
Date: 14 August, 2024

D.R. Riker
Derek Riker
Deputy General Counsel
Date: 9/24/2024

Federal Employer ID #: 25-1056909

APPROVED AS TO FORM AND LEGALITY:

kellysmith Digitally signed by kellysmith
DN: dc=LCL, dc=PA, ou=CWOPA, ou=GC, ou=OGC, ou=USERS, cn=kellysmith
Date: 2024.10.07 08:56:29 -04'00'
Deputy General Counsel Date

David E. Stover Digitally signed by David E. Stover,
Assistant Chief Deputy Attorney General
Date: 2024.10.24 10:12:50 -04'00'
Deputy Attorney General Date

APPROVED:

Patricia D. Anthony Digitally signed by Patricia D. Anthony
Date: 2024.11.14 11:32:09 -05'00'
Comptroller Operations Date

APPENDIX A
DESCRIPTION OF SERVICES

At various times, the Commonwealth or one of its agencies has been required to take exigent legal action or defend itself against litigation. The Firms will aid in such emergent legal matters, as further outlined below.

The Firms will file appropriate pleadings and documents to defend the Commonwealth's interests. The Firms will be expected to carry the litigation through pleadings and discovery, the initial judicial proceedings until a final verdict or other disposition and will be considered for handling any subsequent appeals.

This engagement may include other general legal work as designated by the Commonwealth, at the discretion of the General Counsel. The Firms may at any time be called upon to provide specific services to the Commonwealth based on specific need, capacity, qualification or such other circumstances as the Commonwealth shall determine. The Office of General Counsel is looking for geographic diversity across the Commonwealth in order to provide services expeditiously and economically regardless of the location of need. Nothing herein shall in any way limit the discretion of the Commonwealth or the General Counsel to make assignments to serve the needs of the Commonwealth as deemed appropriate.

The General Counsel reserves the right to make an assignment as she may deem necessary or desirable, in her judgment, for all aspects of, or roles within the scope of, this appointment.

APPENDIX B
BILLING RATE INFORMATION

- Members & Associates will be billed at a rate of \$250.00 per hour;
- Paralegals and Staff will be billed at a rate of \$100.00 per hour.

APPENDIX C
COMPENSATION

The Agency shall pay the Law Firm for the services under this contract and reimburse the Law Firm for its eligible costs. There is currently no contract cap unless specified in the appointment letter, by the agency requesting the services. Payments of additional amounts may be made, and continued performance by the Law Firm will be required pursuant to paragraph 27 of this contract.

1. The Law Firm shall be reimbursed for all reasonable, actual, direct labor costs incurred in fulfilling the terms of this contract in accordance with the rates established in paragraphs 6 and 7 and Appendices B, C, and I of this contract.

2. The Law Firm shall be reimbursed for all reasonable, actual, ordinary, and necessary direct non-labor costs incurred in fulfilling the terms of this contract, subject to specific limitations such as those set forth in the Retention of Outside Counsel Guidelines, attached to this contract as Appendix I, and paragraph 7 of this contract including, but not limited to, the following:

a. Reasonable, actual, ordinary, and necessary expenses for travel, meals, and lodging incurred by the Law Firm to fulfill the Law Firm's duties under this contract. The Law Firm shall retain all receipts for these expenses and shall provide copies to the Agency if requested. Mileage reimbursement will be made in accordance with the travel regulations applicable to the Commonwealth for the use of personally owned motor vehicles. Expenses for lodging and meals will be reimbursed at rates limited to the single-occupancy rate at the nearest Holiday Inn or other major moderately priced hotel or motel chain and the amount of reimbursement for meals will be limited to the price of a moderately-priced meal at that hotel or motel. No reimbursement will be allowed for any alcoholic beverages.

b. Reasonable, actual, ordinary, and necessary expenses for:

(1) Communications, including telephone, facsimile transmissions, telegraph, postage, parcel post, and freight and package express;

(2) Photocopies made by the Law Firm "in house," to be reimbursed at the maximum rate of \$.15 per page;

(3) Other reproduction costs (including, but not limited to, photographs, photocopies, prints, and offset work); and

(4) Document control and analysis contracted for with outside firms.

The Law Firm shall retain all receipts for these expenses and shall, upon request of the Agency, provide any necessary documentation.

c. Reasonable, actual, ordinary, and necessary expenses for other specific materials

required for and used solely in the fulfillment of this contract. The Law Firm shall retain all receipts for these expenses and shall, upon request of the Agency, provide any necessary documentation.

