

**DEPARTMENT STANDARD GENERAL TERMS AND CONDITIONS
(CONTRACT) (REV. 12/24)**

1. DEFINITIONS

As used in this contract, these words shall have the following meanings:

- A. Commonwealth means the Commonwealth of Pennsylvania.
- B. Contracting Officer means the Deputy Secretary for Administration, or designee, designated to act for the Department in the processing of this contract.
- C. Days means calendar days unless specifically indicated otherwise.
- D. Department means the Pennsylvania Department of Health.
- E. Project Officer means the person designated to act for the Department in administering this contract.
- F. Subcontract means the contract the Contractor enters into with another entity to perform work under this contract regardless of the term the contract is referred to as.
- G. Subcontractor means the entity the Contractor enters into a contract with to perform work under this contract regardless of the term the entity is referred to as.

2. PERFORMANCE

- A. **Commencement.** The Contractor shall not commence performance for work under this contract until:
 - (i) the Effective Date has occurred; and
 - (ii) the Department has issued, to the Contractor, a purchase order or other written notice to proceed signed by the Contracting Officer.

The Department shall not be liable to pay the Contractor for any supply furnished, work performed, or expenses occurred until conditions (i) and (ii) of this Commencement sub-section have been satisfied.

- B. **No Verbal Authority.** No Department employee has the authority to verbally direct the Contractor to commence performance for the work under this contract prior to the satisfaction of the conditions (i) and (ii) of the

Commencement sub-section, above.

- C. **Contractor Waiver.** The Contractor hereby waives any claim or cause of action for any supply furnished, work performed, or expenses occurred prior to prior to the satisfaction of the conditions (i) and (ii) of the Commencement sub-section, above.

3. COMPLIANCE WITH LAW

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this contract.

4. LAWS AND REGULATIONS

This contract is subject to the provisions of all applicable federal, state, and laws and regulations and all subsequent amendments in such laws. Definitions of service, eligibility of recipients of service, and other limitations on the purchase of the services established in this contract are subject to modification by amendments to such laws and regulations without further notice to the contractor.

5. CONTRACT CONTINGENT UPON FUNDING

There must be an appropriation and available state funding, federal funding, or both for the Department to pay the Contractor.

6. BACKGROUND CHECKS

Contractor shall comply with Information Technology Policy, Minimum Contractor Background Checks Policy (ITP-SEC009). In doing so, Contractor shall comply with the following:

- D. Contractor shall, at its expense, arrange for a background check for each of its employees, as well as for the employees of its subcontractors, who will have access to Commonwealth owned or leased facilities, either through onsite or remote access or who will have access to Commonwealth data. Background checks shall be conducted via the Request for Criminal Record Check for in-state Contractor employees (available at <https://www.pa.gov/en/services/psp/request-a-criminal-history-background-check.html>) or via a criminal background check through the appropriate State Agency for the out-of-state Contractor employees. The background check shall be conducted prior to initial access by Contractor employees and annually thereafter.
- E. Before the Commonwealth grants a Contractor employee access to

Commonwealth owned or leased facilities or Commonwealth data, the Contractor shall provide written confirmation to the office designated by the Department that the required background check(s) has been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terrorist threats, violence, use of a lethal weapon, breach of trust, or breach of fiduciary responsibility; or which raises concerns about building, system, or personal security, or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee, and shall not permit that employee remote access to Commonwealth facilities or systems or access to any Commonwealth data, unless the agency consents, in writing, prior to the access being provided. The Commonwealth may withhold its consent at its sole discretion. Failure of the Contractor to comply with the terms of this Background Checks paragraph may result in default of the Contractor under its contract with the Commonwealth.

The Department may require that Contractor or Subcontractor undergo additional background checks.

7. ACCESS TO CERTAIN CAPITAL COMPLEX BUILDINGS AND OTHER STATE OFFICE BUILDINGS

If Contractor, or Subcontractor, requires access to certain Capitol Complex buildings and other state office buildings, Contractor or Subcontractor shall comply with Commonwealth Management Directive 625.10 Amended (Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings).

8. INDEPENDENT CONTRACTOR

The parties intend that the Contractor will be an independent contractor. Contractor shall not act as an employee or agency of the Department.

9. PRIME CONTRACTOR

Contractor shall be the prime contractor for this contract. Contractor shall be liable to the Department for any failure to provide adequate services under this contract whether Contractor, itself, provides such services. Contractor shall be the sole point of contact for all contractual matters, including payment, between itself and Subcontractor. Contractor shall be the sole point of contact for all contractual matters, including payment, between itself and the Department. The Department shall not be liable for any Subcontract contractual matters, including payment, between Contractor and Subcontractor.

10. INTEREST OF CONTRACTOR

The Contractor represents and warrants that it has no present or future direct or indirect interest that conflicts with the performance of its services under this contract. Contractor shall not acquire any direct or indirect interest that conflicts with the performance of its services under this contract.

The Contractor represents and warrants that none of Contractor's employees have a direct or indirect interest that conflicts with the performance of its services under this contract. Contractor shall take appropriate action to resolve such conflict with the employee as acceptable to the Department. If Contractor seeks to hire as an employee any person who has a direct or indirect interest that conflicts with the performance of its services under this contract, Contractor shall notify the Department and take appropriate action to resolve such conflict as acceptable to the Department. For purposes of this provision, Contractor officers and directors are considered employees of the Contractor.

The Contractor represents and warrants that no members of its board of directors have a direct or indirect interest that conflicts with the performance of its services under this contract. Contractor shall take appropriate action to resolve such conflict with a member of its board of directors as acceptable to the Department. If Contractor seeks to appoint a person who has a direct or indirect interest that conflicts with the performance of its services under this contract, Contractor shall notify the Department and take appropriate action to resolve such conflict as acceptable to the Department.

