



BOSTON PUBLIC HEALTH COMMISSION STANDARD CONTRACT FOR THE PROVISION OF GOODS OR SERVICES

This contractual agreement ("Contract") is hereby made on _____ by and between the **Public Health Commission (BPHC)**, a body politic and corporate and political subdivision of the Commonwealth of Massachusetts with a principal place of business located at **1010 Massachusetts Avenue, Boston, Massachusetts 02118** and _____ (hereinafter Contractor). *This document is subject to the terms and conditions and may include additional supporting required documents.*

All fields in Part 1 and Part 2 must be completed. For nonapplicable fields, enter N/A.

Part 1 – IDENTIFICATION OF BPHC

Part 2 – IDENTIFICATION OF CONTRACTOR

Bureau Name:

Contractor Name:

Program Name:

Payee Name if different from Contractor Name:

Requestor:

Contact Name:

Phone:

Street Address:

Email:

City: _____ **State:** _____ **Zip Code:** _____

Email: _____

Good/Services (s) Requested:

Phone Number: _____

TIN (SSN or EIN): _____

Service Location:

DUNS: _____

UEI: _____

CONTRACT TERM:

This contract shall be in effect from (start date) _____ through (end date) _____

Review Terms and Conditions for earlier termination as provided herein.

CONTRACT AMOUNT:

This contract shall not exceed _____ dollars

(\$ _____) and is subject to the availability and appropriation of funds.

GRANT FUNDING SOURCE, if applicable:

Grant Number _____ Grant Expiration Date _____ CFDA Number _____

For Sub-Recipient Contract, the Notice of Grant Award must be sent to the Sub-Recipient as an attachment along with this Contract

ADDITIONAL TERMS:

For Procure to Pay Office Use

BPHC Contract Number: _____

BPHC Vendor ID: _____

ARTICLE I – PERFORMANCE

- a) The Contractor shall conduct all activities, provide all goods, and/or perform all services as may be required by the provisions of this Contract. No variations from specifications hereunder shall be allowed without the written approval of an authorized representative of BPHC.
- b) Where applicable and unless otherwise indicated herein, all shipments shall be assumed F.O.B., destination inside delivery. Such inside delivery shall be performed through the shipper and charged back to the shipper. Appropriate notation must be specific and so noted on the bill of lading. Deliveries are to be made between the hours of 9:00 AM and 5:00 PM, Monday through Friday and exclusive of Holidays, unless otherwise specified. All articles, equipment, or materials shall be forwarded by route or method of lowest transportation charges unless specific shipping instructions are stated herein for those orders which are F.O.B. shipping point.
- c) Upon written request of BPHC, Contractor shall remove from BPHC premises and/or replace all individuals in Contractor's employ or control whom BPHC determines to be disorderly, careless, or incompetent or to be employed, providing services, or conducting activities in violation of the terms of this Contract.
- d) Contractor shall maintain books, records, and other compilations of data relative to the services to be performed hereunder sufficient to substantiate its claims for payment or meet any regulatory requirements, including any and all applicable federal, state, or local requirements. All such records shall be retained for at least seven years. BPHC or its designee shall examine and copy such records upon reasonable notice to Contractor and at such times and expense as may be reasonable.

ARTICLE II – ACCEPTANCE OF GOODS AND SERVICES

BPHC shall have a reasonable opportunity to inspect all goods and services. If the goods or services are not acceptable, Contractor may be allowed to cure the work and/or products within a reasonable time at no additional cost to BPHC. Unless otherwise provided hereunder, liability for payment shall be subject to acceptance by BPHC.

ARTICLE III – TIME

It is understood and agreed that all specified times or period of performance are of the essence.

ARTICLE IV – COMPENSATION

- a) Contractor may be compensated only for those costs and expenses and at the prices as may be allowed hereunder and as may be described in any Budget attached hereto except that such cost and expense shall not exceed the not-to-exceed amount described.
- b) The BPHC shall not be liable for any interest or penalty for late payments.
- c) Invoices with back-up documentation shall reference a BPHC purchase order number and shall be submitted to BPHCs, Procure to Pay (P2P) Department at Accountspayable@bphc.org and may include the program contact email.
- d) Bureau Programs/Departments shall provide to Contractor, P2P's Vendor Invoice Requirement and Submission Letter along with this contract.
- e) Unless agreed, invoices shall be payable thirty (30) days after receipt of invoice date. BPHC requires invoice payment of Electronic Transfer Funds.
- f) Final invoices for fulfilled goods and services must be submitted to BPHC within thirty (30) days of the expiration or termination of this Contract. BPHC retains the right to deny payment for any invoices received after the 30-day invoice period.