3. Travel, meals, lodging, and other direct non-labor costs, which the Law Firm expects to incur under this contract outside of the Commonwealth of Pennsylvania, with the exception of telephone, mailing, and other similar communication expenses, require the prior approval of the General Counsel. The General Counsel's approval will not be unreasonably withheld. Prior approval by the General Counsel of travel to be undertaken by the Law Firm outside of the Commonwealth of Pennsylvania as an incident of the Law Firm's performance of services under this contract constitutes approval for the Law Firm to incur reasonable, actual, ordinary, and necessary expenses for travel, meals, lodging, and other ordinary and necessary direct non-labor costs. The Law Firm shall retain all receipts and shall, upon request of the Agency, provide any necessary documentation.

4. The Law Firm shall require approval by the General Counsel before incurring any extraordinary or unusual expenses.

5. The Law Firm shall advise the General Counsel and the Agency when direct labor and other costs reach 50% of the amount initially encumbered for performance of this contract and 50% of any amount encumbered by any amendment.

APPENDIX D
OFFICE OF GENERAL COUNSEL CONFLICT WAIVER PROCEDURE
(January 2023)

1. OGC’s standard contract for legal services requires the lawyer or law firm (referred to hereafter as “Law Firm”) to promptly disclose any conflicting representation, unless it has been otherwise waived. (See the attached paragraph from the contract for legal services.) Failure to disclose a conflict or undertaking a conflicting representation without obtaining a waiver is cause for termination of the contract.
2. The Law Firm’s request for a waiver shall be submitted in writing to the Chief Counsel of each agency the Law Firm represents, with a contemporaneous copy to the Deputy General Counsel responsible for outside counsel management. Requests must be in letter form and should be sent electronically in PDF format to ogc-outsidecounsel@pa.gov.
3. The waiver request must:
 - a. Identify all existing representations of Commonwealth agencies;
 - b. Describe the nature of the conflict;
 - c. Set forth the measures the Law Firm will take to protect the Commonwealth, its agencies, officials, or employees from any prejudice or detriment if the conflict is waived; and
 - d. State that the other party the Law Firm represents or seeks to represent has granted a waiver (or a waiver has been sought, and if sought, a written notice of the granting of the waiver must be provided).
4. Each affected Chief Counsel shall analyze the request and submit his or her recommendation to approve or disapprove the request to the Deputy General Counsel responsible for outside counsel management, with supporting legal analysis, including any applicable references to the Rules of Professional Conduct.
5. The General Counsel or, upon designation, the Deputy General Counsel responsible for outside counsel management, will make all waiver decisions and issue a letter to the Law Firm approving or disapproving the waiver request.
6. The decision to approve the Law Firm’s waiver request in a matter is not binding on the General Counsel with respect to future matters unless the General Counsel so states.
7. Each affected Chief Counsel will receive a copy of the General Counsel’s letter.
8. A file for each waiver request and the resolution of each request will be maintained in the Office of General Counsel.

APPENDIX E

Commonwealth Standard Terms and Conditions (Revised - 10/1/2023)

1. DEFINITIONS.

Capitalized terms used in these Commonwealth standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the contract to which it is attached.

2. ENHANCED MINIMUM WAGE.

- a. **Enhanced Minimum Wage.** Contractor shall pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this contract/lease, and for an employee's hours performing ancillary services necessary for the performance of the services or lease when the employee spends at least 20% of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate will be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions do not apply to employees
 - i. Exempt from minimum wage under the Minimum Wage Act of 1968;
 - ii. covered by a collective bargaining agreement;
 - iii. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - iv. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** The Contractor shall: (1) post this Enhanced Minimum Wage Provision for the entire period of the contract conspicuously in easily accessible and well-lit places customarily frequented by employees at or near where the contracted services are performed; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.
- e. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.

- g. **Subcontractors.** The Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contract or lease to ensure that these provisions are binding on its subcontractors.

3. INDEMNIFICATION.

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

4. NONDISCRIMINATION/SEXUAL HARASSMENT.

- a. **Representations.** The Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the contract. The Contractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- b. **Nondiscrimination/Sexual Harassment Obligations.** The Contractor shall not:
 - i. in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act ("PHRA") and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
 - ii. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the

manufacture of supplies, the performance of work, or any other activity required under this contract.

