

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

**1. DEFINITIONS**

Capitalized terms used in these standard terms and conditions that are not otherwise defined have the meanings specified in the document to which they are attached.

- 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 agreement.
- 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 agreement.
- F. Subcontract means the contract the Grantee enters into with another entity to perform work under this agreement regardless of whether the contract is referred to as a subgrant or similar term.
- G. Subcontractor means the entity the Grantee enters into a contract with to perform work under this agreement regardless of whether the entity is referred to as a subgrantee or similar term.

**2. COMPLIANCE WITH LAW**

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

**3. LAWS AND REGULATIONS**

This agreement 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 agreement are subject to modification by amendments to such laws and regulations without further notice to the grantee.

**4. AGREEMENT CONTINGENT UPON FUNDING**

There must be an appropriation and available state funding, federal funding, or both

for the Department to pay the Grantee.

**5. BACKGROUND CHECKS**

Unless otherwise directed by the Department, Grantee shall comply with Information Technology Policy, Minimum Contractor Background Checks Policy (ITP-SEC009). In doing so, Grantee shall comply with the following:

- A. Grantee 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 Grantee 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 Grantee employees. The background check shall be conducted prior to initial access by Grantee employees and annually thereafter.
- B. Before the Commonwealth grants a Grantee employee access to Commonwealth owned or leased facilities or Commonwealth data, the Grantee 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 Grantee 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 Grantee 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 Grantee to comply with the terms of this Background Checks paragraph may result in default of the Grantee under its agreement with the Commonwealth.

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

**6. ACCESS TO CERTAIN CAPITAL COMPLEX BUILDINGS AND OTHER STATE OFFICE BUILDINGS**

If Grantee, or Subcontractor, requires access to certain Capitol Complex buildings and other state office buildings, Grantee 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).

**7. INDEPENDENT CONTRACTOR**

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

**8. PRIME CONTRACTOR**

Grantee shall be the prime contractor for this agreement. Grantee shall be liable to the Department for any failure to provide adequate services under this agreement whether Grantee, itself, provides such services. Grantee shall be the sole point of contact for all contractual matters, including payment, between itself and Subcontractor. Grantee 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 Grantee and Subcontractor.

**9. INTEREST OF GRANTEE**

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

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

The Grantee 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 agreement. Grantee shall take appropriate action to resolve such conflict with a

member of its board of directors as acceptable to the Department. If Grantee seeks to appoint a person who has a direct or indirect interest that conflicts with the performance of its services under this agreement, Grantee shall notify the Department and take appropriate action to resolve such conflict as acceptable to the Department.

**10. COVENANT AGAINST CONTINGENT FEES**

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

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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 Grantee warrants that no person or agency has been employed or retained to solicit or obtain this agreement 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 agreement without liability or, to deduct from the agreement price or consideration, or otherwise recover, the full amount of the contingent fee.

**11. EXCLUDED TERMS AND CONDITIONS**

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

**12. TRAVEL AND SUBSISTENCE COSTS**

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

**13. INSURANCE**

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

The Grantee is responsible for paying premiums for such insurance.

**14. TAXES**

The Grantee is responsible for paying taxes and social security premiums. The Grantee 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 agreement.

**15. 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.

**16. 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 agreement—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 agreement. The Department shall take appropriate action to resolve any conflicts with the official or employee as acceptable to the Grantee. The Department represents and warrants that no such Department official or employee has any interest, direct or indirect, in this agreement or the proceeds of this agreement.

Grantee shall not permit a General Assembly member exercising any function or responsibility under this agreement—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 agreement.

**17. SUBCONTRACT**

The Grantee may Subcontract any portion of the services required under this agreement to Subcontractors selected by Grantee and approved in writing by the Contracting Officer, whose approval shall not be unreasonably withheld. Notwithstanding the above, if Grantee has disclosed the identity of Subcontractor together with the scope of work to be subcontracted in its Application, award of this agreement 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 Grantee's purchase of articles, supplies, equipment, and services that are necessary and incidental to the performance of the Grantee's work under this agreement. The existence of any Subcontract shall not change the obligations of Grantee to the Department under this agreement. Upon request of the Department, the Grantee shall provide the Department with an un-redacted copy of the Subcontract between the Grantee and the Subcontractor. The Department reserves the right, for good cause, to require that the Grantee remove a Subcontractor from the project. The Department shall not be responsible for any costs incurred by the Grantee in replacing the Subcontractor if good cause exists.