11. COVENANT AGAINST CONTINGENT FEES

A. **Definitions.** For purposes of this Covenant Against Contingent Fees clause, the following definitions apply:

- (iii) Bona fide agency, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.
- (iv) Bona fide employee, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

- (v) Contingent fee, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.
- (vi) Improper influence, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

B. Covenant.

- (i) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Department shall have the right to annul this contract without liability or, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

12. EXCLUDED TERMS AND CONDITIONS

This contract excludes any terms and conditions from the Contractor's website, quotations, invoices, business forms, click-through agreements, or other documentation. Such terms and conditions are void.

13. TRAVEL AND SUBSISTENCE COSTS

The Contractor shall not invoice for travel or subsistence costs except as authorized by the Department or otherwise provided for in this contract.

14. INSURANCE

The Contractor shall have public liability, property damage, and workers' compensation insurance related to its services under this contract.

The Contractor is responsible for paying premiums for such insurance.

15. TAXES

The Contractor is responsible for paying taxes and social security premiums. The Contractor is responsible for making income tax deductions and any other taxes or payroll deductions required by law for its employees who are performing work under this contract.

16. COMMONWEALTH TAX EXEMPTION

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax-free purchases under registration No. 23-7400001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas-guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

17. OFFICIALS NOT TO BENEFIT

The Department represents and warrants that none of the Department's officials or employees exercising any function or responsibilities under this contract—who have a personal interest or interest from a corporation, partnership, or association in which they are, directly or indirectly, interested—will participate in any decision relating to this contract. The Department shall take appropriate action to resolve any conflicts with the official or employee as acceptable to the Contractor. The Department represents and warrants that no such Department official or employee has any interest, direct or indirect, in this contract or the proceeds of this contract.

Contractor shall not permit a General Assembly member exercising any function or responsibility under this contract—who has a personal interest or interest from a corporation, partnership, or association in which the member is, directly or indirectly, interested—to participate in any decision relating to this contract.

18. SUBCONTRACT

The Contractor may Subcontract any portion of the Services or Supplies described in this contract to Subcontractors selected by Contractor and approved in writing by the Contracting Officer, whose approval shall not be unreasonably withheld. Notwithstanding the above, if Contractor has disclosed the identity of Subcontractor together with the scope of work to be subcontracted in its Proposal, award of the contract is deemed approval of all named Subcontractors and a separate approval is not required. Additionally, separate approval by the Department is not required for the Contractor's purchase of articles, supplies, equipment, and services that are necessary and incidental to the performance of the

Contractor's work under this contract. The existence of any subcontract shall not change the obligations of Contractor to the Department under this contract. Upon request of the Department, the Contractor must provide the Commonwealth with an un-redacted copy of the Subcontract between the Contractor and the subcontractor. The Department reserves the right, for good cause, to require that the Contractor remove a subcontractor from the project. The Department shall not be responsible for any costs incurred by the Contractor in replacing the Subcontractor if good cause exists.

19. ASSIGNABILITY

- A. Subject to the terms and condition of this paragraph, this contract is binding upon the parties and their respective successors and assignors.
- B. The Contractor may not assign, in whole or in part, this contract or its rights, duties, obligations, or responsibilities without the prior written consent of the Department, which consent may be withheld at the sole and absolute discretion of the Department.
- C. For the purposes of this contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- D. Any assignment consented to by the Department shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of this contract and to assume the duties, obligations, and responsibilities being assigned.
- E. Notwithstanding the foregoing, the Contractor may, without the consent of the Department, assign its rights to payment to be received under this contract, provided that the Contractor provides notice of such assignment to the Department together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this contract.
- F. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, is not considered to be an assignment. The Contractor shall give the Department notice of any such change of name.

20. NON-EXCLUSIVE CONTRACT

The Department may award other contracts for additional work within, or related to, scope of this contract.

21. OTHER CONTRACTORS

Contractor shall coordinate its services, and cooperate with other contractors and Department employees for additional work within, or related to, the scope of this contract. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Department employees. The Department shall include this paragraph in the contracts of all contractors with whom this Contractor will be required to cooperate with. The Department shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

22. QUALITY ASSURANCE

Unless otherwise provided in this contract, the Contractor shall furnish all necessary qualified personnel, material and equipment required by this contract and shall manage and direct the same to complete the work required by this contract. The Contractor shall provide special reports related to quality assurance upon request of the Department and in the form requested by the Department.

23. HEALTH EQUITY

The Contractor shall comply with the following. The Contractor shall include this Health Equity paragraph in all Subcontracts where the Subcontractor is providing services required under this contract.

- A. The Contractor and Subcontractor shall provide services in an equitable manner to all populations served and especially those currently underserved, socially disadvantaged, and ethnically diverse groups which includes services that are culturally and linguistically appropriate. Services shall be consistent with the provisions of the National Standards for Culturally and Linguistically Appropriate Services in Health Care (CLAS Standards).
- B. The Contractor and Subcontractor shall identify specific group(s) or population segments to be served who experience a disproportionate burden of disease, health condition or problem being addressed by this contract.
- C. The Contractor and Subcontractor shall identify and address the specific

social and environmental conditions (social determinants of health) that put disproportionately affected groups at increased risk of the disease, health condition or problem being addressed by this contract.

24. AVAILABILITY OF INFORMATION

The Contractor shall provide all information obtained through its services under this contract to the Department upon request.

