



STANDARD CONTRACT FOR THE PROVISION OF GOODS OR SERVICES

This contractual agreement ("Contract") is hereby made this ___ day of ___, 20__ 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 additional terms and conditions and any attachments thereto, which are all incorporated into this Contract.

Part 1 – IDENTIFICATION OF BPHC BUREAU:

- A. Bureau: _____
B. Program: _____
C. Requestor: _____ Phone: _____
D. Goods/Service(s) Requested: _____
E. Service Location: _____

Part 2 – IDENTIFICATION OF CONTRACTOR:

- A. Contractor: _____
B. Payee Name if different from Contractor : _____
C. Contact: _____
D. Street Address: _____
E. City: _____ State: _____ Zip: _____
F. Phone: _____ Fax: _____ Email : _____
G. EIN/SSN: _____ H. DUNS: _____

Part 3 – CONTRACT TERM:

This contract shall be in effect from ___ / ___ / ___ through ___ / ___ / ___, but shall be subject to earlier termination as provided in the Standard Contract Provisions.

Part 4 – CONTRACT NOT-TO-EXCEED AMOUNT:

This contract shall not exceed _____ dollars (\$ _____) and is subject to the availability and appropriation of funds.

Part 5 – FUNDING SOURCE:

Grant Number, if any: _____ Grant Expiration Date: ___/ ___/ ___
CFDA#: _____

Part 6 – ADDITIONAL TERMS:

This contract package includes this Standard Form Contract and any documents physically attached hereto which are incorporated herein by reference.

Contract Number: _____ Vendor Number: _____

TERMS AND CONDITIONS

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) All invoices with back-up documentation shall reference the BPHC purchase order number and shall be submitted to BPHC, Accounts Payable Department, 1010 Massachusetts Avenue, Boston, MA 02118 or via e-mail to accountspayable@bphc.org.

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

e) 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 30 days after expiration or termination of this Contract.

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 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 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, 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.

f) Contractor shall keep himself fully informed of all City of Boston Ordinances, all BPHC Regulations or policies and any state and federal laws or grant requirements 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.

g) 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.

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 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 Federal Excluded Parties List System 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) All vendors who are federally funded sub-recipients 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. 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 be enforced to the fullest extent 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 it 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 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 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) CHECK

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

The General Counsel’s Office of BPHC has discretion to require CORI checks or the CORI Affidavit for any other contracts where it deems it is 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 between BPHC and Contractor relating to the subject matter contained herein. 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.

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

Approved by:

Signature: _____



Date: ____ / ____ / ____

Approved as to Form:

Office of the General Counsel

Date: ____ / ____ / ____

CONTRACTOR

Signature: _____

Printed Name: _____

Title: _____

Date: ____ / ____ / ____



BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the ____ day of _____, _____, by and between the Boston Public Health Commission ("Covered Entity"), and _____, on behalf of itself and its subsidiaries and affiliates, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to the Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "Business Associate" of a Covered Entity as defined in the HIPAA Privacy Regulation.

WHEREAS, Business Associate may have access to Protected Health Information ("PHI") (as defined below) in fulfilling its responsibilities under such arrangement;

WHEREAS, Covered Entity and Business Associate intend to protect and provide for the security, confidentiality and integrity of privacy of PHI disclosed by Covered entity to Business Associate, or collected or created by Business Associate, in compliance with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the regulations promulgated by the Department of Health and Human Services, including but not limited to, the regulations codified at 45 CFR Parts 160 and 164 (the "HIPAA Privacy Regulation"), the Health Information Technology for Economic and Clinical Health Act (the HITECH Act"), and other applicable state and federal laws, all as amended from time to time, including as amended by the Final Rule issued by the Secretary on January 17, 2013 titled "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules"; and

THEREFORE, in consideration of the Parties' continuing obligations under this Agreement, compliance with the HIPAA Privacy Regulation, and for and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Regulation and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Regulation or the HITECH Act. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Regulation, as amended, the HIPAA Privacy Regulation shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Regulation, but are nonetheless permitted by the HIPAA Privacy Regulation, the provisions of this Agreement shall control.

