

Attachment A: Terms and Conditions NWIRC Client Using NWIRC Staff

NWIRC has contracted with the Commonwealth of Pennsylvania to serve as an Industrial Resource Center pursuant to the Industrial Resource Center Guidelines established by the Commonwealth of Pennsylvania. NWIRC is also an affiliate of the National Institute of Standards and Technology's Manufacturing Extension Partnership, and subject to its applicable regulations and standards.

The Client has requested assistance from NWIRC as described in the Contract. These terms and conditions apply to the project(s) referenced in that contract.

1. Obligations of NWIRC

NWIRC shall provide management services as described in the Proposal. The fee shall not exceed the dollar amount stated therein. The price quoted in this proposal remains open for thirty (30) calendar days from the date of the NWIRC's signature. Once signed by the Client, the proposal becomes a contract. The contract will have pending status if work on the project has not commenced within 45 days of customer company signature. A pending contract may result in changes of project staffing and/or timing. If, due to Client delays, work has not commenced within 90 days of Client signature, the contract will be terminated according to the terms and conditions herein.

2. Obligations of Client

Client Cooperation. Client is expected to cooperate with the NWIRC including providing all information reasonably requested, in order for the Services described in the Contract to be undertaken; and is expected to complete no less than two Impact Surveys after project work is complete, upon the request of the NWIRC.

Costs and Payment. Payment terms are outlined in the proposal. All fees will be invoiced with terms of Net 30. The project shall be suspended if payments are delinquent.

Grant Assistance. NWIRC may provide mini-grant assistance for the management services described in the originating contract. The mini-grant shall not exceed the dollar amount stated therein regardless of completed project status and cost. Should a project require less than proposed costs, the NWIRC shall prorate mini-grant assistance by the decremented actual costs relative to proposed costs. Should a project not be completed in full per the originating contract, the NWIRC may provide prorated mini-grant assistance if project impact can be realized.

Cancellation Policy. Upon client project cancellation, the client agrees to remit payment for NWIRC expenses incurred up to the date of the cancellation.

3. Confidential Information

Each party agrees to promptly provide the other with such documentation and other information, oral or written, as reasonably requested to conduct the Services and make recommendations. Each party agrees that it shall not duplicate, use, or disclose any Confidential Information (as defined below) of the other party and shall keep confidential and safeguard such Confidential Information with the same degree of protection and care that such party uses to protect its own Confidential Information. Within thirty (30) days after termination of the Contract, for any reason, each party shall return all Confidential Information of the other party or certify that all copies of such Confidential Information in its possession have been destroyed. Confidential Information shall be clearly identified as proprietary or confidential at the time of disclosure. Confidential Information which is disclosed orally shall be reduced to writing and marked confidential within five (5) days of its disclosure. Confidential Information does not include information which is: (i) already known by the receiving party as may be shown by competent written evidence; (ii) in the public domain; (iii) conveyed to the receiving party by a third party, without restrictions; (iv) released by the disclosing party without restriction; (v) independently developed by the receiving party; or (vi) required by Court Order to be released. The provisions of this section shall serve for five (5) years, regardless of the termination or expiration of this Contract.

4. Representations of Client

Client represents and warrants that it is a Pennsylvania manufacturer and gaining NWIRC assistance will improve its business viability.

5. Warranty

NWIRC shall use reasonable care in the performance of the Services hereunder. NWIRC cannot and does not guarantee, in any way, its services as part of this Project. Client shall have sole responsibility for the consequences of any use or inability to use information, apparatus, method, or process obtained from NWIRC and NWIRC, its employees, agents, officers, and directors shall have no legal liability therefor. THE TOTAL LIABILITY OF NWIRC UNDER THIS CONTRACT FOR BREACH OF WARRANTY, OR FOR ANY OTHER BREACH OF THIS AGREEMENT OR FOR ANY OTHER CLAIM RELATED TO THE SERVICES, SHALL NOT EXCEED THE AMOUNT PAID TO NWIRC BY THE CLIENT COMPANY HEREUNDER. NWIRC SHALL NOT BE LIABLE FOR ANY: INCIDENTAL OR INCONSEQUENTIAL DAMAGES; LOSS OF PROFITS OR REVENUE; LOSS OF USE; LOSS OF PRODUCTION; OR PROGRESS OF CONSTRUCTION. ANY LEGAL ACTION AGAINST NWIRC MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE OCCURRENCE OR OMISSION GIVING RISE TO THAT ACTION OR IT SHALL BE FOREVER BARRED AND DEEMED WAIVED.