25. FISCAL AND PROGRAM RECORDS

- A. The Contractor shall maintain program and fiscal records. For purposes of this contract, “fiscal and program records” means books, records, documents, sub-grants or sub-contracts and other evidence pertaining to the costs and expenses of this contract, records relating services being provided, statistical information collected in the course of performing services, policies and procedures, information relating to staff and job descriptions, and all information necessary for the Contractor to perform the work required under this contract.
- B. The Department—and state and federal personnel and other persons duly authorized by the Department—may conduct program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services.
- C. The Contractor shall maintain statistical records.
- D. The Contractor shall produce program narrative and statistical data upon request of the Department and in the form requested by the Department.
- E. The Contractor shall maintain fiscal records to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. If the Contractor is not a public body, the Contractor shall maintain books, records, documents, and other evidence in accordance with accounting procedures and practices that meet Generally Accepted Accounting Principles (“GAAP”).
- F. If this contract provides funding for a clinic or program that receives other income or funding than directly through this contract (such as, third-party reimbursement for patients), then this Fiscal and Program Records

paragraph applies to the Contractor's records pertaining to those other sources of income or funding.

- G. The Contractor shall make records available during the term of this contract, and for periods set forth in the Record Retention Requirements paragraph, below, for inspection, audit, or reproduction by any authorized representative of the Department, the Department's Comptroller, the Auditor General, the Inspector General or federal auditors.
- H. If the Contractor enters into any Subcontract in the performance of this contract, then this Fiscal and Program Records paragraph applies to Contractor's Subcontract. Contractor shall include this Fiscal and Program Records paragraph into each such Subcontract.
- I. The Contractor shall collect statistical data of a fiscal nature on a regular basis. Contractor shall make fiscal statistical reports upon request of the Department and in the form requested by the Department.

26. RECORD RETENTION REQUIREMENTS

The Contractor shall retain all records kept pursuant to the Fiscal and Program Records paragraph, above, pursuant to the provisions of this Record Retention Requirements paragraph.

- A. The Contractor shall retain its records for a period of four years from the date of final payment under this contract, and for such period, if any, as is required by applicable statute, by any other paragraph of this contract, or by sub-paragraphs (i) or (ii), below.
 - (i) If this contract is completely or partially terminated, the Contractor shall retain all records relating to the work terminated for a period of five years from the date of any resulting final payment.
 - (ii) The Contractor shall retain records that—relate to litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract as to which exception has been taken by the auditors—until such litigation, claims, or exceptions have been disposed of.
- B. Except for the records described in sub-paragraph A.(ii), above, the Contractor may, with the concurrence of the auditors, in fulfillment of its obligation to retain its records as required by this Record Retention Requirements paragraph, substitute photographs, microphotographs, or other authentic reproductions of such records after the expiration of two

years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate. The Department may, with the concurrence of the auditors, authorize a shorter period than the one just mentioned in this sub-paragraph B.

27. CONFIDENTIALITY

A. Confidential Information. The parties shall protect the confidentiality of each other's confidential information. To designate information as confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the Work Statement). Contractor shall additionally use the process outlined in sub-paragraph F. of this Confidentiality paragraph, below, when submitting information to the Department that the Contractor believes to be confidential, proprietary information, or trade secrets, or some combination thereof. Neither party may assert that information owned by the other party is such party's confidential information.

(i) **Medical Information.** The Contractor shall protect the confidentiality of medical records of individuals served by the Contractor under this contract. The Contractor shall not disclose such medical information except as permitted by sub-paragraph B. of this Confidentiality paragraph, below, or to disclose such medical records to the Department for purposes of consultation or for the Department's monitoring of this contract.

(ii) **Sensitive Information.**

a. Sensitive information means a document or information that contains the description, design, operational plan, or other vital information about a critical facility or infrastructure located in Pennsylvania and bordering states (e.g., nuclear power plants, hazardous chemical plant, oil refinery, bridge, dam, tunnel, etc.), or contains information about the operational protocols or emergency response capabilities of state and local agency personnel, the content of which could be used by a terrorist or enemy of the United States to plan an attack upon a critical facility located in Pennsylvania and bordering states or engage in other activities that could cause death or injury to fire, police, medical, military, or other emergency response personnel, public officials, or the

general public.

- b. The Contractor shall protect the confidentiality of sensitive information. The Contractor shall not disclose sensitive information except: (1) as permitted by sub-paragraph B. of this Confidentiality paragraph, below; (2) to the Department for purposes of consultation or for the Department's monitoring of this contract; or (3) matters of public record.

B. Copy, Use, Disclosure. The parties shall not copy, use, or disclose confidential, medical information, or sensitive information except as permitted below:

- (i) it is essential for activities under this contract;
- (ii) the party of the confidential information has authorized it in writing; and
- (iii) in the case of disclosure, where the recipient of the information has agreed to be bound by confidentiality terms no less restrictive than those set forth in this contract.

Each copy of such confidential information, medical information, and sensitive information shall be marked by the party making the copy with any notices appearing in the original.

C. Termination or Expiration. Upon termination or expiration of this contract, or any license granted under it, the receiving party shall return to the party of the confidential, medical, or sensitive information all copies of it in the receiving party's possession, other than one copy. The receiving party may keep one copy for archival purposes only; such copy is subject to this contract's security, privacy, data retention, data destruction, and confidentiality provisions (all such provisions surviving the termination or expiration of this contract).

D. Material Breach. The parties acknowledge that a material breach of this Confidentiality paragraph may—after failure to cure within the time period specified in this contract, and at the discretion of the non-breaching party--result in termination for default pursuant to the Default and Termination paragraphs, below, of this contract, in addition to other remedies available to the non-breaching party.

E. Nonapplicable. Unless this information is otherwise protected by law, this Confidentiality paragraph does not apply to information:

- (i) that are matters of public record;
- (ii) where the parties have obtained the informed consent of the party or affected person or agency whose information it is;
- (iii) already known to the recipient at the time of disclosure other than through the contractual relationship;
- (iv) independently generated by the recipient and not derived by the information supplied by the disclosing party;
- (v) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the protected information;
- (vi) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- (vii) required to be disclosed by law, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Department in connection with services provided under this contract.