**18. ASSIGNABILITY**

- A. Subject to the terms and condition of this paragraph, this agreement is binding upon the parties and their respective successors and assignors.
- B. The Grantee may not assign, in whole or in part, this agreement 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 agreement, 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 Grantee 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 Grantee and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of this agreement and to assume the duties, obligations, and responsibilities being assigned.
- E. Notwithstanding the foregoing, the Grantee may, without the consent of the Department, assign its rights to payment to be received under this agreement, provided that the Grantee 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 agreement.
- F. A change of name by the Grantee, following which the Grantee's federal identification number remains unchanged, is not considered to be an assignment. The Grantee shall give the Department notice of any such change of name.

**19. NON-EXCLUSIVE GRANT**

The Department may award other grants for additional work within, or related to, the scope of this agreement.

**20. OTHER GRANTEES**

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

**21. QUALITY ASSURANCE**

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

**22. HEALTH EQUITY**

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

- A. The Grantee 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 Grantee 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 agreement.
- C. The Grantee 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 agreement.

**23. AVAILABILITY OF INFORMATION**

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

**24. FISCAL AND PROGRAM RECORDS**

- A. The Grantee shall maintain program and fiscal records. For purposes of this agreement, “fiscal and program records” means books, records, documents, sub-grants or sub-contracts and other evidence pertaining to the costs and expenses of this agreement, 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 Grantee to perform the work required under this agreement.
- 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 Grantee shall maintain statistical records.
- D. The Grantee shall produce program narrative and statistical data upon request of the Department and in the form requested by the Department.
- E. The Grantee 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 agreement. If the Grantee is not a public body, the Grantee 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 agreement provides funding for a clinic or program that receives other income or funding than directly through this agreement (such as, third-party reimbursement for patients), then this Fiscal and Program Records paragraph applies to the Grantee’s records pertaining to those other sources of income or funding.
- G. The Grantee shall make records available during the term of this agreement, 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 Grantee enters into any Subcontract in the performance of this agreement, then this Fiscal and Program Records paragraph applies to Grantee’s Subcontract. Grantee shall include this Fiscal and Program Records paragraph into each such Subcontract.
- I. The Grantee shall collect statistical data of a fiscal nature on a regular basis. Grantee shall make fiscal statistical reports upon request of the Department and in the form requested by the Department.

**25. RECORD RETENTION REQUIREMENTS**

The Grantee 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 Grantee shall retain its records for a period of four years from the date of final payment under this agreement, and for such period, if any, as is required by applicable statute, by any other paragraph of this agreement, or by sub-paragraphs (i) or (ii), below.

- (i) If this agreement is completely or partially terminated, the Grantee 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 Grantee shall retain records that—relate to litigation or the settlement of claims arising out of the performance of this agreement, or costs and expenses of this agreement 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 Grantee 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 Grantee 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.

**26. 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). Grantee shall additionally use the process outlined in sub-paragraph F. of this Confidentiality paragraph, below, when submitting information to the Department that the Grantee 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 the asserting party's confidential information.
- (i) **Medical Information.** The Grantee shall protect the confidentiality of medical records of individuals served by the Grantee under this agreement. The Grantee 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 agreement.

(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 Grantee shall protect the confidentiality of sensitive information. The Grantee 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 agreement; or (3) matters of public record.

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

- (i) it is essential for activities under this agreement;
- (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 agreement.

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 agreement, 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 agreement security, privacy, data retention, data destruction, and confidentiality provisions, all such provisions surviving the termination or expiration of this agreement.

- 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 agreement, and at the discretion of the non-breaching party—result in termination for default pursuant to the Default and Termination paragraphs, below, of this agreement in addition to other remedies available to the non-breaching party.
- E. **Nonapplicable.** Unless the 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 agreement.

- F. **Additional Grantee Designation of Confidential Information.** The Grantee shall use the following process when submitting information to the Department that Grantee 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 Grantee is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
  - c. the Grantee is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(ii) from public records requests.
- (iv) Submit the two documents along with the signed written statement to the Department.