6. Force Majeure

No liability under this Agreement shall result to either party from any delay in performance or nonperformance when caused by circumstances reasonably beyond the control and without the fault or negligence of such party, including but not limited to, fire, flood, war, governmental regulations, labor disputes, or specifically in the case of NWIRC, withdrawal or shortage of funding or key personnel. In that event, NWIRC reserves the right to allocate funds or personnel among its clients on such basis as NWIRC deems equitable or desirable.

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7. Termination and Suspension

NWIRC may suspend performance or terminate this Contract on written notice to the parties for a material violation of any of its terms; for any material misrepresentation of Client made in connection with any proposal, solicitation, request, Contract or application relied upon by NWIRC; as may be practicable at any time it is notified by the Commonwealth of Pennsylvania that the funding of NWIRC is or will be terminated or suspended; in the event of a termination of the grant, a withdrawal or shortage of funding; in the event that the Client is convicted of a criminal act, becomes insolvent, has a petition in bankruptcy filed by or against it, has a receiver appointed for it, makes an assignment for the benefit of creditors; in the event the Client fails to pay its Fees on time, or is otherwise in breach of this Agreement. Payment of any mini-grant shall at times be subject to the availability of funds for the purposes of this Contract.

8. Modification and Waiver

This Contract shall not be modified, extended, or changed except by written amendment executed by or on behalf of each of the parties. No waiver by any party of a breach of any provision of this Contract shall be taken or held to be a waiver by such party of any succeeding breach or such provision of any other provisions to the Contract.

9. Entire Agreement

This Contract contains the entire understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, expressed or implied, oral or written.

10. Controlling Law

This Contract shall be governed by the laws of the Commonwealth of Pennsylvania.

11. Role of Commonwealth of Pennsylvania and the United States of America

The Commonwealth of Pennsylvania and its agencies, officers, employees and agents are not parties to the Contract. Consequently, you have no right pursuant to this Contract for breach of the Contract against the Commonwealth of Pennsylvania, its agencies, employees and agents. You are also on notice of the terms and conditions of the Agreement between the Commonwealth of Pennsylvania and NWIRC, including those provisions providing for the termination of the Agreement between the Commonwealth of Pennsylvania and NWIRC by the Commonwealth of Pennsylvania.

Unless otherwise prohibited by law, the Parties agree to indemnify and hold harmless NWIRC, the Commonwealth of Pennsylvania, and the United States Government for any loss, claim, damage, or liability of any kind involving its employees arising in connection with this agreement.

12. Assignment

Client may not assign or transfer its rights or obligations under this contract without the prior written consent of NWIRC.

13. Beneficiaries

The rights, benefits and indemnification under this Contract shall run to the benefit of NWIRC, its officers, directors, employees, agents, subcontractors and assigns, if any.

14. Federal Procurement

Each Party certifies that it is not limited on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689 "Debarment and Suspension", or that it is not otherwise debarred, suspended, or excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549.

15. Equal Employment Opportunity & Non-Discrimination

Each Party agrees to abide by the requirements of the following, as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Federal Executive Order 11246, as amended by Federal Executive Orders 11375 and 12086; the Federal Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Educational Amendments of 1972; The Age Discrimination Act of 1975, as amended; and the requirements of the Americans with Disabilities Act of 1990. The parties agree to continue their respective policies of nondiscrimination based on Title VI of the Civil Rights Act of 1964 in regard to sex, age, race, color, creed, national origin, Title IX of the Education Amendments of 1972 and other applicable laws, as well as the Americans with Disabilities Act.

16. Non-Solicitation of Employees

During the term of this Contract and for a period of one (1) year after its termination, no Party shall solicit for hire as an employee, consultant, or otherwise any of the other party's personnel, who have performed services under this Contract, without such other party's written consent. Damages equal to thirty percent (30%) of the employee's annual salary shall be payable to the aggrieved party in the event of violation of this clause.

17. Auditable Records

The Client shall maintain such records as are necessary to assure accuracy and validity of any performance data submitted to the NWIRC or Commonwealth. The Client shall establish and maintain such records in a manner enabling identification and documentation of both the funds provided pursuant to the Contract and the funds furnished by the Client or other sources.