- iii. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this contract.
- iv. in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which this contract relates.
- v. in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

- c. **Establishment of Contractor Policy.** The Contractor shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of the contract, the Contractor shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.
- d. **Notification of Violations.** The Contractor's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the contract. Accordingly, the Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- e. **Cancellation or Termination of Contract.** The Commonwealth may cancel or terminate this contract and all money due or to become due under this contract may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.
- f. **Subcontracts.** The Contractor shall include these Nondiscrimination/Sexual Harassment provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of these provisions in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by those provisions. If the Contractor becomes aware of a subcontractor's violation of this clause, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

5. CONTRACTOR INTEGRITY.

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

- i. "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- ii. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
- iii. "Contractor Related Parties" means any Affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
- iv. "Financial Interest" means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- v. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, as may be amended, 4 Pa. Code §7.153(b), apply.
- vi. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

b. **Representations and Warranties.**

- i. **Contractor Representation and Warranties.** The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:
 1. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 2. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 3. had any business license or professional license suspended or revoked;
 4. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 5. been, and are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

- ii. **Contractor Explanation.** If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the contract.
- iii. **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
- iv. **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.

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

- i. maintain the highest standards of honesty and integrity.
- ii. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.
- iii. establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
- iv. not accept, agree to give, offer, confer, agree to confer, or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order, statement of policy, management directive, or bulletin applicable to the provision of goods or services under this contract.
- v. not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest. The Contractor must disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.

- vi. comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
 - vii. comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.
 - viii. immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including, but not limited to, contact by a Commonwealth officer or employee, which, if acted upon, would violate the ethical standards.
- d. **Investigations.** If a State Inspector General investigation is initiated, the Contractor shall:
- i. reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
 - ii. cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions and make identified Contractor employees available for interviews at reasonable times and places.
 - iii. upon the inquiry or request of an Inspector General, provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. This information may include, but is not limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.
- e. **Termination.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Contractor Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one right or remedy does not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or contract.
- f. **Subcontracts.** The Contractor shall include these Contractor Integrity Provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of this provision in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Contractor becomes aware of a subcontractor's violation of these provisions, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

6. CONTRACTOR RESPONSIBILITY.

- a. **Definition.** For the purpose of these provisions, the term “Contractor” means as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth. The term also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.
- b. **Contractor Representations.**
 - i. The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.
 - ii. The Contractor represents that as of the date of its execution of this contract it has no tax liabilities or other Commonwealth obligations or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- c. **Notification.** The Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.
- d. **Default.** The Contractor’s failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the contract with the Commonwealth.
- e. **Reimbursement.** The Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this contract or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- f. **Suspension and Debarment List.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

7. AMERICANS WITH DISABILITIES ACT.

- a. **No Exclusion.** Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract.
- b. **Compliance.** For all goods and services provided pursuant to this contract, the Contractor shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.
- c. **Indemnification.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

8. APPLICABLE LAW AND FORUM.

This contract is governed by and must be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in *personam* jurisdiction over the Contractor, and the Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the Commonwealth's rights or defenses.

9. RIGHT TO KNOW LAW. Omitted.

10. OFFSET.

The Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor, or its subsidiaries, owed to the Commonwealth against any payments due the Contractor under any contract between the Commonwealth and Contractor.

11. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS.

- a. **Payment Method.** The Commonwealth shall make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the contract or purchase order, the Contractor must submit or must have submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).
- b. **Unique Identifier.** The Contractor must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Contractor's unique invoice number on its ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.

- c. **ACH Information in SRM.** The Contractor shall ensure that the ACH information contained in SRM is accurate and complete. The Contractor's failure to maintain accurate and complete information may result in delays in payments.

12. WORKER PROTECTION AND INVESTMENT.

The Contractor shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:

- a. Construction Workplace Misclassification Act;
- b. Employment of Minors Child Labor Act;
- c. Minimum Wage Act;
- d. Prevailing Wage Act;
- e. Equal Pay Law;
- f. Employer to Pay Employment Medical Examination Fee Act;
- g. Seasonal Farm Labor Act;
- h. Wage Payment and Collection Law;
- i. Industrial Homework Law;
- j. Construction Industry Employee Verification Act;
- k. Act 102: Prohibition on Excessive Overtime in Healthcare;
- l. Apprenticeship and Training Act; and
- m. Inspection of Employment Records Law.