F. Additional Contractor Designation of Confidential Information. The Contractor shall use the following process when submitting information to the Department that Contractor believes to be confidential, proprietary information, or trade secrets, or some combination thereof:

- (i) Prepare an un-redacted version of the appropriate document;
- (ii) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret; and
- (iii) Prepare a signed written statement that states:
 - a. the attached document contains confidential or proprietary information or trade secrets;
 - b. the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and

c. the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

(iv) Submit the two documents along with the signed written statement to the Commonwealth.

28. KEY PERSONNEL

The personnel specified in this agreement are considered to be essential to the work being performed. Prior to diverting any of the specified individuals to other programs, the Grantee shall notify the Project Officer, in writing, reasonably in advance and shall submit justification including proposed substitutions in sufficient detail to permit evaluation of the impact on the program. Grantee shall not make any such diversion without the written consent of the Project Officer.

29. WRITTEN COMMITMENT

Any written commitment or representation of the Contractor made within the scope of the Work Statement, if accepted by the Project Officer in writing, is binding upon the Contractor, part of this contract, and subject to this contract's provisions.

30. CHANGE LETTER

The Department may make changes in the Work Statement by issuing to the Contractor a change letter. To be effective, the change letter must be: in writing, within the scope of the contract, and signed by the Department. A change to the quantities listed in the contract resulting from variations between estimated quantities and actual quantities is within the scope of this contract. A change letter does not release any performance security furnished by the Contractor under this contract.

The change letter is effective as of the date of the change letter unless the change letter specifies a later date of effectiveness.

Contractor shall comply with the change letter. Any dispute by the Contractor in regard to the performance required under the change letter is handled through the Contract Controversies paragraph, below.

The change letter is part of this contract and subject to its provisions.

31. FORMS APPROVAL

Contractor shall obtain written approval by the Department prior to distributing any forms, questionnaires, survey instruments, or similar developed under this

contract.

32. COLLECTION OR RECORDING OF INFORMATION

The Contractor shall submit—to the Project Officer for written approval prior to use—copies of each questionnaire and survey plan, including plans for structured interviews and consultations, for the collection of information upon identical items from five or more individuals or organizational elements. The term "structured interview and consultation" is defined as an interview or consultation which follows a pre-designed line of questioning that takes approximately the same form for all the respondents being interviewed or consulted.

33. DEPARTMENT APPROVAL AND ATTRIBUTION

A. **Definitions.** For purposes of this Department Approval and Attribution paragraph, the following definitions apply:

- (i) Printed materials means notices, informational pamphlets, press releases, research reports, brochures, manuals, labels, newsletters, artwork, print advertisements, and other similar material.

B. **Preapproval.**

- (i) Contractor shall submit all printed materials to the Department for written preapproval before Contractor disseminates such printed materials unless otherwise specified by the Department in writing. Unless otherwise authorized in writing by the Department, Contractor shall include the Department logo and the names and titles of the Governor and the Secretary of Health on all printed materials.
- (ii) Contractor shall submit all radio, television, or online streaming materials to the Department for written preapproval of such materials prior to and after its final production.

C. **Attribution.** The Department may require that the Contractor attribute the Department. If the Department requires attribution on printed materials, the Contractor shall include the following statement on printed materials: "This project is funded, in part, under a Contract with the Pennsylvania Department of Health. Basic data for use in this study were supplied by the Pennsylvania Department of Health, Harrisburg, Pennsylvania. The Department takes no part in and is in no way responsible for any analyses, interpretations or conclusions," or another statement approved by the Department. If the Department requires attribution on radio, television, or

online streaming materials, the Contractor shall include a statement approved by the Department.

34. ESTIMATED QUANTITIES

Contractor acknowledges that the quantities listed in this contract are estimates. The Department may increase or decrease the quantities to meet actual requirements. The Department may procure materials or services covered under this contract though a separate procurement whenever the Department determines that doing so is in its best interests.

35. MANUFACTURER'S PRICE REDUCTION

If, prior to the delivery of the award item(s) by the Contractor, a price reduction is announced by the original equipment manufacturer, Contractor shall provide the Department a comparative price reduction on such item.

36. HAZARDOUS SUBSTANCES, HAZARDOUS MIXTURES, SINGLE CHEMICALS, CHEMICAL MIXTURES, & SAFETY DATA SHEETS

- A. **Compliance.** The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor shall comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act"), and the regulations promulgated pursuant to it at 34 Pa. Code § 301.1 *et seq.*
- B. **Labeling.** The Contractor shall insure that each individual product (as well as the carton, container, or package in which the product is shipped) of any of the substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged, or marked with the following information in sub-paragraph E., below. Labels must be legible and prominently affixed to, and displayed on, the product and the carton, container, or package so that employees can easily identify the substance or mixture present.
- C. **Common name or trade name.** A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.
- D. **Warning System.** Container labels must provide a warning as to the specific nature of the hazard arising from the substance in the container. Hazard warnings must be given in conformity with one of the nationally recognized

and accepted systems of providing warnings. Hazard warnings must be consistent with one or more of the recognized systems throughout the workplace, such as:

- (i) National Fire Protection Association (“NFPA”): NFPA 704, Standard System for the Identification of the Hazards of Materials for Emergency Response
- (ii) American Coatings Association (“ACA”): Hazardous Materials Identification System (“HMIS”)
- (iii) ASTM International: Industrial Hygiene Standards and Safety Standards
- (iv) American National Standards Institute (“ANSI”): ANSI Z129.1-2006, Hazardous Industrial Chemicals - Precautionary Labeling