Protected Health Information. "Protected Health Information" ("PHI") means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Business Associate acknowledges and agrees that all Protected Health Information that is created, received, maintained or transmitted by the Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by the Covered Entity or its operating units to Business Associate or is created or received by Business Associate on the Covered Entity's behalf shall be subject to this Agreement.

- A. Except as otherwise permitted herein, Business Associate may only Use or Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:
 1. the Disclosure is required by law; or
 2. Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will be held confidentially and used or further Disclosed only as required by law or for the purpose for which it was Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- B. Business Associate may Use and Disclose PHI for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship.
- C. Business Associate may Disclose PHI as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, (if consistent with the HIPAA Privacy Regulation).

- D. Business Associate may Use PHI as would be permitted by the HIPAA Privacy Regulation if such Use or Disclosure were made by the Covered Entity or to carry out the responsibilities of Business Associate, provided that such Disclosures are permitted or Required By Law.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- A. Not use or further disclose PHI other than as permitted or required by this Agreement. Business Associates acknowledges and agrees that in addition to the requirements of this agreement, the Business Associates must comply with all applicable sections and provisions of HIPAA, the HITECH Act, and Final Rule issued by the Secretary on January 17, 2013 titled "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules";
- B. Implement appropriate administrative safeguards as required by 45 CFR §164.308, physical safeguards as required by 45 CFR §164.310, and technical safeguards as required by 45 CFR §164.312 to prevent Use or Disclosure of PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity, other than as provided for by or permitted under this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's internal practices, records, and books related to the Use and Disclosure of PHI to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Regulation;
- C. Ensure that Business Associate's agents, including subcontractors, to whom it provides PHI received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement;
- D. Make available PHI in a reasonable amount of time to the extent and in the manner required by §§164.524, 164.526, and 164.528 of the HIPAA Privacy Rule which permit the patient/client to access rights, amendment rights and an accounting of disclosures of his/her PHI;
- E. Make available Business Associate's internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity to the Secretary of Health and Human Services for purposes of determining the Covered Entity's compliance;
- F. Notify Covered Entity of any request of an individual to make an amendment to PHI and make available to Covered Entity, if so requested, the PHI for Covered Entity to timely and properly comply with requests by Individuals for amendments consistent with Covered Entity's obligations under 45 CFR §164.526.
- G. Incorporate any amendments or corrections to PHI when notified by Covered Entity;

- H. Document its Disclosures of PHI in the same manner as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528; and
- I. Report to Covered Entity within five (5) business days any use or disclosure of PHI which is not in compliance with the terms of this Agreement, including breaches of Unsecured PHI as required under 45 CFR §164.410, and any Security Incident of which Business Associate becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

IV. TERM AND TERMINATION

- A. Term. This agreement shall be effective and enforceable by the Parties to this Agreement as of the Effective Date as defined herein, and shall terminate on the earlier of (1) when Business Associate is no longer providing Services to Covered Entity, (2) the termination of this Agreement by either party, or (3) the mutual written agreement of the Parties.
- B. Termination for Cause. Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement or fails to satisfy any of its statutory obligations under HIPAA or the HITECH Act. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives notice to Business Associate of such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement, then Covered Entity shall have the right to terminate this Agreement immediately.
- C. Effect of Termination.
 - 1. At termination of this Agreement, or any similar documentation of the business relationship of the Parties, or upon request of the Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all PHI received from or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to PHI that is in the possession of any subcontractors or agents of Business Associate. Business Associate shall not retain any copies of such PHI.
 - 2. If Business Associate determines that such return or destruction of PHI is not feasible or in violation of law, Business Associate shall provide Covered Entity with a notification of the conditions for which return or destruction is infeasible, and Business Associate will extend the protections of this Agreement to the information and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible or in violation of law, for so long as Business Associate maintains such PHI.

V. GENERAL PROVISIONS

- A. Obligations of Business Associate. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein. Except as expressly stated herein or the HIPAA Privacy Regulation, the Parties to this Agreement do not intend to create any rights in any third parties.
- B. Amendments and Modifications. This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement is intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of Massachusetts. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- C. Interpretation and Severability. The Parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of PHI which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of PHI. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

Boston Public Health Commission

Business Associate

Signature: _____

Signature: _____

Printed Name: _____

Title: _____

Date: ____/____/____

Date: ____/____/____