APPENDIX F
RETENTION GUIDELINES FOR OUTSIDE COUNSEL
(January 2021)

The Office of General Counsel (“OGC”) expects to have a productive, professional, and cost-effective relationship with outside counsel. These guidelines apply to all engagements for services between OGC (and any of its agency offices) and your law firm, regardless of the office from which those legal services are performed. Any exception must be approved in advance by OGC.

I. MATTER MANAGEMENT AND REPORTING

A. The Contract for Legal Services

Your law firm has been retained by OGC to perform legal services as set forth in the contract for legal services. The contract defines the scope of services covered by the matter that is the subject of the contract; a “matter” may consist of a single representation or the provision of legal services in connection with a relatively routine, high volume practice area (e.g., workers’ compensation). The contract identifies the principal OGC in-house attorney responsible for managing the work. For complex litigation matters, a senior-level OGC litigation manager also may be assigned or otherwise involved in the case. For high volume matters, a third-party administrator also may have a defined role in managing the work. Outside counsel is expected to keep the responsible OGC attorney(s) informed of all significant developments that arise, as well as seek his or her direction on strategy and tactics.

Throughout the course of your law firm’s representation, the law firm must be mindful of conflict issues and disclose promptly any conflicting representation. The Conflict Waiver Procedure that is a part of the contract sets forth the process for disclosure. Failure to disclose a conflict or undertaking a conflicting representation without obtaining a waiver from the General Counsel is cause for termination of the contract.

B. Effective Utilization of Personnel

OGC generally expects a single outside lawyer to be primarily responsible for each matter. Outside counsel should discuss with OGC the staffing requirements for each matter, including the number of attorneys and staff that may work on the matter. OGC encourage the use of law clerks and paralegals for those aspects of any matter that do not need to be performed by an attorney. Staffing should reflect management practices that are consistent with the delivery of the appropriate level and type of legal services required in order to achieve effective results and resource efficiency.

OGC generally expects one lawyer to attend all relevant depositions, meetings, hearings, trial, and other proceedings. In more complex matters, additional lawyers may be necessary to represent the Commonwealth.

In concert with the Commonwealth’s commitment to workforce diversity, OGC expects each law firm it engages to use its best efforts to: (1) consider persons from diverse backgrounds

for assignment to its OGC engagements; and (2) actively promote full and equal participation of women, racial and ethnic minority groups, and all other persons of diverse backgrounds in the legal profession, as evidenced by the law firm's employment practices.

C. Matter Management, Budget and Reports

OGC expects regular communications with its counsel. The most effective representation results from a true partnership between the OGC lawyer and outside counsel. The law firm must send to OGC an initial report within 45 days of the retention of the law firm's services covering the following areas:

- *Management Plan and Budget* – The Management Plan and Budget (“Plan”) should include an initial assessment of the assigned matter (see below) and a detailed strategy for handling the matter, including the feasibility of employing alternative dispute resolution techniques in litigation matters. The Plan must include an initial budget that estimates the legal fees and other costs to be incurred for the current calendar year as well as projected legal fees and costs for the entire duration of any matter that continues beyond the end of a calendar year. The firm must identify all personnel assigned to the matter, and their respective billing rates. An updated budget and personnel list, on firm stationery, must be submitted at the start of each subsequent calendar year or more frequently if there is a known material variance in the budget. OGC recognizes that it may be difficult at an early stage to project all the resources required for a matter; however, OGC believes that the plan and budget are important management tools.

- *Initial Assessment of Litigation Claims*¹ – The Initial Assessment must include a detailed description of the claim, applicable defenses, an assessment of potential liability and possible verdict range, any settlement demand by opposing counsel, and estimated trial date/time (if applicable).

The law firm is expected to keep the responsible OGC attorney advised of the status of the matter. In the absence of material developments that require immediate notification, the law firm should submit, at least quarterly, a confidential matter status report that: (1) summarizes developments to date; (2) identifies actions that are planned to be taken in the forthcoming six months; and (3) updates the previously submitted Management Plan and Budget. In those instances where the responsible OGC attorney is not present at a meeting, hearing, deposition or any other relevant event, the law firm must send a prompt report of the event by telephone or electronic mail as directed by the responsible OGC attorney.

¹ If the matter involves litigation of a routine, high volume nature (e.g., workers' compensation), the responsible OGC attorney shall define for the firm the level of reporting required for each individual claim

D. Correspondence and Pleadings²

No significant correspondence or pleading should be sent or filed without prior approval of the responsible OGC attorney. In general, outside counsel should keep the responsible OGC attorney fully informed of all developments on a timely basis and consult with him or her on all matters of strategy, planning and proposed disposition by motion, trial or settlement.