ARTICLE V – RELATIONSHIP WITH BPHC

Contractor is retained solely for the purposes of and to the extent set forth in this Contract. Contractor's relationship to BPHC during the term of this Contract shall be that of an independent contractor. The Contractor shall be fully responsible for completion of its obligations under this Contract without supervision from BPHC. The Contractor has full discretion to employ the proper means and methods to complete the work and shall determine its own working hours. Contractor shall have no capacity to bind BPHC in any contract or to incur any liability on the part of BPHC. Contractor, its agents or employees shall not have the status or pension rights of an employee. The BPHC shall not be liable for any personal injury to or death of Contractor, its Agents, or employees.

ARTICLE VI – ASSUMPTION OF LOSS AND LIABILITY

- a) Contractor shall pay and be exclusively responsible for all debts for labor and material incurred by Contractor for the rental of any appliance or equipment hired by Contractor and/or for any expense incurred on account of the delivery of goods or services to be performed under this Contract.
- b) Contractor shall bear all loss resulting from any cause before the delivery of goods or services is completed and after performance of service if the goods or services fail to conform to specifications.
- c) Contractor or any of its agents, employees, or subcontractors entering on the premises of BPHC shall take all precautions necessary to prevent injury to persons or property.
- d) Contractor shall indemnify, assume the defense of, and hold BPHC its officers, agents, assigns, or employees, harmless from all suits and claims against them or any of them arising from any act or omission of Contractor, its agents, or employees in any way connected with performance under this Contract.
- e) Contractor shall maintain at a minimum General Liability, Property Damage, Employers' Liability, Worker's Compensation, and Motor Vehicle Liability (personal Injury and Property Damage) and such other liability insurance coverage as may be required hereunder sufficient to protect Contractor and BPHC from any risks or claims which may be associated with this Contract and as are customary in Contractor's business and shall provide BPHC with evidence of such coverage. In the event any changes occur in such liability coverage during the period of performance, Contractor shall notify BPHC of such changes and shall provide BPHC with new evidence of coverage. At BPHC's discretion, BPHC shall have the right to require that BPHC be named as an Additional Insured on any applicable policies.
- f) Contractor acknowledges that BPHC, its officers, agents, assigns, and employees, are subject to all of the provisions in M.G.L.c. 258, including but not limited to, the liability limitations for governmental entities.

ARTICLE VII – REMEDIES OF THE BPHC

- a) If Contractor provides goods or services which do not meet the specifications provided or are otherwise not merchantable or fit for their intended purposes, BPHC shall have all remedies as are provided by law.
- b) BPHC shall have the right to inspect goods or services for forty-five days and if the goods or services fail to meet the terms of the Contract or are otherwise not merchantable or fit for their intended purpose, BPHC shall have all remedies as are provided by law.
- c) BPHC may deduct the cost of any substitute contract or non-performance of services together with incidental and consequential damages from the Contract amount and shall withhold such damages from the sums due or to become due to the Contractor.
- d) BPHC retains all rights to warranty as supplied by Contractor.
- e) If this Contract is funded in whole or in part by a grant to BPHC from a third party, BPHC has the right to reduce the amount of this contract or terminate this contract if the grant from the third party is reduced or eliminated.
- f) In addition to all other remedies available to BPHC under applicable state and federal laws, in the event Contractor or its subcontractor(s) fails to comply with the contract terms or with applicable federal, state, or local requirements governing the use of any grant funding supplied by a third party that supports this contract, BPHC may withhold or suspend awards, in whole or in part, or recover from the Contractor or subcontractor(s) any funds improperly paid to the Contractor or subcontractor(s) following an audit by BPHC.

