

ATTACHMENT A
TERMS AND CONDITIONS TO THE CONTRACT/PURCHASE ORDERS FOR CDBG-DR

The following terms and conditions are made part of the contract/purchase order entered into between the Puerto Rico Department of Housing (PRDOH) and all its vendors and **CONTRACTORS** (hereinafter "**CONTRACTOR**") whether for services or supplies. The **CONTRACTOR** acknowledges that non-compliance with the terms and conditions in this attachment and the terms and conditions in the contract/purchase order may result in the termination of the contract/purchase order.

TERMS AND CONDITIONS

- 1) The **CONTRACTOR** shall furnish all necessary labor, materials, tools, equipment, software, supplies, and transportation necessary for the performance of the **CONTRACTOR**'s duties under the contract/ purchase order. The Contractor shall procure all necessary permits, consents, and licenses to comply with all applicable laws, federal, state, or municipal, along with all regulations, and ordinances of any regulating body. The **CONTRACTOR** shall pay any applicable sales, use, or personal property taxes arising out of this contract/purchase order and the transactions contemplated thereby. Any other taxes levied upon this contract/purchase order, the transaction, of the equipment, or services delivered pursuant here shall be borne by the Contractor. It is clearly understood that the PRDOH is exempt from any taxes regarding performance of the scope of work of this contract/purchase order.
- 2) The **Contractor** shall be solely responsible for all damages to persons and/or property that occur as result of **Contractor**'s negligence, and shall take proper safety and health precautions to protect the health and the property of the general public in relation with the scope of work of the contract/ purchase order. In no event, the PRDOH shall be liable for any indirect, incidental, special, or consequential damages, or damages for loss of profits, revenue, data or use, incurred by either party or any third party, whether in an action in contract or tort, even if the other party or any person has been advised of the possibility of such damages. The **CONTRACTOR** and its affiliates, its successors and assignees will indemnify the PRDOH from any damages and/or losses arising out of any breach of this contract/purchase order by the **CONTRACTOR** or against personal injuries or property damage resulting from any act of negligence or omission by the **CONTRACTOR** and its affiliates in connection with this contract/purchase order.
- 3) The **CONTRACTOR** agrees to indemnify, defend and hold harmless the PRDOH, their officers, and employees from and against: 1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the contract/purchase order; 2) Any claims or losses resulting to any person or entity injured or damaged by the vendor, its officers, employees, or subcontractors by the publications, translation, reproduction, delivery, performance, use or disposition of any data used under this contact/purchase order in a manner not authorized by the contract/purchase order, or by federal or State statues or regulations; 3) Any failure of the vendor, its officers, employees, or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws.
- 4) The **CONTRACTOR**'s responsibility under the contract/ purchase order will terminate when all work has been completed, the final inspection by the PRDOH has been made and the work and/or supplies have been accepted by the PRDOH authorized representative. The **CONTRACTOR** will remain responsible as required by the applicable guaranties.
- 5) Performance warranty:
 - a. **CONTRACTOR** warrants that it will perform all work and provide all Deliverables under this Contract in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
 - b. **CONTRACTOR** warrants that all Deliverables it completes under this Contract shall: meet or exceed the standards of **CONTRACTOR**'s trade, profession, or industry; meet or exceed the specifications set forth in the Attachments; and be fit for ordinary use, of good quality, and with no material defects.
 - c. If **CONTRACTOR** submits Deliverables that do not meet specifications, fails to complete Deliverables timely, or fails to perform its obligation under this Contract, PRDOH may require **CONTRACTOR**, at its sole expense, to:
 - i. repair or replace Deliverables that do not meet specifications;
 - ii. refund payment for Deliverables that do not meet specifications and accept the return of such Deliverables;
 - iii. pay liquidated damages for any past due Deliverable; and
 - iv. take necessary action to ensure that future performance and Deliverables meet specifications and conform to the Contract.
- 6) The **CONTRACTOR** will submit in writing to the Contracting Officer any complaint and/or dispute it might have related to its duties under the contract/ purchase order and/or the rejection of the services and/or goods by the PRDOH. The Contracting Officer will render a decision regarding the dispute within thirty (30) days, after receipt of the **Contractor**'s complaint, and this decision will be final.
- 7) The **CONTRACTOR** will not hire SUBCONTRACTORS that have been denied participation in HUD and/or the Government of Puerto Rico contracting programs. The **CONTRACTOR** must verify the eligibility of the subcontractors in the System for Award Management (SAM) and in the Limited Denial of Participation List (LDP), and retain documentation of the search results to confirm eligibility of the subcontractors. To comply with the eligibility verification process, the **CONTRACTOR** may request assistance from the CDBG-DR Procurement Office at the following email address: cdbgdr-procurement@vivienda.pr.gov. All terms and conditions herein apply to subcontractors.
- 8) The PRDOH, the Government of Puerto Rico, HUD, and the U.S. Comptroller General shall have unlimited access to records produced in the performance of the duties under the contract/ purchase order, whether written or mechanized in possession of the **CONTRACTOR**, for a period of five (5) years from closeout of the grant to the state, or the period required by other local applicable laws and regulations. Such records include but are not limited to: Records providing a full description of each activity undertaken; Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG-DR program; Records required to determine the