E. Required Information.

- (i) Hazardous substances:
 - a. The chemical name or common name;
 - b. A hazard warning; and
 - c. The name, address, and telephone number of the manufacturer.
- (ii) Hazardous mixtures:
 - a. The common name, but if none exists, then the trade name;
 - b. The chemical or common name of special hazardous substances comprising .01% or more of the mixture;
 - c. The chemical or common name of hazardous substances comprising 1.0% or more of the mixture;
 - d. A hazard warning; and
 - e. The name, address, and telephone number of the manufacturer.
- (iii) Single chemicals:
 - a. The chemical name or the common name;

- b. A hazard warning, if appropriate; and
 - c. The name, address, and telephone number of the manufacturer.
- (iv) Chemical mixtures:
- a. The common name, but if none exists, then the trade name;
 - b. A hazard warning, if appropriate;
 - c. The name, address, and telephone number of the manufacturer; and
 - d. The chemical name or common name of either the top five substances by volume or those substances comprising 5.0% or more of the mixture.
- F. **Safety Data Sheet (“SDS”).** The Contractor shall provide a SDS with the information required by the Act and the regulations for hazardous substances, hazardous mixture, single chemicals, and chemical mixtures, as applicable. The Contractor shall provide the Department a SDS with the initial shipment and with the first shipment after a product’s SDS is updated or a product is changed. For any other product, substance, mixture, or chemical, the Contractor shall provide a SDS if the manufacturer, importer, or supplier produces or possesses the SDS. The Contractor shall also notify the Department when a product, substance, mixture, or chemical is subject to the provisions of the Act and the regulations. The Contractor may attach a SDS to the carton, container, or package sent to the Department at the time of shipment.

37. POST-CONSUMER RECYCLED CONTENT

Except as specifically waived by the Department in writing, any products that the Contractor provides to the Department as part of the performance of this contract must meet the minimum percentage levels for total recycled content as specified by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor may be required, after delivery of the product, to provide the Department documentary evidence that the item(s) was produced with the required minimum percentage of post-consumer and recovered material content.

38. F.O.B. DESTINATION

Any products required under this contract are shipped f.o.b. destination. Contractor shall: (i) be responsible for any loss of or damage to the products occurring before receipt of the shipment by the Department at the delivery point specified by the Department; (ii) furnish a delivery schedule and designate the mode of delivering carrier; and (iii) pay and bear all charges to the delivery point specified by the Department. The Department shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery of such products, unless such charges are caused by an act or order of the Department acting in its contractual capacity.

Any loss of, or damage, to the products does not release the Contractor from any obligations under this contract. Contractor shall deliver any products required under this contract within the time period specified; if no time period is specified, then within 30 Days of the Effective Date of this contract. Time is of the essence for the timely delivery of these products. If Contractor fails to delivery such products by the time specified, the Department may terminate this contract.

39. INSPECTION, ACCEPTANCE, REJECTION, ABANDONMENT, & REPLACEMENT

A. **Inspection, Acceptance.** No product received by the Department is accepted until the Department has a reasonable opportunity to inspect the product. The Department may reject any product that is discovered to be defective, or fails to conform to the specifications required under this contract, on initial inspection of the product, or, at a later time if the product's defects or the product's noncompliance with the specifications were not reasonably ascertainable on initial inspection.

B. **Rejection, Abandonment.**

(i) If the Department rejects a product, Contractor shall remove the rejected product from the premises within 15 Days of notification that the Department is rejecting the product. The Department shall not be liable for any expense to remove such rejected product. A rejected product that is not removed by the Contractor within 15 Days of such notification is abandoned. The Department may dispose of the abandoned product as its own property and may retain the portion of the proceeds of any sale of the abandoned product that represents the Department's costs and expenses to store and sell the abandoned product.

(ii) **Redesignation.** The Department may subsequently—before or after

15 Days from the date of the Department's notification to Contractor rejecting a product—re designate the abandoned product as rejected. Contractor shall remove such re-designated rejected product within the time period specified by the Department. Contractor is liable for any expense to remove such re-designated rejected product, including any clean-up costs. The Department may deduct—from any monies due, or becoming due, to the Contractor—the costs of removal and clean-up.

- C. **Replacement.** Upon notice of rejection, the Contractor shall immediately replace the rejected product with a conforming product. If the Contractor does not replace the rejected product, the Department may procure a replacement. The Department may deduct—from any monies due, or becoming due, to the Contractor—the difference between the product's price stated in the contract and the cost to the Department for the replacement.

40. PRODUCT CONFORMANCE

Upon request by the Department, Contractor shall:

- A. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Department.
- B. Supply published manufacturer product documentation.
- C. Permit a Department representative to witness testing at the Contractor's location or at an independent laboratory.
- D. Complete a survey/questionnaire relating to the bid requirements and specifications.
- E. Provide customer references.
- F. Provide a product demonstration at a location near Harrisburg or another location specified by the Department.

41. WARRANTY

The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and Subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the Department. The Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be

replaced with an item of equivalent or superior quality without any additional cost to the Department.

42. DISPOSITION OF EQUIPMENT, SUPPLIES, AND OTHER MATERIAL

A. **Competitive Procurement.** Unless otherwise authorized by the Department in writing, the Contractor shall acquire all personal property (e.g., equipment, supplies, and other material) for use in this contract at the lowest practicable cost by means of competitive procurement.

B. **Title.**

- (i) The Department retains title to any personal property furnished by the Department to the Contractor.
- (ii) Any personal property acquired by the Contractor, including acquisition by lease-purchase agreement, is in the title of the Contractor during the term of this contract, subject to other provisions of this contract.
- (iii) Upon termination or expiration of this contract, the Contractor hereby assigns the title to such personal property to the Department.

C. **Equipment Inventory Form.** Unless otherwise authorized by the Department in writing, Contractor shall: (i) prior to acquiring equipment for use in this contract, complete the Department's Equipment Inventory Form (available upon request); and (ii) provide a completed Equipment Inventory Form to the Department when the Contractor submits an invoice for reimbursement of such equipment.