ARTICLE VIII – REMEDIES OF CONTRACTOR

If damages, other than loss on nonconforming goods or services, are actually sustained by Contractor due to any act or material omission for which BPHC is legally responsible, BPHC may allow a sum equal to the amount of such damages sustained by Contractor as determined BPHC in writing, provided Contractor shall have delivered to BPHC a detailed written statement of such damages and cause thereof within thirty (30) days after the act or material omission by BPHC. Contractor shall not have the option to accelerate at will.

ARTICLE IX – ASSIGNMENT

Contractor shall not assign, delegate, subcontract, or in any way transfer any interest in this Contract without prior written consent of BPHC. BPHC

reserves the right to delegate, assign, or otherwise transfer any interest in this Contract to another entity for purposes of contract administration without further notice to Contractor.

ARTICLE X – COMPLIANCE WITH LAWS, BPHC POLICIES, GRANT REQUIREMENTS, AND PUBLIC POLICY

- a) This Contract is subject to all laws of the Commonwealth of Massachusetts and, where applicable for most goods contracts, is governed by M.G.L. c. 106 §2-101, et seq. (the Uniform Commercial Code, Article 2).
- b) Contractor shall provide, at its sole expense, all necessary licenses, permits, or other authorizations required by the City of Boston, the Commonwealth of Massachusetts, or any state or federal governmental agency with proper jurisdiction and shall insure that all specifications, goods or services acquired or performed hereunder adhere to all applicable regulations. Contractor agrees and certifies that it is authorized and/or licensed to perform the services required by this Contract and that it will secure such authorization and/or licensure for so long as it is bound to perform under the terms of this Contract
- c) Contractor shall not discriminate against any individual because of gender, race, religious creed, national origin, age, disability, gender identity, or sexual orientation in connection with the performance of services under this Contract. Contractor shall post in conspicuous places notices to be provided by the Massachusetts Commission Against Discrimination, setting forth provisions of the Fair Employment Practice Law of the Commonwealth.
- d) Contractor shall not act in collusion with any BPHC officer, agent, assign, employee, or any other party, nor shall the Contractor make gifts regarding this Contract or any other matter in which BPHC has a direct and substantial interest in violation of M.G.L. c. 268A (the Conflict of Interest Law).
- e) Pursuant to M.G.L. c. 62C, Section 49A, Contractor certifies under the penalties of perjury that Contractor has complied with laws of the Commonwealth relating to taxes, reporting of employees and contractors, withholding and remitting of child support.
- f) Contractor shall comply with all City of Boston Ordinances, BPHC Regulations or policies, and any state and federal laws or grant requirements that in any manner affect the services herein specified. Contractor shall at all times observe and comply with said ordinances, regulations/policies or laws, and shall protect and indemnify the BPHC its officers, agents, assigns, and employees against any claim or liability arising from or based on any violation of such ordinances, regulations or laws.
- g) In addition to its obligations, the Contractor, where applicable, shall specifically comply with the City of Boston's Healthy Options Beverage Standards, which is incorporated into the contract by reference. The Contractor understands and agrees that compliance with those standards is required by the City of Boston's April 7, 2011 Executive Order Relative to Healthy Beverage Options. In pertinent part, the Order Relative to Healthy Beverage Options is applicable to all vending machine services, City-managed food or beverage services programs, contracted food or beverage services, food or beverage procurement, leases and other agreements for food or beverage concessions in or around City- owned buildings.
- h) This contract is also subject to BPHC's Food Service and Catering Policy, which is incorporated herein by reference. This Policy applies to the purchase and service of food and/or beverages at all BPHC funded events and programs, regardless of the internal source of funding that supports the event. A copy of the policy can be made available upon request.
- i) In addition to its obligations to comply with any applicable federal or state laws under section (f) above, the Contractor shall also comply with the requirements of any federal, state, or city grant that supports this contract. In particular, the Contractor must comply with all applicable grant reporting requirements and must provide appropriate supporting backup for any invoices submitted to BPHC for payment. Any waiver of these grant requirements by BPHC shall not prejudice BPHC's right to strictly require compliance with this section at any time during the life of the contract. BPHC shall supply a copy of the applicable Notice of the "Grant" Award with any provisions applicable to the Contractor upon request.
- j) BPHC will not purchase goods or allow services from a Contractor who is currently either barred or suspended from doing business with the United States government. The Contractor hereby certifies that they are not on the Systems for Award Management (SAM.gov)'s Exclusion List, and they are not barred or suspended from federal contracting. If the Contractor is barred or suspended from federal contracting during the period of this contract, the Contractor must notify BPHC in writing within fifteen (15) days

of such occurrence. In the event the Contractor is barred or suspended from federal contracting, BPHC shall have the right to modify or terminate this agreement at its discretion.

