

**STANDARD FORM CONTRACT FOR THE
PROVISION OF GOODS AND SERVICES**

This contractual agreement ("Contract") is hereby made this _____ day of _____, 201 ____ by and between the Boston Public Health Commission (hereinafter "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 and _____ (hereinafter "Contractor"). This Contract is subject to the terms and conditions contained in the Request for Contract/Standard Form Contract Cover Page, including any attachments thereto, which are incorporated by reference herein.

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 six 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) All invoices shall reference the BPHC purchase order number and shall be submitted to BPHC, Accounts Payable Department, 1010 Massachusetts Avenue, Boston, MA 02118.

d) A final invoice must be submitted within thirty (30) days of the expiration of this Contract. BPHC shall have the right to deny payment for any invoices, final or otherwise, that are received by BPHC more than 90 days after expiration or termination of this Contract.

e) Unless otherwise agreed, all invoices shall be payable thirty (30) days after receipt by BPHC.

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. 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 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.
- 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, is governed by M.G.L. c. 106 §§2-102, et seq.

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 adheres 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, where applicable, maintain during the term of this Contract such Workmen's Compensation insurance as may be reasonably necessary to protect Contractor from claims under M.G.L. c.152 (the Workmen's Compensation Law).

d) Contractor shall not discriminate against any individual because of gender, race, religious creed, national origin, age, disability 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.

e) 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).

f) Pursuant to M.G.L. c. 62C, Section 49A, the Contractor certifies under the penalties of perjury that Contractor has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

g) Contractor shall keep himself fully informed of all City of Boston Ordinances, all BPHC Regulations or policies and any state and federal laws that in any manner affects 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.

h) In addition to its obligations under section g, 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.

i) 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.

j) In addition to its obligations to comply with any applicable federal or state laws under section g, 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. In addition, if applicable, the Contractor shall comply with all grant requirements of the American Recovery and Reinvestment Act of 2009 (“ARRA”) and the Federal Funding Accountability and Transparency Act (“FFATA”).

k) BPHC will not purchase goods or services from a Contractor who is currently either disqualified or suspended from doing business with the United States government. The Contractor hereby certifies that they are not on the Federal Excluded Parties List System and they are not disqualified or suspended from federal contracting. If the Contractor is disqualified 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 disqualified or suspended from federal contracting, BPHC shall have the right to modify or terminate this agreement at its discretion.

l) All vendors, who are federally funded subrecipients, must provide: 1) a Data Universal Numbering System (DUNS) number, and 2), for all vendors subject to OMB Circular A-133, annually, a copy of their most recent A-133 audit report.

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.

d) 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

e) 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, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather.

f) 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 be enforced to the fullest extent permissible by law.

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 regular mail and shall be effective on mailing. 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 M.G.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. 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) CHECK

In order to ensure that employees and independent contractors who have unsupervised contact with client(s) are appropriate for serving 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 candidates and/or independent contractor(s) as provided in 105 CMR 950.00. 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 BPHC client(s) shall consent to a CORI check or provide the BPHC with a current official CORI report. All CORI reports are subject to review and approval by the BPHC before approval of the Contract.

ARTICLE XVIII – ENTIRE AGREEMENT

This Contract constitutes the entire agreement of the BPHC and Contractor and supersedes any and all oral agreements and negotiations between BPHC and Contractor relating to the subject matter contained herein.

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

BOSTON PUBLIC HEALTH COMMISSION

CONTRACTOR

By:

By:

Huy Nguyen, MD, Medical Director and
Interim Executive Director

Printed Name: _____

Date: ____ / ____ / ____

Title: _____

Date: ____ / ____ / ____

Approved as to form:

Office of General Counsel
Boston Public Health Commission

Date: ____ / ____ / ____