D. **Disposition.** With written preapproval by the Department, the Contractor may dispose of such personal property in accordance with the following requirements:

- (i) Keep item: To do so, Contractor, at its expense, shall arrange for an independent third-party to appraise the item. Contractor shall pay the Department for the value of the remaining useful life of the item based on the appraisal. The Department shall not be liable for any costs or expense of the appraisal or the transfer of the item.
- (ii) Sell item: To do so, Contractor must have written preapproval of the Governor's Office of Budget. Contractor shall provide the Department notice at least 10 Days before any scheduled sale. Contractor shall reimburse the Department for the Department's appropriate share of

the sale of the item.

E. Requirements.

- (i) Contractor shall maintain, repair, protect, protect, preserve, and insure personal property used under this contract. The purpose of such treatment is to ensure the item's full availability and usefulness.
- (ii) Unless approved in writing by the Department and the Governor's Office of Budget, Contractor shall only use personal property acquired under this contract in the performance of it.

F. Loss or Damage. If Contractor is indemnified, reimbursed, or otherwise compensated for any loss or damage to personal property acquired under this contract, Contractor shall, as directed by the Department:

- (i) use the proceeds to repair or replace the item;
- (ii) credit the proceeds against the cost of the work covered by this contract; or
- (iii) reimburse the Department.

43. OWNERSHIP RIGHTS

A. Definitions. For purposes of this Ownership Rights paragraph, the following definitions apply:

- (i) Data means written reports and analyses, diagrams, maps, system designs, computer programs, flow charts, software, magnetic tapes, diskettes, drawings, studies, manuals, brochures, advertisements, documents, sketches, papers, files, information, computer documentation, other tangible materials, and work of any similar nature that is required to be performed by or for the Contractor under this contract or that is incidentally prepared by or for the Contractor in the performance of this contract. Data includes background material prepared by or for the Contractor incidental to the performance of this contract.
- (ii) Background material means original work papers, notes, and drafts prepared by or for the Contractor to support conclusions in any final report or product delivered under this contract, including completed questionnaires, and material in electronic data processing form, computer programs, and other tangible materials produced by or for the Contractor during the term of this contract and directly related to

the services being rendered. Background material does not mean the Contractor's financial reports or other information incidental to the administration of this contract.

B. Preexisting Materials Brought by Contractor.

- (i) The Department shall have no ownership rights to the Contractor's data, proprietary materials, methodologies, or other intellectual property that the Contractor brings to this contract or has previously developed with or obtained from third parties.
- (ii) The Contractor shall provide a list of all preexisting data, proprietary materials, methodologies, or other intellectual property in connection with this contract prior to starting work.
- (iii) Contractor hereby grants the Department a nonexclusive, nontransferable license for any portion of the preexisting data, proprietary materials, methodologies, and other intellectual property brought by Contractor to this contract to:
 - a. use;
 - b. modify;
 - c. prepare derivative works; and
 - d. grant to third parties engaged by the Department the right to use, modify, and prepare derivative works.

C. Ownership of Data.

- (i) Contractor hereby assigns to the Department all data qualifying as "work made for hire" as defined in United States copyright law. The Department shall have sole and exclusive ownership of such "work made for hire" data.
- (ii) Contractor hereby assigns to the Department all copyright interests, proprietary rights, trade secrets, and other right, title and interest in and to data. The Department shall have all the rights accorded a holder of copyright under United States copyright law including the exclusive right to reproduce the data in copies; the right to distribute copies by sale or other transfers; the right to register all copyrights in its own name as author in the United States and foreign countries; the right to prepare derivative works based upon the data; and the right to display the data.

- D. **Delivery.** Upon completion or termination of this contract, the Contractor shall immediately deliver all data and background materials to the Department. The Contractor warrants that the data and background materials are original and do not infringe the rights of any other work.
- E. **Data Processing.** Contractor shall provide, in a form compatible to the Department's computer systems, by electronic means, or other means specified by the Department, all computer programs, tapes, software, data, background materials, and information developed under this contract. Upon request by the Contractor, the Project Officer shall provide the Contractor specifications on the form compatible to Department's computer systems if such specifications are not included elsewhere in this contract.
- F. **Federal Government Interests.** The Contractor acknowledges that certain funding under this contract may be provided by the federal government. Contractor and Subcontractors rights are further subject to the federal government's rights set as set forth in Chapter 18 (Patent Rights In Inventions Made With Federal Assistance) of Part II of Title 35 of the United States Code and the regulations promulgated under at Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements) of Chapter IV of Title 37 of the Code of Federal Regulations, 37 CFR 401.1 *et seq.* and as set forth in other applicable law. Notwithstanding the foregoing, the Department may share information with the federal government relating to data developed under a wholly state-funded contract.

44. PATENT, COPYRIGHT, AND TRADEMARK INDEMNIFICATION

- A. The Contractor represents and warrants that:
 - (i) it is the sole owner or author of, or has entered into a suitable legal agreement concerning either:
 - a. the design of any product or process provided or used in the performance of this contract that is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law; or
 - b. any copyrighted matter in any report, document or other material provided to the Commonwealth under this contract.
 - (ii) it exercises reasonable due diligence to prevent claims of infringement on the rights of third parties.