**27. 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.

**28. WRITTEN COMMITMENT**

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

**29. CHANGE LETTER**

The Department may make changes in the Work Statement by issuing to the Grantee a change letter. To be effective, the change letter must be: in writing, within the scope of this agreement, not exceed the total cost of this agreement, and signed by the Department.

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

Grantee shall comply with the change letter. Any dispute by the Grantee in regard

to the performance required under the change letter is handled through the Grant Controversies paragraph, below.

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

**30. FORMS APPROVAL**

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

**31. COLLECTION OR RECORDING OF INFORMATION**

The Grantee 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.

**32. 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) Grantee shall submit all printed materials to the Department for written preapproval before Grantee disseminates such printed materials unless otherwise specified by the Department in writing. Unless otherwise authorized in writing by the Department, Grantee shall include the Department logo and the names and titles of the Governor and the Secretary of Health on all printed materials.
- (ii) Grantee 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 Grantee attribute the Department. If the Department requires attribution on printed materials, the Grantee shall include the following statement on printed materials: "This

project is funded, in part, under a Grant 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 Grantee shall include a statement approved by the Department.

**33. DISPOSITION OF EQUIPMENT, SUPPLIES, AND OTHER MATERIAL**

- A. **Competitive Procurement.** Unless otherwise authorized by the Department in writing, the Grantee shall acquire all personal property (e.g., equipment, supplies, and other material) for use in this agreement 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 Grantee.
  - (ii) Any personal property acquired by the Grantee, including acquisition by lease-purchase agreement, is in the title of the Grantee during the term of this agreement, subject to other provisions of this agreement.
  - (iii) Upon termination or expiration of this agreement, the Grantee hereby assigns the title to such personal property to the Department.
- C. **Equipment Inventory Form.** Unless otherwise authorized by the Department in writing, Grantee shall: (i) prior to acquiring equipment for use in this agreement, complete the Department's Equipment Inventory Form (available upon request); and (ii) provide a completed Equipment Inventory Form to the Department when the Grantee submits an invoice for reimbursement of such equipment.
- D. **Disposition.** With written preapproval by the Department, the Grantee may dispose of such personal property in accordance with the following requirements:
  - (i) Keep item: To do so, Grantee, at its expense, shall arrange for an independent third-party to appraise the item. Grantee 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, Grantee must have written preapproval of the

Governor's Office of Budget. Grantee shall provide the Department notice at least 10 Days before any scheduled sale. Grantee shall reimburse the Department for the Department's appropriate share of the sale of the item.

**E. Requirements.**

- (i) Grantee shall maintain, repair, protect, protect, preserve, and insure personal property used under this agreement. 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, Grantee shall only use personal property acquired under this agreement in the performance of it.

**F. Loss or Damage.** If Grantee is indemnified, reimbursed, or otherwise compensated for any loss or damage to personal property acquired under this agreement, Grantee 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 agreement; or
- (iii) reimburse the Department.

**34. 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 Grantee under this agreement or that is incidentally prepared by or for the Grantee in the performance of this agreement. Data includes background material prepared by or for the Grantee incidental to the performance of this agreement.
- (ii) Background material means original work papers, notes, and drafts prepared by or for the Grantee to support conclusions in any final report or product delivered under this agreement, including completed questionnaires, and material in electronic data processing



form, computer programs, and other tangible materials produced by or for the Grantee during the term of this agreement and directly related to the services being rendered. Background material does not mean the Grantee's financial reports or other information incidental to the administration of this agreement.

**B. Preexisting Materials Brought by Grantee.**

- (i) The Department shall have no ownership rights to the Grantee's data, proprietary materials, methodologies, or other intellectual property that the Grantee brings to this agreement or has previously developed with or obtained from third parties.
- (ii) The Grantee shall provide a list of all preexisting data, proprietary materials, methodologies, or other intellectual property in connection with this agreement prior to starting work.
- (iii) Grantee hereby grants the Department a nonexclusive, nontransferable license for any portion of the preexisting data, proprietary materials, methodologies, and other intellectual property brought by Grantee to this agreement 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) Grantee 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) Grantee 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 agreement, the Grantee shall immediately deliver all data and background materials to the Department. The Grantee warrants that the data and background materials are original and do not infringe the rights of any other work.
- E. **Data Processing.** Grantee 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 agreement. Upon request by the Grantee, the Project Officer shall provide the Grantee specifications on the form compatible to Department's computer systems if such specifications are not included elsewhere in this agreement.
- F. **Federal Government Interests.** The Grantee acknowledges that certain funding under this agreement may be provided by the federal government. Grantees 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 grant agreement.