- *Correspondence*: Copies of all correspondence received or sent on OGC's behalf by the law firm to opponents or other third parties should be sent to the responsible OGC attorney.

- *Pleadings*: Copies of all pleadings received or filed on OGC's behalf by the law firm should be sent to the responsible OGC attorney.

The responsible OGC attorney should have the opportunity to discuss the preparation of pleadings with the law firm sufficiently in advance of filing deadlines to determine who will perform the work. The responsible OGC attorney, or her/his designee, may elect to prepare draft answers, motions, request for discovery and other pleadings. In such instances, such items will be forwarded to the law firm either in final form for filing or in draft form, and the law firm are expected to place them in final form in accordance with local rules.

E. Discovery

All discovery, electronic or otherwise, should be coordinated with the responsible OGC attorney.³ Commonwealth personnel are not to be contacted directly without prior approval of the responsible OGC attorney.

OGC may prefer to have someone from its offices present during the preparation for and deposition of Commonwealth personnel. OGC believes its knowledge of the Commonwealth's business can be beneficial to the law firm in preparing the witness and in the course of questioning by opposing parties. The law firm is not permitted to waive the right of Commonwealth personnel to review and sign their depositions and must not enter into any stipulations to the contrary.

All discovery requests should be forwarded to the responsible OGC attorney immediately, indicating the response date. OGC can better assist in preparing responses if outside counsel can, preliminarily, identify objectionable questions and indicate these questions for which information is requested, as well as a recommended approach for completing the response. Outside counsel must consult with the responsible OGC attorney regarding anticipated electronic discovery (e-discovery) requests and use of any e-discovery computer programs, whether owned by the firm or provided by third-party vendors. OGC will not pay for any such programs without advance approval.

² If the matter involves litigation of a routine, high volume nature, the responsible OGC attorney shall define for the firm the level of reporting required for each individual claim

³ If the matter involves litigation of a high volume nature, the responsible OGC attorney shall define for the firm his or her role in coordinating discovery, which may be minimal.

Many internal Commonwealth documents are confidential or protected by privilege. Accordingly, the responsible OGC attorney may require that a Confidentiality Agreement and/or Protective Order be secured to insure that the confidential nature of the information is maintained.

F. Expert Witnesses or Consultants

Where outside counsel determines that an expert witness or a special consultant is necessary for any matter, the responsible OGC attorney must be consulted prior to any engagement, and prior written approval must be obtained. In making such recommendation, outside counsel should provide the responsible OGC attorney with a written description of the study or testimony the expert is expected to provide, the expert's qualifications, the rationale for using an expert in the matter and an estimate of the expert's fees and expenses. As with the law firm's staffing and time on any matter, OGC expects that recommendations concerning the use of expert witnesses and consultants will be at appropriate levels for the risk and exposure involved in the matter.

G. Negotiations, Settlements and Appeals

The decision to try, settle or appeal a case rests solely with OGC. All settlement opportunities and demands must be brought promptly to the attention of the responsible OGC attorney, along with your recommendations under no circumstances may the law firm agree to settle any case on the Commonwealth's behalf, enter into a consent decree or stipulation, release any substantial right, or otherwise commit the Commonwealth on any issue without OGC's prior approval.

II. BILLING REQUIREMENTS; OTHER CONSIDERATIONS

A. In General

Billing invoice requirements have been developed to clearly advise the law firm as to how OGC would like the bills submitted. Specific provisions are set forth in the contract for legal services in paragraph 7. These requirements must be followed with respect to all bills unless the responsible OGC attorney has pre-authorized another arrangement.

OGC expects that any firm retained to perform services on behalf of OGC will accomplish its goals and objectives in a manner that maximizes value and minimizes expense without sacrificing quality. Compensation arrangements are set forth in the contract for legal services.

If OGC inadvertently pays an invoice, which on review does not comply with these guidelines, OGC retains the right to obtain reimbursement of the payment.

B. Rates

Unless a different billing arrangement is provided in the contract for legal services, OGC will pay specified hourly rates, as set forth in the contract by attorneys and paralegals.

In matters where fees are based upon hourly rates, actual time in units of 1/10 of an hour is the maximum acceptable time unit to be used in billing. No changes in billing methodology or hourly rates will be made without the express written approval of the General Counsel.