- B. Contractor Obligations.** Contractor shall indemnify the Commonwealth any 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 alleged patent, copyright, or trademark infringement in the United States of any of the products provided or used in the performance of this contract.
- C. Commonwealth Attorneys Act.** The Commonwealth shall provide Contractor prompt notice of any such claim or suit 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.
- D. Infringement.**
- (i) If any of the products provided by the Contractor in such claim or suit are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option:
 - a. procure the right to continue use of such infringing products;
 - b. replace infringing products with non-infringing, equal performance products; or
 - c. modify the infringing products so that they are no longer infringing.
 - (ii) If the Contractor is unable to do any of the preceding, the Contractor shall remove the infringing product, or, at the option of the Commonwealth, only those products that are held to be infringing, and pay the Commonwealth:
 - a. any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation;
 - b. any license fee paid by the Commonwealth for the use of any product, less an amount for the period of usage; and
 - c. the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for.

E. **No Time Limit.** Contractor's obligations under this Patent, Copyright, and Trade Indemnification paragraph continue without time limit.

45. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by Contractor's suppliers resulting from violations of state and federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of this contract, and intending to be legally bound, the Contractor hereby assigns to the Commonwealth all rights, title, and interest in and to any claims Contractor now has or may hereafter acquire under state and federal antitrust laws relating to the goods and services which are subject to this contract.

46. HUMAN RESEARCH

Contractor shall submit to the Department Institutional Review Board all human subject research funded under this contract for approval prior to conducting such research. Contractor shall submit on the form requested by the Department.

Contractor shall not conduct any human subject research, including obtaining identifiable private information or data through intervention or interaction with a subject, unless, prior to such research, Contractor certifies in writing to the Department that: (i) Contractor's own, or another institutional review board, has approved, in writing, such research or (ii) that such research is exempted.

Contractor shall comply with all laws governing human subject research, including 42 U.S.C. § 3515(b) (relating to prohibitions on funding certain experiments involving human participants) and the regulations promulgated under it.

Contractor shall obtain voluntary, informed consent for each subject. If the subject is a minor or is incompetent, Contractor shall obtain voluntary, informed consent of the subject's legal guardian. Prior to seeking consent for each subject, Contractor shall inform the subject that refusing to provide consent will not result in the loss of any benefits that the subject is otherwise entitled to from the federal government, the Commonwealth, the Contractor, Subcontractor, or any third-party insurer.

47. GENERIC DRUGS

If under this contract the Contractor prescribes or dispenses drugs to consumers, Contractor shall comply with the Generic Equivalent Drug Law, Act 259 of November 24, 1976, P.L. 1163, 35 P.S. § 960.1 *et seq.*, as amended, and the regulations promulgated under that Act.

48. CORPORATE PRACTICE OF MEDICINE DOCTRINE

The Contractor shall comply with the corporate practice of medicine doctrine laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and decisions of the Pennsylvania courts.

49. ENVIRONMENTAL PROTECTION

In carrying out this contract, the Contractor shall minimize pollution and shall comply with all applicable environmental laws and regulations, including the Clean Streams Law, Act of June 22, 1937 (P.L. 1987, No. 394), as amended, 35 P.S. §§ 691.1—691.801; the Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. §§ 6018.101—68.1003; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. §§ 693.1—693.27.

50. NO THIRD-PARTY BENEFICIARY

This contract is not intended to create third-party beneficiary rights or remedies.

51. REPORTING REQUIREMENTS UNDER THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (“FFATA”)

For the Commonwealth to process this agreement, the Grantee must:

- A. maintain a current full registration that permits its entity registration to appear in a public search in the System for Award Management or SAM (www.SAM.gov) at all times that Grantee has active federal awards funded pursuant to this agreement, and provide its Unique Entity Identifier (“UEI”), issued upon registration in SAM.gov, to the Commonwealth;
- B. provide the Commonwealth with the primary location of performance under this agreement, including the city, State, and zip+4, or, if performance is to occur in multiple locations, the location where most of the Grantee’s performance under this agreement is to be expended; and
- C. provide the Commonwealth the names and total compensation of its five most highly compensated officers if the Grantee in the previous fiscal year received:
 - (i) 80% or more of its annual gross revenues from federal awards;
 - (ii) \$25 million dollars or more in annual gross revenues from federal awards; and
 - (iii) the public does not have access to information about the

compensation of the entity's executives through periodic reports filed under filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

52. NO WAIVER

No delay or failure of the Commonwealth to enforce any provision of this contract or to exercise any right or remedy under this contract may be construed as a waiver by the Commonwealth of the provision or its right or remedy.

53. CONTRACT CONTROVERSIES

- A. **Time to file.** In the event of a controversy or claim arising from this contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim must state all grounds upon which the Contractor asserts a controversy exists.
- B. **Waiver.** If the Contractor fails to file a claim, or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- C. **Mediation.**
 - (i) At the time the claim is filed, or within 60 Days after, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program (<https://www.pa.gov/en/agencies/ogc/services-provided-to-agencies-home/mediation-home.html>).
 - (ii) If the Contractor or the Contracting Officer requests mediation and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 Days after receipt of the claim if mediation is unsuccessful.
- D. **Determination.** If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 Days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the 120 Days (unless extended by consent of the parties), the claim

shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.

- E. **Board of Claims.** Within fifteen (15) Days of the mailing date of the determination denying a claim, or within 135 Days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of this contract in a manner consistent with the determination of the Contracting Officer and the Commonwealth shall compensate the Contractor pursuant to the provisions of this contract.
- F. **Exclusive Remedy.** The remedy set forth in this Contract Controversies paragraph is the exclusive remedy for the Contractor to resolve questions and disputes if the Contractor and the Department are unable to resolve them between themselves.

54. FORCE MAJEURE

- A. Neither party will incur any liability to the other if its performance of any obligation under this contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.
- B. The Contractor shall notify the Department orally within 5 Days and in writing within 10 Days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under this contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Department may reasonably request. After receipt of such notification, the Department may elect to cancel this contract, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.
- C. In the event of a declared emergency by competent governmental

authorities, the Department by notice to the Contractor, may suspend all or a portion of this contract.