**35. PATENT, COPYRIGHT, AND TRADEMARK INDEMNIFICATION**

- A. The Grantee 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 agreement 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 agreement.
  - (ii) it exercises reasonable due diligence to prevent claims of infringement

on the rights of third parties.

- B. Grantee Obligations.** Grantee 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 agreement.
- C. Commonwealth Attorneys Act.** The Commonwealth shall provide Grantee 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 Grantee, the Commonwealth will cooperate with all reasonable requests of Grantee made in the defense of such suits.
- D. Infringement.**
- (i) If any of the products provided by the Grantee in such claim or suit are held to constitute infringement and the use is enjoined, the Grantee 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 Grantee is unable to do any of the preceding, the Grantee 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.** Grantee's obligations under this Patent, Copyright, and Trade Indemnification paragraph continue without time limit.

**36. ASSIGNMENT OF ANTITRUST CLAIMS**

The Grantee and the Commonwealth recognize that in actual economic practice, overcharges by Grantee'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 agreement, and intending to be legally bound, the Grantee hereby assigns to the Commonwealth all rights, title, and interest in and to any claims Grantee now has or may hereafter acquire under state and federal antitrust laws relating to the goods and services which are subject to this agreement.

**37. HUMAN RESEARCH**

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

Grantee 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, Grantee certifies in writing to the Department that: (i) Grantee's own, or another institutional review board, has approved, in writing, such research or (ii) that such research is exempted.

Grantee 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.

Grantee shall obtain voluntary, informed consent for each subject. If the subject is a minor or is incompetent, Grantee shall obtain voluntary, informed consent of the subject's legal guardian. Prior to seeking consent for each subject, Grantee 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 Grantee, Subcontractor, or any third-party insurer.

**38. GENERIC DRUGS**

If under this agreement the Grantee prescribes or dispenses drugs to consumers, Grantee 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.

**39. CORPORATE PRACTICE OF MEDICINE DOCTRINE**

The Grantee 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.

**40. ENVIRONMENTAL PROTECTION**

In carrying out this agreement, the Grantee 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.

**41. NO THIRD-PARTY BENEFICIARY**

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

**42. 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](http://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 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.

~~43.~~ **NO WAIVER**

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

~~44.~~ **GRANT CONTROVERSIES**

- A. **Time to File.** All questions or disputes arising between the parties respecting any matter pertaining to, or breach of, this agreement must be filed as a written claim with the Contracting Officer within six months after the cause of action accrues. The claim is filed as of the date of receipt by the agency. The claim must state all grounds upon which the Grantee asserts a controversy exists.
- B. **Waiver.** If the Grantee fails to file a claim, or files an untimely claim, the Grantee is deemed to have waived its right to assert a claim in any forum.
- C. **Mediation.** 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>).
- D. **Determination.** The Contracting Officer shall review timely-filed claims and issue a determination, in writing, regarding the claim. The determination shall be issued within 120 Days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Grantee. The Contracting Officer shall send the written determination to the Grantee. If the Contracting Officer fails to issue a determination within the 120 day period, (unless extended by the consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be considered to be a decision of a subordinate officer, and shall be appealable to the Agency Head or his or her designee within 10 business days pursuant to 1 Pa. Code § 35.20. The matter before the agency shall be subject to 2 Pa. C.S. ch. 5, Subch. A (relating to practice and procedure of Commonwealth Agencies), and the rules set out in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The Agency Head shall issue a final order which shall be appealable pursuant to 2 Pa. C.S. Ch. 7, Subch. A (relating to Judicial Review of Commonwealth Agency Action).
- E. **Exclusive Remedy.** The remedy set forth in this Grant Controversies paragraph is the exclusive remedy for the Grantee to resolve such questions and disputes if the Grantee and the Department are unable to resolve them between themselves. Settlement of disputes under this provision must be

prior to the final payment to Grantee.