- k) Contractors who are federally funded sub-recipients must provide: 1) a Data Universal Numbering System (DUNS) number or a System for Award Management (SAM.gov) Unique Entity Identifier (UEI), and 2), Contractors subject to Uniform Guidance 2 C.F.R. 200 Subpart F – Audit Requirements, annually, a copy of the Contractor's latest Federal Single Audit report.
- l) Contractor certifies compliance of the prohibition of the use of telecommunications equipment and services produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of those entities) and certain video surveillance products or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of those entities) as per 2 C.F.R. §200.216 and NDAA Section 889.
- m) BPHC and the Contractor commit to making a good-faith effort to contract/subcontract with a diverse group of Certified Underrepresented Business Enterprises (CUBEs) in accordance with BPHC's Equitable Procurement Policy. CUBEs include the following: Minority, Women, Veteran, Disabled, LGBT and Small Local Business Owners.
- n) If this contract is in response to an infectious disease outbreak, including but not limited to COVID-19, the vendor acknowledges that this contract may be supported by funds from the United States Federal Government. Accordingly, the required federal provisions at the following link are hereby incorporated into this agreement: [Electronic Code of Federal Regulations \(eCFR\)](#)
- #### **ARTICLE XI – MISCELLANEOUS**
- a) All alterations or additions, material or otherwise, to the terms and conditions of this Contract must be in writing and signed by BPHC and Contractor.
- b) Any waiver expressed or implied, by BPHC of any rights, terms or conditions of the Contract shall not operate to waive such rights, terms or conditions or any other rights, terms, or conditions beyond the specific instance of waiver.
- c) Contractor acknowledges that any and all products created pursuant to this contract shall be the exclusive property of BPHC. Contractor shall not use or publish or cause to be used or published any reports or any other printed material in relation to the services performed hereunder without written authorization from BPHC. Where such authorization is given, Contractor shall appropriately acknowledge the collaboration and support of the BPHC. In addition, Contractor has an affirmative obligation to request whether BPHC would like to collaborate on the creation of any research paper, tool, or other product that is the result of the performance of this contract.
- d) For those contracts involving data collection, BPHC shall have the right to terminate this contract in accordance with Article XIV below if the Contractor fails to demonstrate within the first three (3) months of the contract period that it has the ability to comply with its obligations as stated in this Contract and the attached Scope of Services.
- e) Unless separately agreed upon by the parties in the attached Scope of Services, BPHC shall be the owner of any and all data collected by the Contractor pursuant to this Contract.
- f) In the event of any dispute concerning the meaning or application of this contract, any such dispute shall be resolved pursuant to the laws of the Commonwealth of Massachusetts and, if necessary, by a Court of the Commonwealth of Massachusetts in Suffolk County or the United States Federal Court sitting in Boston, MA.
- g) Neither party shall be liable to the other or be deemed to be in breach of the Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy (including terrorist acts), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or compliance with governmental orders that prohibits the performance of this contract.
- h) If any provision of this Contract is declared or found to be illegal,

unenforceable, or void, both parties shall be relieved of all obligations under such provision. The remainder of the Contract shall fully be enforced permissible by law.

i) BPHC is a tax-exempt entity and shall not be responsible for the payment of any type of tax that may arise as a result of the performance of this contract. The Boston Public Health Commission, having federal tax identification number 043316655, is a tax-exempt entity because it is a political subdivision of the Commonwealth of Massachusetts and performs essential governmental functions such as protecting, promoting, and preserving the health and well-being of all Boston residents. The Boston Public Health Commission was created as of July 1, 1996 by the Boston Public Health Act of 1995 (the "Act"). See Mass. Gen. Laws 111 App. §2-1 et seq. The Act specifically created the Boston Public Health Commission as a political subdivision of the Commonwealth of Massachusetts and imbued upon its exemption from taxation and other assessments. See Mass. Gen. Laws III App. §§2-3, 2-9. According to the Internal Revenue Code, gross income does not include income derived from the exercise of any essential governmental function or that accruing to a State or political subdivision thereof. See 26 USC §115(1). For these reasons, the Boston Public Health Commission enjoys tax exempt status under both state and federal law. This Paragraph XI (i) shall serve as the Commission's certificate of tax exemption.