eligibility of activities; Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG-DR assistance; Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG-DR program regulations; Financial records as required by 24 C.F.R. § 570.502, and 2 C.F.R. Part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and other records necessary to document compliance with this contract/purchase order, any other applicable Federal statutes and regulations, and the terms and conditions of PRDOH's Federal award.

- 9) The **CONTRACTOR** warrants that to the best of its knowledge, it does not have any apparent or real conflict of interest, defined as a situation in which **CONTRACTOR** may have an unfair competitive advantage over other **CONTRACTORS** or prospective **CONTRACTORS** regarding any PRDOH procurement proceedings. If the **CONTRACTOR** discovers a conflict of interest after the contract was awarded, the **CONTRACTOR** before the award was made and intentionally did not disclose it to the PRDOH, the Contracting Officer may terminate the contract/ purchase order through written notification.
- 10) In the event that the **CONTRACTOR** is not in compliance with any of the terms and conditions in this attachment and/or the terms and conditions in the contract/ purchase order, the Contracting Officer may cancel the contract/purchase order immediately and it may declare the **CONTRACTOR** ineligible for further Puerto Rico Department of Housing contracts.
- 11) The PRDOH may terminate in whole or in part this contract/purchase order if **CONTRACTOR** fails to fulfil any of its obligations, for its convenience (necessary or convenient to the PRDOH), at PRDOH's discretion (with or without cause), if **CONTRACTOR** unilaterally and without prior notice chooses to abandon in any shape, form, or fashion or ceases and desists in the specific performance of its general and particular duties and responsibilities as agreed, if the **CONTRACTOR** is subject to a criminal or criminal or civil action, suit, proceeding, inquiry or court of applicable jurisdiction, or any governmental agency, or the **CONTRACTOR** is subject to an order, judgment, or opinion, issued by any federal or local authority, a court of applicable jurisdiction, or any governmental agency, in connection with the execution, delivery, and performance by the **CONTRACTOR** of this contract/purchase order, if the **CONTRACTOR** has been noncompliant, breach, inaccuracy of any representation, warranties, covenants, or the certifications provided to the PRDOH, whether the noncompliance, breach or inaccuracy takes place before or after the execution of this contract/purchase order, or if any judgment that obligates the PRDOH to terminate the contract/purchase order pursuant to Act Number 2 of January 2, 2018, as amended, known as the Anti-Corruption Code for the New Puerto Rico.
- 12) The work to be performed under this contract/purchase order is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. Thresholds for section 3 covered housing and community development assistance are the following: A- Recipient, The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds \$200,000.00. B- **CONTRACTOR** and subcontractor. The requirements of this part apply to **CONTRACTORS** and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds \$200,000.00 and the contract or subcontract exceeds \$100,000.00. The **CONTRACTOR** agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The **CONTRACTOR** will not subcontract with any subcontractor where the **CONTRACTOR** has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract/purchase order for default, and debarment or suspension from future HUD assisted contracts.
- 13) The **CONTRACTOR** will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include: (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- 14) Any additional funds to complete the services or goods requested by the PRDOH to the **CONTRACTOR** will be subject to evaluation before acceptance as well as funds availability and will require an amendment to this contract/purchase order.
- 15) An authorized representative of the PRDOH will review invoices and, if adequate, will approve and process its payment.
- 16) While providing the services under this contract/purchase order, the **CONTRACTOR** must adhere to applicable requirements of the CDBG-DR grant. If the **CONTRACTOR** performs ineligible activities under the CDBG-DR grant or program, the **CONTRACTOR** cannot include them in the invoice for payment to the **CONTRACTOR**.
- 17) **CONTRACTOR** shall be liable to the PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this contract/purchase order. **CONTRACTOR** shall reimburse such disallowed costs from funds other than those **CONTRACTOR** received under this contract/purchase order.
- 18) The **CONTRACTOR** acknowledges and agrees to repay any CDBG-DR funds used for ineligible costs.
- 19) In order for the **CONTRACTOR** to receive payment for any work performed hereunder, the following certification must be included in each application for payment or invoice submitted to the PRDOH for payment:
"Under penalty of absolute nullity, I certify that no public servant of the government entity is a party to or has an interest in the profits or benefits that are the product of the contract subject of this invoice, and to be a party to or have an interest in the profits or benefits of resulting from the contract, under this invoice a prior dispensation has been issued. The sole consideration to furnish the contracted goods or services subject of the contract is the payment