**45. FORCE MAJEURE**

- A. Neither party will incur any liability to the other if its performance of any obligation under this agreement 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 Grantee shall notify the Department orally within 5 Days and in writing within 10 Days of the date on which the Grantee 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 agreement is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Grantee 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 agreement, or to extend the time for performance as reasonably necessary to compensate for the Grantee's delay.
- C. In the event of a declared emergency by competent governmental authorities, the Department by notice to the Grantee, may suspend all or a portion of this agreement.

**46. DEFAULT**

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

- A. Breach of any provision of this agreement;
- B. Inaccurate representations or warranties;
- C. Unsatisfactory performance of the work;
- D. Failure to start the work within the time specified in this agreement, 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 agreement, or as otherwise specified by the Department;
- F. Discontinuance of work without Department approval;
- G. Failure to resume work within a reasonable time—after a prior, Department approved, discontinuance—following notice;
- H. Failure, within 10 Days after notice by the Department, to pay for services or supplies, owed by the Grantee, related to Grantee’s work under this agreement;
- I. Failure to protect, repair, or
- J. Failure to comply with applicable industry standards, customs, and practice;
- K. Assignment for the benefit of creditors;
- L. Insolvency; or
- M. Proceedings in bankruptcy instituted by or against the Grantee.

**47. TERMINATION**

- A. **In Whole or In Part.** The Department may terminate this agreement in whole or in part in accordance with this Termination paragraph.
- B. **Default.**
  - (iv) **Notice to Cure.** Prior to terminating this agreement, the Department shall issue Grantee a notice to cure default letter that describes the default.
  - (v) **Termination.** If Grantee 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 agreement upon notice to the Grantee.
  - (vi) **Replacement Services.** The Department may procure replacement services to those services terminated under the Default sub-paragraph B.(ii), above. Grantee shall be liable for any excess costs for such replacement services as compared to the costs of the services provided by the Grantee prior to termination.
  - (vii) **Reports or Other Documentation.**
    - a. **Transfer and Delivery.** If the Department terminates this



agreement under the Default sub-paragraph B.(ii), above, Grantee shall transfer title and deliver to the Department completed, and partially completed, reports and other documentation that the Grantee has produced.

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

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 Grant Controversies paragraph, above.

d. **Withholding.** The Department may withhold—from payment to the Grantee 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.

(viii) **Deemed Convenience.** If it is later determined that the Department erred in terminating this agreement 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 Grantee, the Department may terminate this agreement for cause as provided by law or under this agreement.

(ii) The Default sub-paragraph B.(iii)-(v), above, govern.

**D. Non-Appropriation.**

(i) Upon notice to the Grantee, the Department may terminate this agreement if funds are not appropriated or otherwise made available to support the continuation of performance under this agreement. The Department shall: pay the Grantee 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 agreement. 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 Grant Controversies paragraph, above.

**E. Convenience.**

- (i) Upon notice to the Grantee, the Department may terminate this agreement for its convenience if the Department determines that termination is in its best interest. The Department shall: pay the Grantee 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 agreement. 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 Grant Controversies paragraph, above.

**F. Cancellation.** Either party may cancel this agreement 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 agreement.

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

**48. 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. 2. (Compliance with Law);
- B. 3. (Laws and Regulations);
- C. 15. (Commonwealth Tax Exemption);
- D. 23. (Availability of Information);

- E. 24. (Fiscal and Program Records);
- F. 25. (Record Retention Requirements);
- G. 26. (Confidentiality);
- H. 32. (Department Approval and Attribution);
- I. 33. (Disposition of Equipment, Supplies, and Other Material);
- J. 34. (Ownership Rights);
- K. 35. (Patent, Copyright, and Trademark Indemnification);
- L. 36. (Assignment of Antitrust Claims);
- M. 37. (Human Research);
- N. 40. (Environmental Protection);
- O. 41. (No Third-Party Beneficiary);
- P. 43. (No Waiver);
- Q. 44. (Grant Controversies); and
- R. 48. (Survival).