ARTICLE XII – AVAILABLE APPROPRIATION

This Contract is subject to the availability of an appropriation therefore BPHC retains the right to reduce the amount of this Contract or terminate it if funding for the Contract is reduced or eliminated. This expressly includes any contracts that are funded in whole or in part by any grant funding received by BPHC.

ARTICLE XIII – RELEASE OF BPHC ON FINAL PAYMENT

Acceptance by Contractor of final payment from BPHC under this Contract shall be deemed to release forever BPHC from all claims and liabilities, except those which Contractor notifies BPHC in writing within three (3) months after such payment.

ARTICLE XIV – TERMINATION OR CANCELLATION

This Contract may be terminated by the BPHC for any breach of its terms by the Contractor, for convenience, or for any other ground stated elsewhere in this contract. All obligations which are executory on both sides shall be discharged upon termination. Any rights based on prior breach of performance shall survive. The terms of the Contract shall survive its termination for the purposes of (1) resolving any claims and (2) warranties. This Contract may be cancelled by the BPHC and will have the same effect as termination except that the BPHC shall retain any remedy for breach of the whole contract or any unperformed balance. Notice of termination or cancellation shall be given to the Contractor at the address supplied on the Request for Contract/Standard Contract Cover Page by email or mail and shall be effective on upon received. Contractor shall have no right to recover other amounts, including but not limited to amounts for lost profits, indirect, incidental, or consequential damages.

ARTICLE XV – WARRANTIES

Contractor makes all warranties as are applicable under M.G.L. c. 106 §2-313, the Warranty of Title, M.G.L. c. 106 §2-313, Express Warranties as by affirmation, promise, description and/or sample, M.G.L. c. 106 §2-314, the implied warranties of merchantability or by usage of trade, and MG.L. c. 106 §2-315, implied warranty of fitness for a particular purpose.

ARTICLE XVI – CONFIDENTIALITY

Contractor shall comply with all applicable federal, state, and local laws and regulations relating to confidentiality and privacy of any data collected or received by the Contractor. Contractor shall inform each of its employees or agents having any involvement with personal data or other confidential data of the laws and regulations relating to confidentiality and shall ensure their compliance.

ARTICLE XVII – CRIMINAL OFFENDER RECORD INFORMATION (CORI)

In order to ensure that independent contractors and their employees who have unsupervised contact with client(s) are appropriate for serving in their position in any program or facility of BPHC or any vendor agency programs funded by BPHC, a Criminal Offender Record Information ("CORI") check must be performed on the independent contractor(s) or its employees as provided in 101 CMR 15.00. It is the policy of BPHC that convictions of certain crimes pose an unacceptable risk to the vulnerable populations served by BPHC and its vendor agencies. Contractor and any subcontractors/employees who may have unsupervised contact with

client(s) shall consent to a CORI check conducted by Human Resources or provide BPHC with an Affidavit stating that the vendor has conducted its own CORI check on the employees or individuals.

The General Counsel's Office has the discretion to require CORI check, SORI check, or CORI Affidavit for any other contracts where it deems necessary, including but not limited to, any contracts where BPHC's finances or financial information are a subject of the contract.

ARTICLE XVIII – ENTIRE AGREEMENT, COUNTERPARTS, COPIES

This Contract constitutes the entire agreement of the BPHC and Contractor and supersedes any and all oral agreements and negotiations. If necessary, this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. In addition, a copy of this contract will be just as enforceable as an original, unless one party demands creation and receipt of a contract with original signatures.

----- **END OF TERMS AND CONDITIONS** -----

BPHC and Contractor hereby cause this instrument to be executed by the duly authorized representatives as of the day first written above.

CONTRACTOR

Approved by:

Signature:

Printed Name: _____

Date: _____

BOSTON PUBLIC HEALTH COMMISSION

Approved as to Form – General Counsel

Signature:

Printed Name: _____

Date: _____

Approved - Administration and Finance / Executive Office

Signature:

Printed Name: _____

Date: _____