C. Billing Cycle

Bills for legal services should be submitted on a monthly basis, for services through the last day of the month in which services are performed. Agencies will use best efforts to make payment on invoices within 45 days of receipt, in final form with requisite documentation.

D. Billing Format

Specific billing instructions are set forth in the contract for legal services in paragraph 7. At a minimum, a copy should be directed to the responsible OGC attorney, and the assigned senior-level OGC litigation manager, where applicable. Invoices should not be sent to the General Counsel.

All billing statements should include:

- Contract number
- Date task performed
- Identification of attorney/paralegal performing the task with full name and title listed on the statement
- Specific task description
- Time being billed per task
- Hourly rate being charged by the attorney/paralegal
- A summary of the total time and amount charged for each attorney/paralegal
- A specific description of all expenses incurred including the rate charged for copying as limited by the contract for legal services. This description of services should be as specific as possible.

E. Disbursements/Expenses

OGC expects the hourly billing rate to include overhead and internal charges associated with the law firm's practice. The law firm shall require written approval by the responsible OGC attorney before incurring any extraordinary or unusual expenses. Functions such as legal research or photocopying must be billed at cost and may not be profit centers.

OGC **will not pay** separate charges for the following expenses:

- Word processing
- Overtime charges (including overtime local transportation and meal charges)
- Secretarial/clerical time or functions such as collating, scheduling, indexing, creating files or typing, opening or closing files, data entry, updating pleading binders or retrieval of documents from files
- File organization
- Basic overhead charges (local telephone charges, local fax charges, ordinary postage, courier services to OGC)
- Books, subscriptions or educational expenses
- Professional association memberships
- Office supplies
- Preparation and review of bills
- Mark-ups for computerized databases (such as Westlaw and Lexis)
- Storage charges
- Re-education of a new attorney if a file is transferred
- Cellular phone charges
- Training on and maintenance of computer systems

OGC **will pay** for the following when incurred specifically for OGC matters:

- Filing fees
- Court reporter fees
- Expert witness fees, if approved in advance by the responsible OGC attorney
- Computerized/database research, if approved in advance by the responsible OGC attorney
- Long distance telephone charges and long-distance fax charges
- Air freight/express mail deliveries, where necessary to meet applicable deadlines, or as may otherwise be approved by the responsible OGC attorney**
- Outside photocopying, binding and printing services, if approved in advance by the responsible OGC attorney
- Outside messenger services**

** While OGC may pay for messenger and express service where warranted, as a general matter, OGC encourages use of e-mail and regular U.S. mail service whenever possible.

F. Travel

Reasonable, actual, ordinary, and necessary expenses for travel, meals, and moderately priced lodging incurred by the law firm to fulfill its obligations under the contract will be permitted as set forth in the contract for legal services. Prior approval is needed for any air travel and only coach air rates will be reimbursed. Prior approval is needed for any overnight stay. Local travel expenses, such as taxis and trains, are reimbursable. Personal auto travel will be reimbursed at the mileage rate authorized by the Commonwealth. The law firm is expected to expense only reasonable amounts for meals and non-alcoholic

beverages. OGC also does not pay for minibar expenses, sundries, in-hotel movies or similar entertainment charges. The law firm shall retain all receipts and shall, upon request of the requisite OGC agency legal office or the Agency for whom the work is being performed, provide any necessary documentation.

G. Legal Research

Counsel should know the legal aspects of the Commonwealth's business for which the law firm has been retained, particularly the areas in which the case or transaction arises, and should keep abreast of developments in the law that may impact its OGC engagement. Prior approval for extensive legal research is required. If it is anticipated that more than two hours will be spent on computerized legal research, the law firm must secure the approval of the responsible OGC attorney. OGC should not be charged for routine research on matters of common knowledge among reasonably experienced counsel in the same geographical location. Where circumstances exist that enable the law firm to use its own data or brief banks, OGC should only be charged for updating the previously researched material. OGC expects that paralegals or more junior associates will be used on research matters. All research completed on an OGC matter is the property of OGC and a copy of all significant research projects should be submitted to OGC.

H. Confidentiality and Media Coverage

OGC expects absolute confidentiality regarding legal matters handled by each outside counsel. In addition, no statement may be made to the press or any other media – on or off the record - unless prior express written approval is secured from OGC. Under no circumstances should a law firm use OGC representation in firm promotional or other informational material without the prior approval of OGC.