agreed upon with the authorized representative of the parties. The amount that appears in the invoice is fair and correct. The work has been performed, the products have been delivered and the services rendered, and no payment has been received for them."

- 20) With the exception of the **CONTRACTOR**'s working papers, the **CONTRACTOR** acknowledges the PRDOH's ownership of all information, drafts, documents, reports, papers, and other materials developed and prepared by the **CONTRACTOR**, its agents or representatives, for purposes of performing key obligations hereunder. In the event of any termination, the **CONTRACTOR** shall deliver such information, drafts, reports, papers and other materials to the PRDOH, in document form or as computer program data, and the **CONTRACTOR** recognizes the PRDOH's right to request such documentation or computer program data. If the **CONTRACTOR** fails to deliver said information, the PRDOH may seek a judicial order to enforce its rights.
- 21) Proof of expenditures incurred by the **CONTRACTOR** on behalf of PRDOH shall be made available to PRDOH. The **CONTRACTOR** agrees to maintain accurate records and files of all contract/purchase order documents, correspondence, book estimates, bills, and other information related to the **CONTRACTOR** account. These documents shall be open for the PRDOH examination at all reasonable times during the term of this contract/purchase order, and up to five (5) years from closeout of the grant to the state, or the period required by other local applicable laws and regulations.
- 22) Non-disclosure and Confidentiality:
- a. Confidential Information; Definition: The term Confidential Information as used throughout this Section, means any information concerning PRDOH operations and that of its **CONTRACTOR** (e.g., the projects, computer processing systems, object and source codes and other PRDOH business and financial affairs). The term Confidential Information shall also deem to include all notes, analysis, compilation, studies and interpretation or other documents prepared by **CONTRACTOR**, its agents or representatives, in connection with PRDOH operations.
 - b. Non-Disclosure: **CONTRACTOR** agrees to take all reasonable steps or measures to keep confidential all Confidential Information and will not, at any time, present or future, without PRDOH express written authorization, signed by the Secretary of the PRDOH, use or sell, market or disclose any Confidential Information to any third party, **CONTRACTOR**, corporation, or association for any purpose whatsoever. **CONTRACTOR** further agrees that, except as they relate to the normal course of the service, the **CONTRACTOR** will not make copies of the Confidential Information except upon PRDOH express written authorization, signed by an authorized representative of PRDOH, and will not remove any copy or sample of Confidential Information without prior written authorization from PRDOH. **CONTRACTOR** retains the right to control its work papers subject to these confidentiality provisions.
 - c. Return Documents: Upon receipt of written request from the PRDOH, **CONTRACTOR** will return to PRDOH all copies or samples of Confidential Information which, at the time of the notice are in **CONTRACTOR**'s or its agent's possession. **CONTRACTOR** reserves the right to retain a set of its work papers.
 - d. Equitable Relief: The **CONTRACTOR** acknowledges and agrees that a breach of the provision of subparagraph B and C of this Section will cause PRDOH to suffer irreparable damage that could not be remedied or compensated adequately only by mere monetary retribution. The **CONTRACTOR** further agrees that money damages may not be a sufficient remedy for any breach of this Section. Accordingly, the **CONTRACTOR** agrees that PRDOH shall have the right to seek injunctive relief and the specific performance of the provisions of this Section to enjoin a breach or attempted breach of the provision hereof, such right being in addition to any and all other rights and remedies that are available to PRDOH by law, equity or otherwise.
- 23) Nothing contained in this Acontract/purchase order shall create a contractual relationship with, or a cause of action of a third party against either the PRDOH or the **CONTRACTOR**.
- 24) The **CONTRACTOR** certifies, to the best of his or her knowledge, that:
- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Forms-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The **CONTRACTOR** shall require that the language of this certification be included in the award documents for all subcontracts. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. §1352 (as amended by the Lobbying Disclosure Act of 1995). The **CONTRACTOR** acknowledges that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The **CONTRACTOR** certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the **CONTRACTOR** understands and agrees that the provisions of 31 U.S.C. §3801 et seq., apply to this certification and disclosure, if any.
- 25) The **CONTRACTOR** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The **CONTRACTOR** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **CONTRACTOR** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this