55. DEFAULT

In addition to its other rights and remedies provided by law or under this contract, the Department may (subject to the provisions of the Force Majeure paragraph, above) declare the Contractor in default by notice and terminate this contract (in accordance with the Termination paragraph, below) for the following reasons:

- A. Breach of any provision of this contract;
- B. Inaccurate representations or warranties;
- C. Unsatisfactory performance of the work;
- D. Failure to start the work within the time specified in this contract or purchase order, or as otherwise specified by the Department;
- E. Failure to complete the work, or deliver the awarded item(s), within the time specified in this contract or purchase order, or as otherwise specified by the Department;
- F. Improper delivery;
- G. Failure to provide an item that is in conformance with the specifications referenced in this contract or a purchase order;
- H. Delivery of a defective item;
- I. Failure to remove, or remove and replace, non-conforming, defective, or unsatisfactory item(s);
- J. Discontinuance of work without Department approval;
- K. Failure to resume work within a reasonable time—after a prior, Department approved, discontinuance—following notice;
- L. Failure, within 10 Days after notice by the Department, to pay for services or supplies, owed by the Contractor, related to Contractor's work under this contract;
- M. Failure to comply with applicable industry standards, customs, and practice;
- N. Assignment for the benefit of creditors;

O. Insolvency; or

P. Proceedings in bankruptcy instituted by or against the Contractor.

56. TERMINATION

A. **In Whole or In Part.** The Department may terminate this contract in whole or in part in accordance with this Termination paragraph.

B. **Default.**

(i) **Notice to Cure.** Prior to terminating this contract, the Department shall issue Contractor a notice to cure default letter that describes the default.

(ii) **Termination.** If Contractor does not cure the stated default within 10 Days (or other time specified in the letter) to the satisfaction of the Department, then the Department may terminate this contract upon notice to the Contractor.

(iii) **Replacement Services.** The Department may procure replacement services to those services terminated under the Default sub-paragraph B.(ii), above. Contractor shall be liable for any excess costs for such replacement services as compared to the costs of the services provided by the Contractor prior to termination.

(iv) **Reports or Other Documentation.**

a. **Transfer and Delivery.** If the Department terminates this contract under the Default sub-paragraph B.(ii), above, Contractor shall transfer title and deliver to the Department completed, and partially completed, reports and other documentation that the Contractor has produced.

b. **Price for Completed.** The price for completed reports and other documentation, accepted by the Department, is the price stated in this contract.

c. **Price for Partially Completed.**

1. **Mutual price:** The price for partially completed reports and other documentation, accepted by the Department, is a price agreed upon by the parties.

2. **Dispute:** If the parties cannot agree upon a price, then

the price is a dispute under Contract Controversies paragraph, above.

d. **Withholding**. The Department may withhold—from payment to the Contractor for such completed, or partially completed, reports or other documentation—an amount that the Department determines to be necessary to protect against a loss from an outstanding lien or a claim of a former lien holder.

(v) **Deemed Convenience**. If it is later determined that the Department erred in terminating this contract for default, then it is deemed that the Department terminated for convenience under the Convenience sub-paragraph E., below.

C. Cause.

- (i) Upon notice to the Contractor, the Department may terminate this contract for cause as provided by law or under this contract.
- (ii) The Default sub-paragraph B.(iii)-(v), above, govern.

D. Non-Appropriation.

- (i) Upon notice to the Contractor, the Department may terminate this contract if funds are not appropriated or otherwise made available to support the continuation of performance under this contract. The Department shall: pay the Contractor for work satisfactorily completed prior to the termination effective date; and the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services provided under this contract. The Department shall not be liable for any loss of profit, loss of use of money, administrative costs, or overhead costs.
- (ii) If the parties disagree about termination payment and costs, then that is a dispute under Contract Controversies paragraph, above.

E. Convenience.

- (i) Upon notice to the Contractor, the Department may terminate this contract for its convenience if the Department determines that termination is in its best interest. The Department shall: pay the Contractor for work satisfactorily completed prior to the termination effective date; and the reasonable value of any nonrecurring costs

incurred but not amortized in the price of the supplies or services provided under this contract. The Department shall not be liable for any loss of profit, loss of use of money, administrative costs, or overhead costs.

(ii) If the parties disagree about termination payment and costs, then that is a dispute under Contract Controversies paragraph, above.

F. **Cancellation.** Either party may cancel this contract upon 30 Days notice to the other party.

G. **Department Rights and Remedies.** The rights and remedies of the Department in this Termination paragraph are not exclusive and are in addition to any other rights or remedies provided by law or under this contract.

H. **Expiration.** The expiration of the term, or an extension of the term, of this contract is not termination.

57. **SURVIVAL**

The following paragraphs, as well as any right or obligation of the parties that, by its express terms or nature and context is intended to survive termination or expiration of this agreement, will survive any such termination or expiration:

- A. 3. (Compliance with Law);
- B. 4. (Laws and Regulations);
- C. 16. (Commonwealth Tax Exemption);
- D. 24. (Availability of Information);
- E. 25. (Fiscal and Program Records);
- F. 26. (Record Retention Requirements);
- G. 27. (Confidentiality);
- H. 33. (Department Approval and Attribution);
- I. 39. (Inspection, Acceptance, Rejection, Abandonment, & Replacement);
- J. 41. (Warranty);

- K. 42. (Disposition of Equipment, Supplies, and Other Material);
- L. 43. (Ownership Rights);
- M. 44. (Patent, Copyright, and Trademark Indemnification);
- N. 45. (Assignment of Antitrust Claims);
- O. 46. (Human Research);
- P. 49. (Environmental Protection);
- Q. 50. (No Third-Party Beneficiary);
- R. 52. (No Waiver);
- S. 53. (Contract Controversies); and
- T. 57. (Survival).