nondiscrimination clause. In the event of the **CONTRACTOR**'s noncompliance with the nondiscrimination clauses of this contract/purchase order or with any of the said rules, regulations, or orders, this contract/purchase order may be canceled, terminated, or suspended in whole or in part and the **CONTRACTOR** may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 26) The **CONTRACTOR** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 27) The **CONTRACTOR** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.
- 28) The Federal Government is not a party to this contract/purchase order and is not subject to any obligations or liabilities to the non-Federal entity, **CONTRACTOR**, or any other party pertaining to any matter resulting from the contract/purchase order.
- 29) **CONTRACTOR** shall produce all insurance required by the PRDOH, if any.
- 30) In the event that **CONTRACTOR** files for bankruptcy protection, the Government of Puerto Rico and PRDOH may deem this contract/purchase order null and void, and terminate this contract/purchase order without notice.
- 31) This contract/purchase order shall be binding upon and shall inure to the benefit of PRDOH and the **CONTRACTOR**, their successors and assigns. The **CONTRACTOR** shall not assign this contract/purchase order, in whole or in part, without the prior written consent of PRDOH, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.
- 32) The rights of each party hereunder are personal to that party and may not be assigned or otherwise transferred to any other person, **CONTRACTOR**, corporation, or other entity without the prior, express, and written consent of the other party.
- 33) The failure or delay of either party to insist upon the performance of and/or the compliance with any of the terms and conditions of this contract/purchase order shall not be construed as a waiver of such terms and conditions or the right to enforce compliance with such terms and conditions.
- 34) This contract/purchase order shall be governed by, interpreted and enforced in accordance with, the laws of the Government of Puerto Rico and any applicable federal laws and regulations. The parties further agree to assert any claims or causes of action that may arise out of this contract/purchase order in the Puerto Rico Court of First Instance, Superior Court of San Juan, Puerto Rico.
- 35) The fulfillment of this contract/purchase order is based on those funds being made available to the PRDOH as the lead administrative agency for Recovery. All expenditures under this contract/purchase order must be made in accordance with this contract/purchase order, the policies and procedures promulgated under the CDBG-DR Program, and any other applicable laws. Further, **CONTRACTOR** acknowledges that all funds are subject to recapture and repayment for non-compliance.
- 36) PRDOH may recapture payments it makes to **CONTRACTOR** that (i) exceed the maximum allowable rates; (ii) are not allowed under applicable laws, rules, or regulations; or (iii) are otherwise inconsistent with this contract/purchase order, including any unapproved expenditures. **CONTRACTOR** must refund such recaptured payments within thirty (30) days after the PRDOH issues notice of recapture to **CONTRACTOR**.
- 37) **CONTRACTOR** shall be liable to the PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this contract/purchase order. **CONTRACTOR** shall reimburse such disallowed costs from funds other than those **CONTRACTOR** received under this contract/purchase order.
- 38) The terms and conditions of this contract/purchase order related to the following subjects shall survive the termination or expiration of this contract/purchase order: interpretive provisions; consideration; warranties; general affirmations, federal assurances, federal and state certifications; CDBG-DR and state funding, recapture of CDBG-DR and/or state funds, overpayment of CDBG-DR and/or state funds; ownership and intellectual property, copyright; records retention methods and time requirements; inspection, monitoring and audit; confidentiality; public records; indemnification and liability; infringement of intellectual property rights; independent **CONTRACTOR** relationship; compliance with laws; notices; choice of law and venue; severability; dispute resolution; consolidations, merger and dissolution. Terms and conditions that, explicitly or by their nature, evidence the Parties' intent that they should survive the termination or expiration of this contract/purchase order shall so survive.